

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th June, 2025

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Deputy Speaker (Sen. Kathuri): Do we have quorum?

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

Serjeant-at-Arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Deputy Speaker (Sen. Kathuri): Order, hon. Senators. We now have quorum. Let us start our business.

Clerk, kindly read out the first Order.

(Sen. Ali Roba consulted Sen. (Dr.) Khalwale)

Order, Sen. Roba. There is a Message I want to read.

MESSAGE FROM THE NATIONAL ASSEMBLY

DECISION OF THE NATIONAL ASSEMBLY ON PRESIDENT'S RESERVATIONS TO THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILLS NO.12 OF 2023)

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.46(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the decision of the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

National Assembly on the President's reservations to The Conflict of Interest Bill (National Assembly Bills No.12 of 2023).

The Message, dated Tuesday, 3rd June, 2025, was received in the Office of the Clerk of the Senate on Wednesday, 4th June, 2025. Pursuant to Standing Order No.46 (4), I now report the Message-

"PURSUANT to the provisions of Standing Order No.41(1) and No.154 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Conflict of Interest Bill (National Assembly Bills No.12 of 2023) was published vide Kenya Gazette Supplement No.41 of 3rd April, 2023 as a Bill seeking to provide for the management and regulation of conflict of interest in the discharge of official duties and was passed by the Houses of Parliament in accordance with the provisions of Article 113 of the Constitution and subsequently presented for Assent;

AND WHEREAS on 30th April, 2025, His Excellency the President referred the Bill back to Parliament for reconsideration in accordance with the provisions of Article 115 of the Constitution;

FURTHER WHEREAS the National Assembly considered the President's Reservations to the Conflict of Interest Bill (National Assembly Bills No.12 of 2023) and passed the Bill a second time with amendments, on Tuesday, 3rd June, 2025, thus fully accommodating the President's Reservations;

NOW THEREFORE, in accordance with the provisions of Article 115 of the Constitution and Standing Order No.41(1) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate."

Hon. Senators, as you are aware, the Senate was seized of the President's Memorandum on 30th April, 2025 and the matter was subsequently referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and reporting. The Committee, through a Motion, sought and was granted an extension of time by a further 45 calendar days on 20th May, 2025, to enable the Committee conclude its deliberations and table its Report.

I urge the Committee to expedite the consideration of the President's reservations.
Thank you.
Next Order.

PAPER LAID

REPORT ON PETITION: INCOMPLETE INVESTIGATIONS AND
FAILURE TO ARREST AND PROSECUTE SUSPECTS OF THE ABDUCTION
AND DISAPPEARANCE OF MR. JOSHUA GICHUKI MWANGI

The Deputy Speaker (Sen. Kathuri): The Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights (JLAHRC) or a member of the Committee.

Deputy Majority Whip, kindly read the Paper.

Sen. (Dr.) Lelegwe Ltumbesi: Thank you, Mr. Deputy Speaker, Sir.

I beg to lay the following Paper on the Table of the Senate today, 5th June, 2025-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on a petition to the Senate by Ms. Christine Njoki Mweru regarding incomplete investigations, failure to arrest and prosecute suspects involved in the abduction and disappearance of Mr. Joshua Gichuki Mwangi.

I beg to lay.

(Sen. (Dr.) Lelegwe Ltumbesi laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Next Order.

NOTICE OF MOTION

ADOPTION OF REPORT ON PETITION ON INCOMPLETE INVESTIGATIONS AND FAILURE TO ARREST AND PROSECUTE SUSPECTS OF THE ABDUCTION AND DISAPPEARANCE OF MR. JOSHUA GICHUKI MWANGI

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Lelengwe, give Notice of that Motion.

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion-

THAT the Senate adopts the report of the Standing Committee on Justice, Legal Affairs and Human Rights on a petition to the Senate by Ms. Christine Njoki Mweru regarding incomplete investigations and failure to arrest and prosecute suspects involved in the abduction and disappearance of Mr. Joshua Gichuki Mwangi laid on the table of the Senate on Thursday, 5th June, 2025.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM RUTHAGATI HIGH SCHOOL IN NYERI COUNTY

The Deputy Speaker (Sen. Kathuri): Before we move on to the next Order, let me make this Communication.

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Ruthagati High School in Nyeri County. The delegation comprises 75 students and three teachers, who are in the Senate for a one-day academic exposition.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Thank you.

Proceed, Sen. Wamatinga. A minute is enough.

Sen. Wamatinga: Thank you very much, Mr. Deputy Speaker, Sir. Indeed, I am delighted because this is my former school.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Deputy Speaker (Sen. Kathuri): Since it is your former school, take two minutes.

Sen. Wamatinga: Thank you very much, Mr. Deputy Speaker, Sir.

I am a proud former student of Ruthagati Secondary School and proud to see young boys from my former school coming to the Senate and finding one of the Senators of Nyeri County as a former student of Ruthagati. I encourage them that we live in a country that gives every person, every child, regardless of where they come from, an opportunity to serve this country. Ruthagati was and still is one of the best day schools. Now it is a boarding school in Nyeri County.

Mr. Deputy Speaker, Sir, this is an extra-county school that produces some of the best scholars, including myself. Today marks that day that boys from that school have come to visit the Senate, only to find a former boy sitting here as a Senator. Work hard, be diligent in whatever you do, obey your teachers and parents and know that the sky is the limit.

My standing here today is proof enough that you can become whatever you want to be because you are the bearer of your vision. Let nobody tell you since you did not go to one of those big schools, you cannot become somebody in this country. I am a Senator and a Commissioner at the same time. I am very proud today to welcome you here, to encourage you to learn and most importantly to tell you that, yes, indeed, your future lies in your hands. You can chase after your dreams and become whatever you want to become.

In the Senate, which is the upper House, we are 67 Senators and one of them comes from your school. Therefore, that should be motivation enough for you to go and work very hard. I will be seeing you out there to share with you a word or two. I will also be coming to visit your school because I remember that I promised you a cheque. I have already bought it.

It is at home. I will bring it in the next couple of days. Welcome to the Senate. See you later.

Thank you very much.

The Deputy Speaker (Sen. Kathuri): Very well. Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

The Deputy Speaker (Sen. Kathuri): We have Statements under Standing Order No. 53(1).

Sen. Kavindu, proceed.

STATE OF STADIUM FACILITIES IN MACHAKOS COUNTY

Sen. Kavindu Muthama: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee of Roads,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Transportation and Housing on a matter of county-wide concern namely, the construction of stadiums in Machakos County.

The County Government of Machakos in January, 2019 awarded contracts for construction of Masii and Mavoko stadiums to a local firm at contract sums of Kshs49,045,479 and Kshs44,616,635 respectively. However, construction works at both stadiums are stalled and the contractor abandoned the respective sites.

Further, the County through the Department of Tourism and Sports entered into a contract for the designing and building of Kinyui Stadium at a contract price of Kshs49,906,656 in the Financial Year 2018/2019, with an initial contract period of three years, which has since expired.

In the Statement, the Committee should address the following-

(1) The current status of construction in Masii, Mavoko and Kinyui stadiums, including progress made since contractors abandoned the site.

(2) The reasons for the stalling of construction works at the three stadiums and the prolonged abandonment of the sites by the contractors.

(3) A breakdown of funds disbursed to the contractors to date for each of the projects and indicate whether there has been any loss of public funds in the stalled projects.

(4) The measures taken by the County Government to hold the contracted firms accountable for abandoning the projects, including any penalties, legal action and contract termination proceedings.

(5) Whether there are any concrete plans to revive, re-tender or complete the construction of the stadiums and provide timelines of the same.

PUBLIC HEALTH RISKS OF WASTEWATER-IRRIGATED FOOD CROPS IN NAIROBI

Mr. Deputy Speaker, Sir, I have another one.

I rise on Standing Order No.53(1) to seek a Statement from the Standing Committee on Health on a matter of national concern regarding public health risks associated with the use of contaminated water from the Nairobi River, Ngong' River and Athi River for irrigation of food crops in areas such as Kitengela, Athi River Town, Great Wall area, Kibera, Kamulu, Maili-Saba and the surrounding communities.

There is increasing concern that untreated wastewater and industrial effluence are being used to irrigate food crops such as vegetables and tuber crops, which are later sold in local markets and major supermarkets. Studies have indicated the presence of heavy metals like lead, cadmium and mercury as well as microbial pathogen in the water and soil used to cultivate. Consumption of such produce poses serious health risks, particularly to children and expectant mothers.

In the Statement, the Committee should address the following-

(1) Measures being implemented by the State Department of Public Health and Professional Standards in the Ministry of Health (MoH) to prevent the irrigation of food crops using contaminated water within the Nairobi Metropolitan areas and ensure that food sold to the public is safe.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(2) The surveillance and regulatory mechanism in place to test and monitor vegetables and tuber crops sold in both formal and informal markets for contamination of heavy metals and pathogens.

(3) Whether the Ministry has conducted any health impact assessment on the consumption of crops irrigated with polluted water in the affected regions, including findings and subsequent action taken.

(4) Information of public education initiatives, enforcement measures against violators and strategies being implemented to secure the food supply chain from contaminated produce.

I thank you.

DRASTIC REDUCTION IN MILK COLLECTION VOLUMES BY COOPERATIVE SOCIETIES IN KIRINYAGA COUNTY

Sen. (Dr.) Murango: Thank you, Mr. Deputy Speaker, Sir. I have two statements arising from a crisis in Kirinyaga County.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries on a matter of county-wide concern regarding the drastic reduction in milk collection volumes from Kirima Slopes Dairy Cooperative Societies in Kirinyaga County by the New Kenya Cooperative Creameries (KCC) and Meru Central Dairy Union.

Kirima Slopes Dairy Cooperative Society represents over 6,000 smallholder farmers and has consistently delivered 75,000 litres of milk per day; 45,000 litres to KCC and 30,000 litres to Meru Central Dairy Union. However, these volumes have been slashed drastically without prior consultation or justification.

Meru Central Dairy Union issued a one-day notice limiting intake to 15,000 litres, while KCC has further reduced their collection to 25,000 litres. This abrupt action has created a surplus of 35,000 litres per day, overwhelming storage capacity, leading to direct losses estimated to be Kshs2 million daily.

In the Statement, the Committee should address the following-

(1) Reasons behind the abrupt reduction in milk collection by new KCC and Meru Central Dairy Union from Kirima Slopes Dairy Cooperative and why affected farmers were not given adequate notice or alternative arrangement despite having a contract.

(2) Why suppliers outside Meru County, especially in Kirinyaga, are being affected or penalised despite their loyalty during dry seasons while milk collection continues uninterrupted in most of the regions.

(3) Immediate and long-term measures the State Department of Livestock is taking to absorb surplus milk, including efforts to expand cooling infrastructure in Kirinyaga and provide timely market access to prevent post-harvest losses.

(4) Policy interventions in place to protect small-scale dairy cooperatives from sudden disruptions in supply chains that ensure their stability and sustainability.

(5) The Government's strategies to regulate milk and dairy imports from Uganda, including plans to protect local producers and processors from unfair competition.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

DIRECT PAYMENT OF COFFEE SALES PROCEEDS
FROM NAIROBI COFFEE EXCHANGE TO FARMERS

Mr. Deputy Speaker, Sir, the second Statement is on the directive mandating direct payment of coffee sales proceeds from the Nairobi Coffee Exchange to individual farmers.

I rise again pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee On Agriculture, Livestock and Fisheries on a matter of national concern regarding the directive issued by the Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) development on 18th November, 2024, mandating direct payment of coffee sales proceeds from Nairobi Coffee Exchange to individual farmers.

In the Statement, the Committee should address the following-

(1) Whether the Ministry undertook consultation with Coffee Cooperative Societies and other relevant stakeholders before issuing the directive mandating direct payment of coffee sales proceeds from the Nairobi Coffee Exchange to individual farmers and if so, obtain information on the same.

(2) Whether the directive aligns with the provision of Cooperative Societies Act and the Constitution of Kenya and specifically, how the directive impacts the constitutionally guaranteed freedom of association.

(3) The economic and structural impact of the directive on Coffee Cooperative Societies, including the measures in place to safeguard the future of these cooperative societies, which provide essential services to the farmers.

(4) The measures in place to cushion small-scale farmers, particularly those producing less than 200 kilogrammes of coffee cherry annually, from increased transaction charges and other diverse effects associated with the piecemeal payments, including limited bargaining power.

(5) Whether the Ministry can consider a review or suspension of the directive to allow for wider consultations, to ensure that the directive does not compromise the integrity of coffee value chain.

I thank you.

ONGOING SHORTAGE OF ESSENTIAL NEWBORN VACCINES
IN MEDICAL FACILITIES ACROSS THE COUNTRY

Sen. Seki: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding the ongoing shortage of essential newborn vaccines, specifically Bacillus Calmette-Guérin (BCG) and Oral Polio Vaccines (OPV) in medical facilities across the country.

There is a growing concern among parents and healthcare providers over the persistent unavailability of those critical vaccines. The BCG and OPV vaccines are vital in protecting infants against tuberculosis and polio, which continues to pose significant health risks, particularly in vulnerable communities. The current shortage undermines the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

National Immunisation Programme and threatens to reverse decades of progress in child health and disease prevention.

In the Statement, the Committee should address the following-

(1) Cause of the shortage of BCG and polio vaccines in Kenya, including financial constraints, current procurement challenges and logistics hurdles in vaccine supply and distribution.

(2) The steps being undertaken by the MoH and timelines to resolve the shortage and restore vaccine availability in all affected facilities.

(3) Measures in place to strengthen the national vaccine supply system, including coordination with county governments to ensure stability and avoid future stock-out.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Next is Sen. Eddy Oketch.

Sen. Ogola: Thank you, Mr. Deputy Speaker, Sir. I approached you with the request that Sen. Eddy Oketch asked me to read out his statements and you allowed me. With that approval, allow me to read the four statements by Sen. Eddy Oketch in the order in which they appear.

The Deputy Speaker (Sen. Kathuri): Yes, proceed.

FORMATION OF MINING POLICE UNIT TO HELP CURB ILLEGAL MINING, SMUGGLING AND MONEY LAUNDERING

Sen. Ogola: Mr. Deputy Speaker, Sir, first is a request for a statement on the formation of the Mining Police Unit.

I rise pursuant to Standing Order No.53(1), to seek a statement from the Standing Committee on Land, Environment and Natural Resources on a matter of national concern regarding the formation of the Mining Police Unit to help curb illegal mining, smuggling and money laundering within the mining sector.

In the statement, the Committee should address the following-

(1) The legal basis and justification for the formation of the Mining Police Unit.

(2) How the roles played by the Mining Police Unit differ from those of the inspectors of mines under the Mining Act.

(3) The number of cases handled by the Unit so far, including details on the quantity of illegally mined minerals recovered and the status of prosecution of the responsible individuals.

(4) The measures in place to protect artisanal and small-scale miners from harassment by officers in the Mining Police Unit, including details on the reporting mechanism for such statement.

BASIS FOR CABINET DECISION TO DECLARE 14 MINERALS AS STRATEGIC

Mr. Deputy Speaker, Sir, two is a request for a statement on the basis for the Cabinet decision to declare 14 minerals as strategic.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I rise pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Land, Environment, and Natural Resources on a matter of national concern regarding the basis for the Cabinet decisions of 3rd October, 2023 to declare radioactive mineral uranium, thorium, nickel, cobalt, graphite, terbium, tin, lithium, severite, coltan, chromite, niobium, rare earths and copper as strategic minerals.

In the Statement, the Committee should address the following-

(1) Details on the advisory by the Mineral Rights Board and the Director of Mines on the declaration of the 14 minerals as strategic, including an assessment of the legal standing of the advisory by the Mineral Rights Board, which did not have a chairperson appointed by the President at the time.

(2) Whether the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs also relied upon input from other relevant stakeholders in his request to the Cabinet to declare the minerals as strategic and, if so, provide details on such input.

(3) The alternative livelihood options and other support mechanisms the Government has provided to miners adversely affected by the declaration of the 14 minerals as strategic.

STATE OF ARTISANAL AND SMALL-SCALE MINING

Mr. Deputy Speaker, Sir, third is a request for a Statement on the status of artisanal and small-scale mining in Kenya.

I rise pursuant to Standing Order No.53(1), to seek a statement from the Standing Committee on Land, Environment, and Natural Resources on a matter of national concern regarding the state artisanal and small-scale mining in Kenya.

In October, 2023, the Cabinet vacated the prohibition on mining using traditional and customary means, also known as artisanal mining. However, little progress has been observed in onboarding artisanal and small-scale miners into the mainstream mining sector in Kenya.

In the Statement, the Committee should address the following-

(1) The number and identities of artisanal and small-scale miners granted mining permits in each county since the Cabinet decision to vacate the prohibitions on artisanal mining.

(2) The actions being taken by the Government to address delays in processing applications for artisanal mining permits.

(3) The delay in operationalization of the already gazetted 32 artisanal mining committees, which are supposed to advise on grant, renewal and revocation of artisanal mining permits in respective counties.

That is a statement by Sen. Eddy Oketch, MP, Senator for Migori County.

Mr. Deputy Speaker, Sir, I have the last one.

GOVERNMENT FAILURE TO PUBLISH FINDINGS
OF AERIAL GEOPHYSICAL SURVEY OF
KENYA'S MINERAL RESOURCES

Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources on a matter of national concern regarding failure by the Government to publish the findings of aerial geophysical survey of Kenya's mineral resources undertaken between 2019 and 2022.

In the statement, the Committee should address the following-

(1) The findings of the aerial geophysical survey of Kenya's mineral resources undertaken between 2019 and 2022.

(2) The reasons for the failure by the Government to publish the said findings, including the projected timelines for such a publication.

Again, that is a statement by Sen. Eddy Oketch, MP, Senator for Migori County.

Mr. Deputy Speaker, Sir, I thank you.

The Deputy Speaker (Sen. Kathuri): Let us now go to the Statement pursuant to Standing Order No.57(1) by the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 10TH JUNE, 2025

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, on behalf of the Senate Majority Leader, I rise, pursuant to Standing Order No.57(1) to hereby present the business of the House for the week commencing Tuesday, 10th June, 2025.

The status of the business pending before the Senate include 53 Bills, of which 37 are at the Second Reading stage and 16 at the Committee of the Whole stage. We have 32 Motions pending conclusion and 26 Petitions are pending conclusion, out of which 17 are due for reporting by the respective standing committees, and 485 Statements pursuant to Standing Order No.53(1) are under consideration by the respective standing committees.

On Tuesday, 10th June, 2025, the Senate Business Committee (SBC) will meet to consider the business for the week. The tentative business for that day will include business not concluded from today's Order Paper, as well as the business indicated in the Notice Paper.

The tentative business for the morning sitting on Wednesday, 11th June, 2025, will include the Schedule of Questions and Cabinet Secretary as approved by the SBC, as well as Motions.

The Questions will include the following-

(a) Question No.066 to the Cabinet Secretary, Ministry of Tourism by Sen. Joyce Korir, CBS, MP;

(b) Question No.043 to the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development by Sen. Edwin Sifuna, CBS, MP;

(c) Question No.039 to the Cabinet Secretary, Ministry of Youth Affairs, Creative Economy and Sports by Sen. Daniel Maanzo, EBS, MP;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(d) Question No.067 to the Cabinet Secretary, Ministry of Youth Affairs, Creative Economy and Sports by Sen. Joyce Korir, CBS, MP;

(e) Question No.067 to the Cabinet Secretary, Ministry of Youth Affairs, Creative Economy and Sports by Sen. Joyce Korir, CBS, MP;

(f) Question Nos.013 and 018 to the Cabinet Secretary for Interior and National Administration by Sen. (Dr.) James Murango, MP;

(g) Question No.026 to the Cabinet Secretary for Interior and National Administration by Sen. (Dr.) Boni Khalwale, CBS, MP;

(h) Question Nos. 028, 029 and 080 to the Cabinet Secretary for Interior and National Administration by Sen. (Prof.) Tom Ojienda, SC, MP;

(i) Question No.041 to the Cabinet Secretary for Interior and National Administration by Sen. Daniel Maanzo, EBS, MP;

(j) Question No.044 to the Cabinet Secretary for Interior and National Administration by Sen. Edwin Sifuna, CBS, MP;

(k) Question No.049 to the Cabinet Secretary for Interior and National Administration by Sen. Shakila Abdalla, MP;

(l) Question No.051 to the Cabinet Secretary for Interior and National Administration by Sen. Catherine Mumma, MP;

(m) Question Nos.054, 056 and 059 to the Cabinet Secretary for Interior and National Administration by Sen. James Lomenen, MP;

(n) Question No.062 to the Cabinet Secretary for Interior and National Administration by Sen. Joyce Korir, CBS, MP; and,

(o) Question No.072 to the Cabinet Secretary for Interior and National Administration by Sen. Kathuri Murungi, MGH, MP.

Mr. Deputy Speaker, Sir, while some progress has been made in processing of Bills and Motions, what is pending for consideration is still a lot. As such, the tentative business of the afternoon sitting on Wednesday, 11th June, 2025, will include business not included in Tuesday's Order Paper and the following Bills.

To begin with are Bills at the Second Reading stage, which include the following-

(i) The County Governments) (State Officer's Removal from Office Procedure Bill (Senate Bills No.34 of 2024);

(ii) The County Governments (Amendment) Bill (Senate Bills No.39 of 2024);

(iii) The Labour Migration and Management (No.2) Bill (Senate Bills No.42 of 2024); and,

(iv) The Street Naming and Property Addressing System Bill (Senate Bills No.43 of 2024).

We have Bills at the Committee of the Whole stage, which include the following-

(i) The Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023);

(ii) The Local Content Bill (Senate Bills No.50 of 2023);

(iii) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.41 of 2023);

(iv) The Sports (Amendment) Bill (Senate Bills No.33 of 2024);

(v) The Cooperatives (Amendment) Bill (National Assembly Bills No.7 of 2024);

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(vi) The Public Fundraising Appeals Bill (Senate Bills No.36 of 2024);
(vii) The Heritage and Museums Bill (Senate Bills No.8 of 2023);
(viii) The Environment Laws (Amendment) Bill (Senate Bills No.23 of 2024);
(ix) The County Library Services Bill (Senate Bills No.40 of 2024);
(x) The Statutory Instruments (Amendment) Bill (Senate Bills No.10 of 2024);
(xi) The Creative Economy Support Bill (Senate Bills No.30 of 2024); and,
(xii) The County Governments Election Laws (Amendment) Bill (Senate Bills No.2 of 2024).

The Motions include the following-

(i) Motion on the Report of the Liaison Committee on the activities and operations of the select committees during the Third Session of 2024;

(ii) Motion on the Report of the Standing Committee on Devolution and Intergovernmental Relations on its inquiry into the state of governance in the county governments of Garissa arising from a Statement that was sought by Sen. Abdul Haji;

(iii) Motion on the Report of the Standing Committee on Devolution and Intergovernmental Relations on its inquiry into the state of the markets in Vihiga and Bungoma counties arising from a Statement sought by Sen. Osotsi and Sen. Wakoli; and,

(iv) Motion on the progress Report of the Standing Committee on National Cohesion, Equal Opportunity, and Regional Integration on the inquiry into the diversity and inclusivity in the staff composition of state agencies in Kenya.

With respect to the aforementioned Bills at the Committee of the Whole, I would like to urge the respective standing committees to prioritize their consideration and to file reports thereon within timelines specified under the Senate Standing Orders. I also urge all Senators attending to file amendments to the same within reasonable time for the Senate to be able to dispense with the Bills at the Committee of the Whole.

The projected business for Thursday, 12th June, 2025 will include business not concluded on Wednesday's Order Paper and any other business scheduled by the Senate Business Committee.

Mr. Deputy Speaker, Sir, as all Senators will note, the Senate will proceed on recess on 13th June, 2025, pursuant to the standing Senate Calendar. As such, I will move a Motion of Adjournment on 12th June, 2025 for the Senate to adjourn until the next part of the Session. In this regard, I urge all of us to take advantage of the available time to conclude on business pending before the Senate.

Mr. Deputy Speaker, Sir, I have a small addition. We, the Members of the Senate Committee on Finance and Budget, feel constrained by this Calendar. We have requested our Chairperson to request your Committee to ensure that the Calendar is sensitive to the constitutional timelines.

I thank you and hereby lay the statement on the Table of the Senate today, 5th June, 2025.

(Sen. (Dr.) Khalwale laid the document on the Table)

Why is the Senator of---

Disclaimer: The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.

Sen. Wambua: Mr. Deputy Speaker, Sir, Sen. (Dr.) Khalwale should know this better than anyone else. When he was reading the statement under Standing Order No.57, he was doing it as the Senate Majority Leader. He then went ahead and switched when on the Floor and started to address the Senate, as a Member of a Committee. That is not procedural and it is not allowed.

The Deputy Speaker (Sen. Kathuri): The record did not capture what he said. The Chairperson is here and he cannot talk on behalf of the Chair of the Committee on Finance and Budget.

Sen. (Dr.) Khalwale, next time, I will give that responsibility to your deputy, Sen. (Dr.) Lelegwe. I will ask him to do that work in the absence of the Senate Majority Leader. You have fired yourself.

There are several requests on my screen. I do not know if you want to make brief comments on the statements or you are queuing for Order No.9, which has a lot of attention.

Sen. Munyi Mundigi, I will give you two minutes.

Sen. Munyi Mundigi: Asante Bw. Naibu Spika kwa kunipa ruhusa ili nichangie *statement* ambayo imeletwa na Sen. (Dr.) Murango kuhusu mambo ya maziwa.

Mambo ya maziwa inashughulikiwa na Kamati ya Kilimo. Wakulima wenye wako na ng'ombe na wanauza maziwa New Kenya Co-operative Creameries (KCC) wanaumia sana. Kumekuwa na vita Kaunti ya Embu na kaunti zingine. Wananchi waliambiwa na Rais pamoja na Waziri wa *Co-operatives and Micro, Small and Medium Enterprises (MSME) Development* ya kwamba wataua maziwa lita moja kwa Shilingi 50.

Kilio chetu ni kwamba bei ya chakula ya ng'ombe na dawa ya ng'ombe ipunguzwe ndiposa mkulima afaidike. Saa hizi, ukienda kule Mlima; Embu, Kirinyaga, Tharaka-Nithi, Meru na Nyeri, utapata ya kwamba KCC haichukui maziwa pahali ambapo inawekwa. Maziwa imekuwa nyingi. Ni huzuni sana kwa sababu wakulima wanateseka.

Wale ambao walikuwa wamechukua deni wameshindwa kulipa. Wazazi wameshindwa kulipa karo na wale wagonjwa wameshindwa kupata pesa ye kuenda hospitali. Naomba tuulize waziri wa Kilimo na yule wa *Co-operatives and Micro, Small and Medium Enterprises (MSME) Development* watueleze nini inaendelea. Hii ni kwa sababu Rais alisema eti maziwa haitanunuliwa chini ya Shilingi 50.

Kwa hivyo, Waziri awe *summoned* na hii Seneti ili akuje aseme kile ambacho kinaendelea. Hii ni kwa sababu Rais alisema bei ya maziwa iende juu, lakini tunaona bei ikishuka.

Katika Kamati ya Leba---

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

The Deputy Speaker (Sen. Kathuri): What is your point of order, Sen. Korir? , Samahani, Sen. Munyi Mundigi. Naomba tuweze kupata hoja ya nidhamu.

Sen. Korir: Asante, Bw. Naibu Spika. Yule Seneta ambaye amelea huu mjadala hakusema lolote kuhusu mlima. Ningependa kujua kama watu wa mlima peke yao ndio wako na shida na mambo ya maziwa. Sen. Munyi Mundigi atueleze hili jambo kwa upana.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Deputy Speaker (Sen. Kathuri): Aeleze pia mlima ni wapi.

Two minutes, Sen. Munyi Mundigi.

Sen. Munyi Mundigi: Asante, Bw. Naibu Spika. Ninajua maziwa inapatikana Kenya nzima. Lakini, wakulima ambao wako na shida ya maziwa ni wale wa kutoka kule Mlima; Embu, Tharaka-Nithi, Meru na Kirinyaga. Mimi nimetaja ile kona ambayo ninajua iko na shida.

Kama mambo ya kahawa---

The Deputy Speaker (Sen. Kathuri): Sen. Munyi Mundigi, ameuliza eti mlima ni wapi. Ni mlima upi huu unaita 'mlima?'

Sen. Munyi Mundigi: Nchini Kenya kuna *regions*. Mt. Kenya ndio mlima.

(Loud consultations)

Sen. Mwaruma: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to comment on the statement by Sen. Oketch Gicheru on Artisanal and Small-Scale Mining. I have a statement like this one, which has not been responded to. We have always raised concern on the rationale and justification of classifying some minerals as strategic minerals, which should only be mined by the National Mining Corporation (NAMICO). We have asked about the rationale, and have also asked if there has been adequate stakeholder involvement in classifying these minerals.

Mr. Deputy Speaker, Sir, where I come from, in Taita-Taveta County, the people who deal with artisanal mining, especially of tsavorites, are really worried because if they start dealing with tsavorite, they might be harassed by police officers and so, we want to get this response, plus the response to a similar statement I raised in this House. However, I do not know if the National Mining Corporation (NAMICO) of Kenya can do mining in the whole of Kenya.

Mr. Deputy Speaker, Sir, the other statement is about the information or data that has been collected by the aerial survey on minerals in Kenya. That data is there, and I do not know who it is helping because that information has not been publicised. That information needs to be published, so that counties, people or investors who want to deal with minerals or mines, can use that information for the sake of extracting the minerals. This is so that they can help the counties. There is a revenue-sharing formula between the national Government, counties and the people. So, we need this information as fast as possible.

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Boni Khalwale, you may proceed.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, following the Corona Virus Disease (COVID-19), lessons were drawn and the Government responded by establishing the Kenya Biovax Institute that was supposed to preside over manufacture, packaging and commercialization of believable vaccines that we are aware the Senator for Kajiado County has drawn the attention of the country to.

It is indeed very sad. I would like the Committee, over and above the issues raised by the Senator for Kajiado County, to tell us the amount of investment that was put into establishment of the Kenya Biovax vaccine, to give us the establishment in terms of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

human resource in that Institute and also tell us how much success has been achieved out of the envisaged functions of the Institute. I say this with a very heavy heart, that the children of the poor in this country are now going to be brought down by polio, tuberculosis, diphtheria, tetanus, and all of them, which are preventable. The medical profession had been able to put into the past.

My second comment is on the matter raised by the Senator for Machakos County on the status of various stadiums in her county. I remember on 1st January this year, six months ago, the President toured the Bukhungu Stadium and invited the contractor to come on site. It is amazing---

The Deputy Speaker (Sen. Kathuri): Sen. Joe Nyutu, you have the Floor.

Sen. Joe Nyutu: Thank you, Mr. Deputy Speaker, Sir, for the opportunity. I want to comment on the statement made by Sen. (Dr.) Murango, the Senator for Kirinyaga County, regarding the reduction of milk uptake from Kirima Dairy, Slopes Dairy by the Meru Central Dairy and KCC.

The reduction by the Meru Central Dairy is very drastic, from 30,000 litres a day to 15,000 litres a day. The reduction by KCC is from 75,000 litres to 25,000 litres a day. You can only imagine what is happening to these farmers and what they are doing with the excess supply of milk.

Although Sen. Joyce Korir does not want to hear anybody mentioning Murima, I want to remind her--- I say this because this is something that is happening in Murima--- We are elected to represent our different individual counties. If I am elected to represent Murang'a, I have to speak for the people of Murang'a and the Senator for Turkana can speak for the people of Turkana, even as we look at matters nationally. We hope that this is not a scheme to then impoverish the people from this particular region.

It is also very important that we deal with the matter of the import of milk from Uganda. We should not expose our farmers through the importation of milk from Uganda.

I also want to comment on Sen. (Dr.) Murango's second statement about the recent directive by the Ministry of Cooperatives to pay coffee farmers directly from the Nairobi Coffee Exchange. This is something that, if implemented, will kill cooperative societies and small-scale farmers---

The Deputy Speaker (Sen. Kathuri): Hon. Senator, you should train your eyes on the lights, so that you do not overrun the highway.

Sen. Wambua Enock, you may proceed.

Sen. Wambua: I thank you, Mr. Deputy Speaker, Sir. I stand to comment on the Statement raised by Sen. Agnes Kavindu, the Senator for Machakos County, concerning the construction of stadiums in Machakos County.

There is a reason the Constitution of Kenya, 2010, under Part II of the Fourth Schedule, allocates the role of construction of stadiums to county governments. This is because it is expected that the county governments will make investments in stadiums to tap into the talent of local youth and engage them in profitable ways.

When the committee that will be seized of this statement chooses to visit those two stadiums identified by Sen. Kavindu, I will request that the committee extends that visit to cover the lower eastern region of Kitui, Makueni and Machakos. I say this

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

because, since Independence, these three counties have never had what you would call real stadiums, where our youths can exploit their talents and where we can have serious meetings.

Going forward, there will need to be a lot of these spaces, where a lot of these things, including public meetings can happen. It will be important to have these counties invest more of their resources in constructing stadiums in that region.

Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kathuri): Sen. Nderitu John Kinyua, you may proceed.

Sen. Kinyua: Asante Bw. Naibu Spika kwa kunipa fursa hii. Ninataka kuunga mkono taarifa iliyoletwa na Seneta wa Jimbo la Kirinyaga kuhusu ukulima wa maziwa.

Ni kinaya kwa sababu, katika Jamhuri ya Kenya, Serikali imejitolea mhangwa kwa kupatiana pembejeo, mbegu za kisasa na mambo mengi. Pia, wanakumbana na mambo ya kiteknolojia. Ni jambo la kuvunja moyo sana ikiwa mambo haya yatafanywa halafu shirika ambalo limepewa jukumu la kushughulikia mambo ya wakulima, haswa maziwa, hawafanyi yale ambayo yanapaswa kufanywa.

Nikitembelea wakulima sehemu ya Kirinyaga, Nyeri na hata Laikipia, wale wanaotegemea mifugo, haswa ukulima wa ng'ombe kwa ajili ya maziwa, maziwa yao yote haiwezi kuchukuliwa na shirika la KCC. Vile vile, baada ya kupokelewa na Shirika la KCC, hata kulipwa inakuwa ni kizungumkuti. Vile vile, bei ambazo Serikali iliwaahidi kuwa lita ya maziwa itakuwa ikinunuliwa kwa zaidi ya Shilingi 50. Inakuwaje kila wakati ni matatizo.

Tunaomba kamati inayohusika na kilimo ambayo itashughulikia jambo hili walivalie njuga na wamuite Waziri Mutahi Kagwe, aweze kueleza kwa sababu alipochaguliwa, kulisemekana yeye ni mtu aliyebobea na ana ujuzi. Sisi tunataka kuona ujuzi wake akilipa wakulima wa maziwa kwa wakati ufao.

Sen. Kisang: Thank you, Mr. Deputy Speaker, Sir. I also want to make a comment on the New KCC issue. The Kenya Kwanza Government did a lot of campaigns across the country to encourage our farmers, especially dairy farmers. We were promised Kshs53 per litre of milk.

Sen. M. Kajwang': On a point of order, Mr. Deputy Speaker, Sir. Could you confirm that the gadgets are working because in your usual democratic fashion, you usually allocate one speaker from either side? I do not know what you had for lunch that has changed you today.

The Deputy Speaker (Sen. Kathuri): The ratio is two to one, almost going to three to one, and also I cannot see you on my screen. There is no Standing Order which describes what the Chair should do when you are giving Members a chance to contribute. Maybe the technicians can check on your gadgets.

Sen. (Dr.) Khalwale: On a point of order. Mr. Deputy Speaker, Sir, did you hear the Senator of Homa Bay question what you had for lunch? In view of the good English language, that statement in itself imputes improper motive because it means either you took alcohol or opium or something. Is he in order, Mr. Deputy Speaker?

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Boni, where I come from, men do not talk about food. So, I could not make a comment about the food. Men do not discuss stomach matters.

You assume you never heard what you said. I just assumed I never heard. It just like when a boy insults you, you do not respond. You just do not answer him, but proceed with your work. Yes.

Proceed, Sen. Kisang.

Sen. Kisang: Mr. Deputy Speaker, Sir, I agree with you. You know where Sen. (Dr.) Khalwale comes from, food is very important. They talk about food all the time.

It is so sad that the New KCC and the SACCO in Meru decided to drastically reduce the amount of milk they are taking from the farmers, from 75,000 to 25,000 litres. Milk is perishable. It is not dry food that you can store in your house for long and then submit later on. We need to call the Cabinet Secretary and the Chief Executive Officer (CEO) of the New KCC to come to the House. Our farmers are suffering. We are encouraging them to have good dairy cows that produce up to 40 litres a day. When they work hard, we stop picking the milk from them. This is not right.

The Cabinet Secretary should come to the House and explain what is happening because we have a shortage of milk. Why are we importing milk from Uganda? Why are we importing maize when we have maize from the neighboring countries? That is something that we need to look at, so that we do not discourage our farmers from investing in both dairy and crops.

Lastly, I wanted to comment on the statement by the Senator for Migori. The Cabinet Secretary for Mining, Blue Economy and Maritime Affairs gazetted 32 Artisanal Mining Committees (AMCs) across the country, Elgeyo-Marakwet County being one of them. They have taken so long to operationalize these committees across the counties that have been gazetted. They need to operationalize, especially this coming Financial Year---

Sen. Ogola: Thank you, Mr. Deputy Speaker, Sir. I support the statement by Sen. Seki on the shortage of vaccines.

At Independence, there were three major things that the founding fathers promised to sort, which were disease, ignorance and hunger. It is a pity that after over 60 years of Independence, we still want to talk about tackling disease.

Could it be that we are leaving our children to languish and die? Coupled with this, I would like the committee to tackle the issue of immunization financing, which is going to be a problem in this country, especially as donors are going to pull out by 2029. If we have a problem by now, it means we are running into a greater problem.

Secondly, I want to support the statement by Sen. Eddy Oketch on the concerns regarding the state of small-scale mining in Kenya. Just a few weeks ago, we saw over five women die in some of those mining sites. We would like the Ministry to also state the safety measures they are putting in place for the artisanal miners and the small-scale miners all over in the mining areas.

Lastly, is on the aerial survey of minerals that was done. Why do we find it easy to know where our natural resources, such as wild animals and forests are, and somebody does not want to make public the inventory on minerals? Kenyans deserve to have this knowledge. There should be a lot of concern on those statements.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I support.

Sen. Okenyuri: Thank you, Mr. Deputy Speaker, Sir. First, I support the statement by the Senator for Migori, Sen. Eddy, on minerals, which is quite weighty.

I would wish the committee that is going to look at that statement to go deeper and even tell us what the body that has been conducting the geological survey looks at for them to term certain minerals strategic. This is because for a long time, I have been thinking soapstone and whatever that surrounds it from Kisi, is strategic enough to convince the Ministry or Government to support that as an economic activity.

It goes a long way in solving the economic needs of the locals and the country. I am worried that we are put aside by having some minerals termed strategic. The committee should shed light, so that I am able to know if indeed we fall below that bar or it is a means of sidelining soapstone miners and carvers.

I also wish to support the statement by Sen. Seki. We have had rampant shortage of vaccines. I do not know why this is recurring. Is it poor forecasting or general lapse in the Ministry? We do not want to lose our children. They are the future of this country, but it is sad that most of them are now missing out on these very crucial vaccines, which are very crucial at their developmental stages. We should not even be talking about this right now. The Ministry needs to stop every other thing and address the matter on infant vaccines.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, in this country, it is very difficult to know what the truth is. I was very conflicted when I listened to the statement by the Senator for Kirinyaga about coffee and dairy.

On Madaraka Day, the President made an address, telling us how structural changes and reforms in the coffee sector have led to the direct settlement scheme, which will allow coffee farmers to get settlements within just a few days, rather than a number of months.

Mr. Deputy Speaker, Sir, I would like the Committee on Agriculture, Livestock and Fisheries to go deeper into this matter, not just to look at that specific aspect of direct settlement scheme, but to verify whether the reforms that the President has told us continuously in the agricultural sector are true reforms. If we were to listen to only one side of the different arms of Government, we will lose it and that is why Parliament exists to validate the claims from the Executive.

Mr. Deputy Speaker, Sir, let me also comment on the mineral, the declaration of strategic minerals. Every corner of this country has a strategic or has a critical mineral under the soil. We had expected that the experts we had donated to the broad-based government like Cabinet Secretary, Hon. Hassan Ali Joho, would be able to tell Kenyans the truth for once. The colonialists, when they came to this country, did a mineral mapping and the records are there. County governments have a clear mineral mapping.

Today we are talking of fiscal space, we are talking of lack of resources, borrowing money from United Arabs Emirates (UAE) and going into wars in Sudan so that we can---

The Deputy Speaker (Sen. Kathuri): Just a minute Sen. Kajwang'. Sen. Boni Khalwale, what is your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise under Standing Order No.105. Did you hear the Senator for Homa Bay County say that they donated experts like Hon. Hassan Ali Joho to the broad-based government? Could he specify in what area of expertise they said Hon. Hassan Ali Joho is an expert because it is a matter of record and it has to be clear? We have allowed Kenyan, dear Senators, that the issue of education be something that should never be celebrated by our children.

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Khalwale, if you familiarize yourself with Standing Order No.101, you know we are very strict on our Standing Orders. If you want to discuss Hon. Hassan Ali Joho you should bring a substantive Motion to this House. You and Sen. Kajwang' - both of you are out of order. I give you the first warning if you dare mention any state officer by his name without a substantive Motion--- Familiarize yourself with the Standing Orders.

Proceed and conclude.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, the Senator for Kakamega County is a renowned expert in bullfighting. We do not challenge it and he does not challenge it, so let us just give Hon. Hassan Ali Joho his flowers that he can be an expert in making sure that bling coming from our natural resources is well tapped.

Mr. Deputy Speaker, Sir, I would love that from the blue economy and our mineral resources, if you are to exploit this, we would not be beggars. The biggest embarrassment for Africa and the southern part of the world was when African Presidents go to the USA and they are demeaned and embarrassed by the American President when they go begging for money, which we could get if we were to tap our critical mineral resources. I hope that in that statement the committee will go deep.

The Deputy Speaker (Sen. Kathuri): We are concluding on the comments in the next five minutes.

Sen. Mungatana Danson.

Sen. Mungatana, MGH: Thank you, Deputy Speaker, Sir. I want to quickly comment on the area geophysical survey of Kenya mineral resources statement by Sen. Eddy Oketch. There was a conference that was held in Kenya on the 26th and 27th of November 2024, after the aerial geophysical survey was done and which identified 970 mineral occurrences in Kenya. What is surprising is that conference was supposed to attract investment into Kenya after we discovered there are about 970 mineral occurrences in Kenya. What is surprising and what is coming from this statement is that this information has not been put up in the public domain. The purpose for which money was spent on this conference was so that we could attract investment into this country.

The Ministry of Mining and Blue Economy released a document saying they spent US\$65 million. This is about Kshs7 billion to carry out that aerial geophysical survey between the years 1919 and 2022. So, if public money was expended to the effect that we bring investment, why is the Ministry having a problem with publishing this information? Why should the Cabinet Secretary arrange conferences in 2024 when maybe there are Kenyans who want to invest in that sector? The committee should explore the reasons because maybe there are very many Kenyans ---

The Deputy Speaker (Sen. Kathuri): Last but not the least, Sen. Osotsi.

Sen. Osotsi: Thank you, Mr. Deputy Speaker, Sir. I want to quickly comment on the statement by the Senator for Migori County. He has actually four statements on the matter of mineral mining.

Sen. Eddy's statements are quite heavy and very important because they are actually addressing very fundamental questions in the mining sector in this country. The status of artisanal mining in our counties is something that this House must look at. We have unscrupulous foreigners who have invaded our villages, especially in Western Kenya. We have Chinese, Indians, Nigerians and many other foreigners in the name of mining gold. Many children have left school because they are busy sieving soil looking for gold. Women have left their homes searching for gold? What happens to this gold when they mine it? No one knows where it goes.

We have sat in this House and told that Vihiga, Migori and Kakamega counties cannot get mineral royalties because the gold that is mined is not accounted for. So, the Committee on Environment, Land and Natural Resources have an obligation to bring answers to this House as to what exactly happens. All these companies operating are known by the Ministry of Mining and Blue Economy officials, police and county governments. What is happening is illegal trade. That is known to Government officials and they are not ---

The Deputy Speaker (Sen. Kathuri): That is the end of the statement. Our next order.

MOTION

CELEBRATING THE LIFE OF PROFESSOR Ngũgĩ wa Thiong'o

THAT AWARE THAT Professor Ngũgĩ wa Thiong'o, a prominent author, academician and human rights defender, globally recognized for his foundational contributions to literature and good governance passed away on 28th May, 2025 at the age of 87;

COGNIZANT THAT the late Professor Ngũgĩ wa Thiong'o had an illustrious career in writing and teaching literature spanning over six decades where he authored landmark novels, plays and poems that shaped postcolonial studies, contributed to social justice and inspired generations of writers and thinkers across the world;

APPRECIATING THAT the late Professor Ngũgĩ wa Thiong'o advocated for indigenous languages and indeed took up writing in his mother tongue, at a time when it was not fashionable to do so;

FURTHER COGNIZANT THAT his legacy in inspiring many generations towards cultural sovereignty and the power of indigenous languages in literature and thought, led to numerous international awards being bestowed upon him;

NOW THEREFORE the Senate expresses its deep sadness at the death of Professor Ngũgĩ wa Thiong'o, records its celebration and appreciation of his

remarkable life, and extends its heartfelt sympathy and condolences to his family, friends and the nation.

(Sen. Mungatana, MGH on 4.6.2025)

*(Resumption of debate interrupted 4.6.2025
- Afternoon sitting)*

The Deputy Speaker (Sen. Kathuri): Hon. Senators, the debate on this Motion was concluded yesterday. What is remaining is putting of the question. In accordance to Standing Order No.84(1), this Motion does not involve counties. However, I want to ascertain whether we have quorum to put a voice vote. Clerk? Okay.

Maybe can I first put the question? There is another thing from where I come from. Men do not look behind. So, once you start standing up, you continue standing. Hon. Senators, I now put the question.

(Question put and agreed to)

(Sen. Cheruiyot walked into the Chamber)

The Deputy Speaker (Sen. Kathuri): Hon. Senators, when the Chair is up standing when you are out, no Senator should utter even a word. Senate Majority Leader, familiarise yourself with the Standing Orders. You must be attentive because the communication is read to you. However, when you start talking---

(Sen. Kinyua consulted with Sen. Tabitha Keroche)

Order. Sen. Kinyua, are you the one who is misleading--- You are more senior than Sen. Keroche.

Next Order.

MOTION

ADOPTION OF REPORT ON THE FOURTH BASIS FOR ALLOCATING SHARE OF NATIONAL REVENUE AMONG COUNTIES

THAT, the Senate notes the Report of the Standing Committee on Finance and Budget on the Fourth Basis for Allocating the Share of National Revenue Among the Counties, laid on the Table of the Senate on Thursday, 17th April, 2025, and that pursuant to Article 217(1) of the Constitution, approves the Fourth Basis for Allocating the Share of National Revenue Among the Counties for the Financial Years 2025/2026 to 2029/2030 as follows-

**County Allocation = (Baseline Allocation Ratio*Ksh.387.425 billion) +
(Ksh. 2 billion shared equally among the identified 11 counties) +**

Disclaimer: The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.

{[(0.45*Population Index) + (0.35*Equal Share Index) + (0.12*Poverty Index) + (0.08*Geographical Size Index)] *Additional County Equitable Share above Ksh. 389.425 billion}.

Where – i. Baseline Allocation Ratio = The allocation factor derived from each County's allocation for the Financial Year 2024/2025;

ii. The 11 identified counties are: - Elgeyo/Marakwet, Embu, Isiolo, Kirinyaga, Laikipia, Lamu, Nyamira, Samburu, Taita/Taveta, TharakaNithi and Vihiga;

iii. The Population Index is based on the 2019 Kenya Population and Housing Census (KPHC);

iv. The Poverty Index is based on the 2022 Kenya Poverty Report by the Kenya National Bureau of Statistics (KNBS); and

v. Geographical Size is capped at 10 per cent.

(Sen. Ali Roba on 3.6.2025)

(Resumption of debate interrupted on 3.6.2025)

The Deputy Speaker (Sen. Kathuri): No Senator was on the Floor, so I yield to Sen. Wambua Enock. Did you contribute? If so, you should not.

(Loud consultations)

This Motion has not been amended. It is the original Motion.

Sen. Omogeni Eric, proceed.

Sen. Omogeni: Mr. Deputy Speaker, Sir, I beg to move-
THAT the Motion be amended by deleting the words-

“County Allocation = (Baseline Allocation Ratio*Ksh.387.425 billion) + (Kshs2 billion shared equally among the identified 11 counties) + {[(0.45*Population Index) + (0.35*Equal Share Index) + (0.12*Poverty Index) + (0.08*Geographical Size Index)] *Additional County Equitable Share above Ksh. 389.425 billion}.” appearing after the word “as follows-” and substituting thereof with the following words-

“County Allocation = (Baseline Allocation Ratio*Ksh.387.425 billion) + (Kshs4.46 billion shared equally among the identified 11 counties) + {[(0.45*Population Index) + (0.35*Equal Share Index) + (0.12*Poverty Index) + (0.08*Geographical Size Index)] *Additional County Equitable Share above Ksh. 391.89 billion}.”

Mr. Deputy Speaker, Sir, I wish to go on record in support of the report of the Committee on Finance and Budget, as amended by the proposed Motion currently on the Floor. I begin by thanking the Chairperson of this Committee, Sen. Ali Roba, for developing a formula that does not elicit any controversy among the 47 Senate delegations.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Many of us who served as Senators in the 12th Parliament recall that the issue of the revenue-sharing formula was highly contentious. We experienced a prolonged stalemate on the Floor of the House, voting more than 13 times before reaching a compromise. Therefore, we must commend the Committee for ensuring that this time, the process is less controversial and seeks to carry everybody on board.

The amendment to the Motion that I have moved this afternoon seeks to carry along the 11 counties that are disadvantaged that get an allocation that does not allow them to perform their functions optimally. As we all know, Article 29 of our Constitution enshrines the spirit of affirmative action.

Furthermore, when we allocate resources, it is important that we be sure that the resources we allocate to our counties will support our devolved units to perform their functions. The spirit behind these amendments is to ensure that our big, rich counties carry along the smaller, poor counties so that we all move together.

I am moving this Motion with the hope that we are not going to agree with the resolution of the National Assembly that is setting the equitable share at Kshs405 billion. I believe that our revenue collection has gone up. We urge our brothers and sisters in the National Assembly to support us, so that we are able to support our devolved units.

Secondly, I thank our current President, His Excellency Dr. William Ruto, for having given this House the independence to deal with this matter without any intimidation from the Executive. I am saying this very candidly because we always know when there is interference. The problem we had last time is that the Executive tried to micromanage Senators. I appeal to the Executive to keep that spirit, so that we can deal with this matter as Senators who carry along the interests of all the 47 devolved units.

Having said that, we also know that when we had a stalemate last time, it took an act of statesmanship from two great individuals; former President - Uhuru Kenyatta and former Prime Minister - Raila Odinga. Sen. Wambua will bear me witness that the compromise that we reached on the Floor included a commitment from the Executive that they were going to give us an additional allocation of Kshs53.5 billion. We got that increase on one financial year. So, this debate we are having with the National Assembly saying that we cannot increase the equitable share from Kshs387 billion to Kshs465 billion is what our Chief Justice will call hot air because it has been done before and it can be done again.

I hope that our brothers and sisters who will represent us in mediation will push to ensure that we get an allocation of Kshs465 billion. When you break down the amount that we have proposed to increase, it is merely by deleting the figure Kshs2 billion that had graciously been allocated to these counties by the Committee on Finance and Budget and substitute Kshs2 billion with Kshs4.6 billion. We are just increasing it by Kshs2.6 billion.

If hon. Senators support, if this amendment carries the day, the position remains as it is currently. There is no county that will be disadvantaged in any way, but would have supported the 11 counties each to get a small increase of Kshs400 million.

I want to agree with the submissions that were made by the Senator of Nairobi City County that this increase should be sector-specific allocation. We do not want to give this money to our counties and then we find that the absorption is to employ

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

relatives or friends of our governors. If we give this money to these 11 counties, it should be for sector-specific allocations, so that the money is used to spur development. If Governor Oparanya is doing a tarmac road from Kakamega to Vihiga County, if we give this money to the Governor for Vihiga, Hon. Otichilo, he should also do the tarmac road because that is the intention of this money. This is an affirmative initiative, so that the big counties do not move alone.

If we want to connect these counties to do business, if Kakamega is doing a tarmac, let Vihiga do it and let Nyamira do the same. I am happy to report, for the comfort of this House, that the wars we have been seeing in Nyamira--- People may ask, if this money goes to Nyamira, which county assembly will appropriate it? Is it the one called *mashinani*, or is it the one that sits in the county headquarters?

If you follow news, you must have read in *The Standard* newspaper of today, that yesterday, the High Court sitting in Bomet made a landmark decision and it nullified everything to do with Bunge Mashinani in Nyamira. Therefore, I want to assure Senators who will support this quest that the money that you will send to Nyamira will be appropriated by one county assembly sitting at the gazetted county assembly premises in Nyamira and not the one you have been seeing sitting in people's residences.

I want to give that undertaking and I hope my Governor is watching these proceedings. We do not want that embarrassment. Yesterday, when I heard that rumour that a judgment had come out clarifying where the assembly should be sitting, I requested this Motion to be stepped down, so that I could deliver the good news to our hon. Senators. This is because we want this money to be used for the benefit of the people who reside in those 11 counties.

In fact, we were proposing that if we are able to get this money for these 11 counties, we should have something we call action-taken reports. We must tell them to report back to us how they have used this money. The fear amongst us is to give money to our counties and then the money goes to the pockets of a few people and not for the benefit of people who reside in those counties.

As I head towards concluding, I want to also tell the Senators that the people who enacted the 2010 Constitution had a lot of faith and trust in us elected parliamentarians.

In India, when revenue is being shared between states and the union, the recommendation of the Finance Commission of India is final. However, luckily for us, when Kenyans enacted our 2010 Constitution, the last task of sharing revenue was placed in the hands of us, the elected leaders. Even if you go to Australia, I think they call it the Commonwealth Grants Commission of Australia. Once they make a recommendation on how money is to be shared between the union and the states, Parliament has no say. In this country, under Article 215, the Commission on Revenue Allocation (CRA) merely makes a recommendation. The people who have the last say, is us, Senators.

I want to appeal to our colleagues, all the 47 Senators, to stand with your brothers and sisters from these 11 counties. Imagine while my brother, Chairperson of the Committee on Finance and Budget and Senator for Mandera, gets a cool Kshs12 billion, our brother from Lamu gets Kshs3.2 billion. When you talk to the Senator for Lamu, he tells you that money barely pays salaries, fuels vehicles and if they are lucky, buy some medicine here and there, it gets depleted. The same applies to Isiolo County. If this

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Motion gets the support of Senators, we will be able to uplift some counties to a level that they can also try to bring developments to their regions.

I want to remind our brothers from the arid, semi-arid and sparsely populated counties that the formula that we had here in 2019 - Sen. Wambua you can bear me witness - was exposing some of them to the risk of losing to the tune of up to Kshs2 billion. However, because we recognized, deliberately, that we were elected not just to fight for Nyamira, but to fight for all the 47 counties, we stood with our brothers to ensure that nobody was disadvantaged with that third revenue sharing formula.

I urge our colleagues here to stand with the 11 counties, so that all of us 47 counties move together in the same spirit as Senators who are here to defend devolution and the functions that have been assigned to our devolved units.

In conclusion, I also want to urge all the bodies that are tasked with ensuring that corruption does not get deeper roots in this country to create confidence within our counties. Action should be taken on those who misappropriate public money. We should see more people behind bars, so that there is deterrence.

With those remarks, I kindly ask the Senator for Elgeyo Marakwet to second the Motion.

Sen. Kisang’: Mr. Deputy Speaker, Sir, I rise to second the Motion as amended. We want to thank the Committee on Finance and Budget for its wisdom. I remember that I was in the National Assembly with you, Mr. Deputy Speaker, during debate on the Third Basis and it was not easy for Members then to pass that particular formula because it was very divisive and basically it divided the country almost into two.

Mr. Deputy Speaker, Sir, as a retired Governor, Sen. Ali Roba, came with a lot of wisdom to the Committee on Finance and Budget and convinced his Members. He also listened to the governors from the 11 marginalized counties and listened to us, as Senators. This proposal to give Kshs4.6 billion to the 11 counties is a good compromise to assist the 11 counties to get resources to do some development.

As Sen. Omogeni has said, we need to ensure that when the House approves, we ring-fence, so that the governors do not continue employing their relatives and spending these as a recurrent. Then at least, the 11 counties will have a minimum of the Kshs405 million that has been proposed to do something meaningful. In Elgeyo Marakwet County, we have 20 wards. If in each financial year, we take 10 out of our 20 wards and allocate Kshs40 million, then they can do something reasonable in each of the wards because what touches the *mwanaanchi* on the ground is health.

Two or three weeks ago, we visited Kilifi, Mombasa and Kwale counties. The health situation is pathetic. Kilifi County was the only county out of the three that we visited that had a good system working. They have a good pharmaceutical system working and the people are doing well. However, I do not know what to say for the other two counties.

Mr. Deputy Speaker, Sir, we are asking and begging our colleagues to help us. This is the time to stand with your brothers and sisters in these 11 counties, so that devolution makes sense for them. Earlier this week, I said that there is nothing these 11 counties have done that can be seen. You can visit them and you will not see anything. I was even telling Sen. Wambua that when you go to Machakos, you will see a big

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

building. You will see tarmac in Kakamega. When Hon. Oparanya was the Governor, he did about 20 or 30 kilometres of tarmac. However, in Vihiga County, even murraming is a problem because those resources are not there.

That is why this House should still insist that Kshs10 billion for RLMT should also go to the counties and be ring-fenced. As we give this additional Kshs405 million to the 11 counties, the Kshs10 million for the RLMT should also go to the counties so that they can do roads.

Mr. Deputy Speaker, Sir, we are asking to be supported. Please support our counties, so that we can actualize. If you look at Article 203(1)(g), it talks about economic disparities within and among counties and the need to remedy them. This affirmative action of Kshs405 million to the 11 counties will sort out this Article 203(1)(g) and at least we can remedy the economic activities of these 11 counties.

As a Senate, we are not agreeing with the position that the National Assembly has taken, that our counties should get Kshs405 billion. Sometime last year, I remember when we were discussing these issues, we had given a proposal of Kshs415 billion to the counties and then it was reduced to Kshs380 billion. Eventually, there was a compromise of Kshs387 billion. Right now, they want to move it marginally by about Kshs17 billion to Kshs405 billion. Hon. Senators, let us be firm and stand with the Kshs465 billion, so that all counties move to Kshs6 billion.

Mr. Deputy Speaker, Sir, we would like to urge our colleagues in the National Assembly that this revenue that will be shared from Financial Year 2025/2026, is based on audited reports of the Auditor-General for Financial Year 2020/2021. Why can the National Assembly's Public Accounts Committee (PAC) not fast-track the looking into these reports in order for us to be a year behind? If we are a year behind, we will not be crying for additional resources because we will be basing the revenue on the most recent. The national Government budget that will be read next week is Kshs4.2 trillion and counties are getting Kshs405 billion. If you calculate, it is less than 10 per cent and we are supposed to be getting a minimum of 15 per cent.

Mr. Deputy Speaker, Sir, I beg to second and ask our colleagues to please sympathize and empathize with us, in order for us to slowly develop our small and marginalized counties.

(Question of the amendment proposed)

The Deputy Speaker (Sen. Kathuri): I invite Senators to contribute to this Motion, not to the original Motion, but to this amendment moved by Sen. Okongó. If you did not get the import of the amendment, then we can benefit from the wisdom of the Chair of the Committee who will explain what had happened before, why the amendment has come and the consequences of it. I invite the Chair, Sen. Roba Ali Ibrahim.

Sen. Ali Roba: Thank you, Mr. Deputy Speaker, Sir. The wisdom behind having a less controversial formula of sharing revenue amongst counties this time is informed by what preceded in the Third Senate; where there was a lot of controversy on the third basis of revenue sharing. As a result, a substantive number of counties lost. There was no

amount of force from the State that could sway the position the Senators took in order to carry the entire country along.

I rise to support the concept of carrying everybody along, especially the 11 counties that are receiving less money. In the wisdom of the committee, initially we proposed Kshs2 billion to be shared equally among the 11 counties with insights that the original proposed division of revenue for this current financial year was Kshs400.01 billion.

The Division of Revenue Bill that was passed by the National Assembly for the coming financial year stands at Kshs405 billion while that which was passed by the Senate is Kshs465 billion. Now we are heading for mediation. Therefore, it is important to reflect on the results of the past mediation in terms of how much more money we got.

Mr. Deputy Speaker, Sir, when we had a mediation committee that was chaired by you, we got very little amount in terms of increase in sharable revenue for counties. In the last one that we mediated, we negotiated from Kshs385 billion to Kshs387.425 billion. That was literally Kshs2 billion only in terms of an increase from the mediation.

I would like to throw a word of caution, so that we debate in the context of other realities that are beyond our control such as the result that may come out of the mediation that has no guarantee. While we will push as hard as possible as Senators to get more money for sharable revenue to the county governments, be informed by the fact that the last meaningful increase on sharable revenue from the Government was in Financial Year 2020/2021. Since then, the cumulative increase is about Kshs70 billion. Considering that there is a new formula, it is high time we pushed to get a little bit more.

Mr. Deputy Speaker, Sir, those are just expectations. The reality is that the current sharable revenue is Kshs387.425 billion. What was originally proposed in the Division of Revenue Act (DORA) that was amended because of the circumstances surrounding the Finance Bill brought it down from Kshs400.01 billion to Kshs387 billion. Now, the National Assembly has proposed Kshs405 billion.

In real sense, the increase on sharable revenue is from Kshs400.01 billion to Kshs405 billion. What is proposed in this amendment is to get Kshs4.6 billion to 11 counties. If we hit the reality of reaching a dead end in the negotiations or mediation between us, based on other past events and if that reality takes us to Kshs405 billion, it means the entire sharable revenue will have increased from Kshs400 billion to Kshs405 billion to be shared between the 11 and other 36 counties may not have much gain from the current sharable revenue increase.

As I support, I would like to caution my colleagues, hon. Senators, to be cognizant of this reality. The most ideal position was to share what is feasible now and what we needed to amend when we realised a lot later. These 11 counties have a challenge and the proposal to carry them along is noble. They need to be considered. On that principle, I believe it will bring the entire Senate on board. The degree of consideration though must be informed by the realities of what we can achieve from the sharable revenue after mediation which I support.

I wanted to put that caution as the Chairperson of the Committee on Finance and Budget, so that as we carry everybody along, we also do not put the other 36 counties to grave disadvantage.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Mr. Deputy Speaker, Sir, I submit. Thank you.

The Deputy Speaker (Sen. Kathuri): Hon. Senators, before I allow another contributor, I have this communication to make.

(Interruption of debate on the Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MERU COUNTY

Hon. Senators, in the Speaker's Gallery, we have Mr. Anderson Mwiti Kathendu and Mrs. Ruth Gacheri Mwiti, business persons from Meru County. They are here on a one-day tour following the invitation by yours truly.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

Since yours truly is on the Chair, I will ask my neighbour from the other side, Sen. Kinyua, Senator for Laikipia County, to welcome the visitors.

Sen. Kinyua: Bw. Naibu Spika, naungana nawe kuwakaribisha wafanyibiashara waliobobea kutoka Kaunti ya Meru. Karibuni sana.

Hivi ndivyo Naibu Spika wetu, Sen. Kathuri Murungi, anavyofanya kazi. Ni mtu anayefanya kazi yake kwa ustadi na kuendesha Bunge hili kwa njia ambayo inafaa.

Karibuni na mjisihuru. Mnaweza kutembea na kusoma mengi ambayo yanatendeka. Nawahakikishia kwamba mlichagua mtu ambaye ni stadi. Alipofika hapa, tulimchagua awe Naibu Spika na anafanya kazi yake vilivyo.

Asante, Bw. Naibu Spika, kwa kunipa fursa hii.

The Deputy Speaker (Sen. Kathuri): Asante kwa maneno hayo mazuri. Sasa tumsikilize Sen. Wambua.

Sen. Wambua: Mr. Deputy Speaker, Sir, I expected you to ask me to welcome the delegation from Meru because I am more close than Laikipia. However, that is now water under the bridge.

The Deputy Speaker (Sen. Kathuri): Next time I will give you that privilege.

Sen. Wambua: I thank you for the assurance.

The Deputy Speaker (Sen. Kathuri): Proceed.

(Resumption of debate on the Motion)

Sen. Wambua: Mr. Deputy Speaker, Sir, I stand here to make comments on the proposed amendment to the Motion by the Committee on Finance and Budget.

Just a little history will help us make the right decision on this matter. In the formula that we are concluding, the bone of contention then was that the Senate was faced with the challenge of an existential threat to a county. That is Mandera County where the Chairperson of the Committee on Finance and Budget comes from.

If we had gone with the wisdom of the CRA then and passed the formula as proposed by them, probably Mandera County would have shut its doors by now. Since we are here as defenders and protectors of devolution, we said that Mandera County was not going to be shut down under our watch. Therefore, we fought.

Mr. Deputy Speaker, Sir, I want to take this opportunity to thank the Senate Majority Leader because at that time, that county and Elgeyo-Marakwet that was then represented by Hon. Kipchumba Murkomen were going to gain quite substantially. However, they made the sacrifice for the sake of counties that were going to lose money. That is the context within which we are discussing this proposal.

The Senator for Nyamira County has done a good job to move the amendment. I have a challenge with the request put forward to us by the 11 small counties. It is true that the concept of affirmative action is contemplated under Article 203 of the Constitution when formulating a formula for sharing revenue. It states that where we can apply affirmative action to take care of counties that are disadvantaged.

I want the 11 counties to convince us, because that is what we are doing here, that the additional money that they are asking for will go to good use. I say that because the Senator of Nyamira County, while moving the amendment, has just mentioned to us that a ruling has been made in Nyamira, that the so-called *mashinani* sittings have now been abolished by the courts.

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

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

We expect the Senator of Nyamira County to report to us next week that the County Assembly of Nyamira will now be sitting in the gazetted premises of the Assembly. He should report to us that they will be appropriating money for the county government under the law and the Constitution.

Madam Temporary Speaker, I listened to the Senator from Elgeyo Marakwet County and I am not convinced about what he is asking for. I am very honest. The Senator asked us to have mercy on them. However, this must go beyond us having mercy on counties. We must be convinced that the money they are asking for will be allocated to do things that will be beneficial to the people in those counties.

Why do I say that, Madam Temporary Speaker? I say that because the request put forward to us, in this amendment, is to allocate Kshs4.6 billion to 11 counties that, in the opinion of the Senators from those counties, are disadvantaged. We have just listened to the submission from the Committee on Finance and Budget. Going by reality, the growth in revenue to counties is realistically Kshs5 billion, considering what we passed in the last financial year.

Out of that Kshs5 billion, the Senator for Nyamira County and his colleagues are asking us to share Kshs4.6 billion among the 11 counties then the rest of us share Kshs500 million. There is a window for us to exploit and we will try to exploit it. This House must stand very firm. The shareable revenue for all counties cannot be Kshs405 billion. We must push for Kshs465 billion to go to counties. That means that we shall share substantive amount of money. If we stick to Kshs405, then the 11 counties will be called upon to step down a bit from the Kshs4.6 billion to maybe Kshs3 billion.

We are here to be convinced. We will not take a position right now. The other reason why I want to be convinced by this Committee is that, realistically speaking, the 11 counties are asking to have a triple share of the equitable share to counties. I will explain what I mean by this. Sen. Kinyua, if you pay attention, you will understand what I mean.

Under the third basis, under Kshs387 billion allocated to counties, that formula puts into consideration equal share as a parameter. So, all of us, the 47 counties, will get equal share from the Kshs387 billion. Under the proposal brought to us by the Committee, the 35 per cent parameter, equal share, applies equally to all the 47 counties. That is the second bite. So, you are getting the first bite at Kshs387 billion and you get the second bite at the proposal as brought to us by the Committee. You are also proposing an affirmative action of Kshs4.6 billion which is exclusive to the 11 counties.

So, you are basically saying that the 11 counties should get equal share allocation three times in one formula. I am not saying that there is something wrong with it. What I am saying is that we need to be convinced that this is the direction that we want to take.

Last but not least, I guess the wisdom of the Committee is that whatever we do, no county should lose any money. We should at least begin from there. That whatever it is that we do, no county should lose any money. The Committee had proposed Kshs2 billion as affirmative action for 11 counties.

I have not confirmed, but I am told that my name was seen somewhere, that I will be a Member of the Mediation Committee. If those of us who will sit in the Mediation Committee are able to push for at least Kshs450 billion to counties, then Kshs4.6 billion is money that can go to counties as affirmative action for the 11 counties.

Madam Temporary Speaker, I want to conclude by saying this. The solution to the impasse that we had in the previous debate on the third basis was not a discussion and a debate on this Floor about what formula we are going to use. It was about the amount of money that we were going to share. I want to urge my colleagues that even as we discuss the formula, the parameters and the affirmative action, our eyes should be trained on the amount of money that we, the 47 counties, are sharing.

It must be unacceptable, to all of us, that the National Assembly, in their wisdom or lack of it, as Sen. Mungatana said, think that out of a Kshs4 trillion budget, the best they can give to counties is slightly above Kshs400 billion. We must reject that move by the National Assembly and do so loudly and not quietly. We must reject that move by the National Assembly in every space available to us.

I do not know what the National Assembly has against devolution. These leaders behave as though there are residents in counties, who belong to governors and Senators, then other residents, in the same county, belong to Members of the National Assembly. It

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

is a very funny way of thinking. We are fighting for the same people. We are fighting to devolve resources to the same people.

I said here the other day and I want to repeat it. The constitutional provision states that at least 15 per cent of the money should go to counties. This means that 15 per cent is the lower limit. In fact, there is no lower limit for the money that should be going to the national Government. So, we could as well even take 85 per cent of money to counties and 15 per cent to the national Government. That is what it is. We should not look at 15 per cent as though that is the upper limit. We are being told that whatever you do, do not give less than 15 per cent of monies to county governments.

Madam Temporary Speaker, with those remarks, I will sit and wait to be persuaded by the 11 counties. However, I stand on the principle that every county in this country must benefit equitably from the formula that we are going to agree on.

I submit.

The Temporary Speaker (Sen. Mumma): Senate Majority Leader, you may proceed.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker, for this chance to share my thoughts on this amended version of the Motion before us.

I appreciate that we had a Motion that was moving on very well, then 11 of our colleagues caucused without the rest of us. Now they want to convince us to side with them. There is nothing wrong with caucusing because this is a House of reason. We convince each other by logic and good sense. So, from the onset, without committing fully, but like a young man still willing to listen to as many damsels as possible, I want to say that I am willing to be persuaded.

(Laughter)

I do not know why Sen. M Kajwang', Sen. Kinyua and Sen. Wambua are laughing. I know they have misinterpreted my pronouncements to mean other things or to interpret their own stuff.

Madam Temporary Speaker, I must appreciate that, like Sen. M. Kajwang' observed yesterday, this is one of our most solemn moments as a Senate. It is one of those moments that any Senator who never gets to record their voice on this matter is not worth even being elected to this House.

I have my notes from the Second-Generation Formula still very new in this House. I have my notes of what I said in the Third-Generation Formula. Today I can speak off the top of my head on the Fourth-Generation Formula.

There are no other powers. This Constitution is very mean to the Senate. I have said this before, but at least with regards to the determination of how shareable revenue to counties is shared out amongst the 47, we were granted the superpower. Not even the National Assembly has the kind of power that the Senate has. In fact, such is the provision that this is the only occasion where they will require two-thirds to overturn any decision of this House and you know how many times the House has raised that threshold. I cannot recall any other time, save for the time that we needed to chase a very

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

bad man in this country and they successfully did. On any other occasion, even on moments where they could have benefited self, they could not raise those numbers.

I recall the amendment by a former Member of Parliament---

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

Sen. Wambua: Madam Temporary Speaker, I have heard the Senator for Kericho County, the Senate Majority Leader, saying that the only time that the National Assembly raised a quorum of two-thirds is when they needed to chase a very bad man. I do not know, chase him out of where, to where and who this bad man is. Can he clarify that?

The Temporary Speaker (Sen. Mumma): Senate Majority Leader, can you substantiate your allegations?

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, I have just come back from Kitui County, his home county, this morning. I was in Kitui East---

(Sen. Wambua consulted loudly.)

The Temporary Speaker (Sen. Mumma): Order, Sen. Wambua. Can you listen to the substantiation?

The Senate Majority Leader (Sen. Cheruiyot): I was in a place called Zombe or something like that. When I asked the people whether we made the right decision, they unilaterally told me that it was the right decision to kick Hon. Rigathi Gachagua from the position of Deputy President because his conduct was unbecoming.

That was in Kitui, where Sen. Wambua comes from, not any other part of the country. So, if Sen. Wambua needed to know who that bad man was, I have told him.

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

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, I do not know what Sen. Wambua wants to say. If he wants to do a public participation on whether that decision was right, he should go back to the same people that I asked this morning.

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

Sen. Kinyua: Bi. Spika wa Muda, ni kinaya kwa Kiongozi wa Walio Wengi kusema kwamba Bunge la Kitaifa halisikizi chochote na ni watu ambao sio wazuri wasikilize Seneti hii. Halafu hatimaye anatuambia kuwa hao wao, ndio waliomfukuza mtu mbaya. Hiyo ni kinaya.

The Temporary Speaker (Sen. Mumma): Sen. Kinyua, is that a point of order or are you just making a statement? What is your issue?

The Senate Majority Leader (Sen. Cheruiyot): Kweli kabisa, Bi. Spika wa Muda. Hakuna Hoja ya Nidhamu kwa maneno ambayo Sen. Kinyua amesema. Amechangia tu mjadala.

The Temporary Speaker (Sen. Mumma): Sen. Cheruiyot, proceed with the debate.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker, for protecting me from the frivolous points of order from my colleagues who do not want me to engage in this debate. I will tread with caution now, so that I do not get interrupted while executing a very important mandate.

I appreciate that Sen. Okong'o Omogeni and Sen. Kisang' who took to the Floor this early to convince the House. I have listened to them. I listened to Sen. Omogeni and even when I was having tea, while Sen. Kisang' was speaking. The reason I had tea, Sen. Wambua, is that I was not served any ndengu in Kitui. Therefore, I arrived at the House very hungry. However, I still listened to Sen. Omogeni moving the amendment.

Madam Temporary Speaker---

Sen. Wambua: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Is it a point of clarification?

Sen. Wambua: It is a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Cheruiyot, do you want to be informed?

The Senate Majority Leader (Sen. Cheruiyot): Why is Sen. Wambua restless? Could it be because the people of Kitui welcomed me so well this morning?

The Temporary Speaker (Sen. Mumma): Sen. Cheruiyot, do you want to sit down? Sen. Wambua, quickly, pass the information.

Sen. Wambua: Madam Temporary Speaker, I would have wanted to let the Majority Leader to just get away with this, but for a second time, he has said he was in Kitui. The tradition in this House and he is the originator of that tradition is, we do not go to Senators' counties without first informing them and secondly, without us accompanying them.

Is he breaking a tradition that he set? If he had gone with me, definitely, he would have been served some ndengu. He went and I do not know whom he went with or what he was doing in Kitui without my presence. Can he tell us why he sneaked into Kitui?

The Temporary Speaker (Sen. Mumma): Sen. Wambua, the Speaker is constrained to rule on customs that are not in the Standing Orders, but Sen. Cheruiyot has heard. I hope behind the tent, he will do what is necessary.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Speaker, for protecting me once again this afternoon, but I had a very good time in Kitui. That is all I wish to say at this point.

Madam Temporary Speaker, I will speak to the amendment being canvassed by our colleagues at the end of my conversation, but I first want to focus on the importance of the exercise that we are doing.

It should never be lost on us that it is without debate in our country that devolution is the greatest gift the people of Kenya have ever bequeathed themselves after Independence. In the same Constitution of Kenya, 2010, the Senate was granted the powers to protect and ensure that we defend counties and their interests. That is a correct wording as per the Constitution.

Madam Temporary Speaker, every business that we transact in this House should always be anchored on that founding philosophy of the House of the Senators by Article

96 to appreciate and to know that everything that we do fosters devolution and ensures that it succeeds.

The second thing that I would wish Senators to note and perhaps to the pleasing of Sen. Osotsi, Sen. Kisang', Sen. Omogeni and my colleagues, it is not possible for devolution as a whole to succeed in certain corners of a country while failing in others. This has nothing to do with the people that you vote as a county governor. It is about how strong we entrench devolution and the amount of resources that we send to our counties.

It is foolhardy to imagine that it is possible for one county to thrive while the rest is actually faltering. Many of the services that are provided by our counties, for example, are so basic that on many occasions they are shared across counties. Think about health, for example. Many times, Sen. Omogeni knows this. When I go to Kapkatet Hospital in Bureti sub-county, my county, nearly half, if not 40 per cent of the people that I meet are from Nyamira County. The others are from Bomet County and another 30 per cent from Kericho County.

It is not possible to believe that when you disadvantage other counties that your own county will thrive. We should always try to seek and ensure that we make all our 47 devolved units successful. It then becomes even a case study for the others to challenge one another and to know what exactly is happening and what is it that one county is doing better than the other.

I have my own mini-devolution conference in my county tomorrow. We will be taking stock of 12 years of devolution and seeing what it is that has worked and where we, as a county, have got it wrong with a view to making things better in the next 12 years.

That is part of our responsibility and duty that we do as counties or leaders from those counties. We need to ensure that we succeed in granting hope to the citizens, ensuring that given an opportunity, another chance, that they will still make the decision that they made in August of 2010 to ensure that we decentralize power in this country. That should always be at the top of our mind, colleagues, that we ask ourselves, should Kenyans be granted an opportunity to vote for the 2010 Constitution as is, what is it that will make it back to the Constitution and what is it that they will definitely say, "remove this one. This was a wrong decision?"

Madam Temporary Speaker, we keep up with the tradition of setting a baseline. Sen. Omogeni and colleagues that were here last term will recall that this is a tradition that we brought to the third formula. It was not there in the first, it was not there in the second.

At the first and the second formula, we had absolutely no baseline. We only divided the resources from zero, moving all the way to the funds that were being devolved. We ensured the division and the weights were applied equally on the full amount of resource that was being devolved. However, at the Third-Generation Formula, this thinking of having a baseline arose. It was quite ingenious of us because you recall that there are instances where we have either stagnated or moved back in terms of the resources that we are devolving to our counties.

It is this proposal, ensuring that you have it in the formula, that at the very minimum should anything happen, it is not possible to devolve less than Kshs387 billion to the counties plus all these other billions that are over and above it.

I am a firm supporter of the baseline allocation ratio because it ensures that counties maintain what they had already secured and the basis upon which they had done their budgets for the previous fiscal year. For example, as we are now doing this the month of June, counties are also working on their budgets. County Executive Committee Members (CECMs) are just about to read the budgets before the county assemblies and finalising on all the proposals. The plans and the question at the moment is what is likely to come out of this discussion and mediation exercise between the Senate and the National Assembly.

To guide them, at the very least, they are certain that given the formula that the Senate is discussing and the use of this baseline ratio, they know there is a particular amount below which they cannot get. I am a firm believer in ensuring that we should not move below what we had already agreed upon. Even those of us that will be in this House, when the Senate considers the fifth and the sixth and the seventh generation formula, I hope will keep with this tradition. When they read the notes and the HANSARD of the thoughts that went into the deliberation of the second, third or the fourth formula, they will appreciate the wisdom of colleagues that came ahead of them and ensure that we always look at what had already been agreed on. I applaud the Committee's decision to keep up with the tradition that was set in this House in the Third-Generation Formula of ensuring that we have the baseline allocation ratio as part and parcel of our formula.

I move to the population index and we are using the 2019 population survey. I think I heard somebody, I do not know if it was Sen. Sifuna yesterday wondering what is going to happen to parts of that exercise that have been challenged in our courts of law.

I guess that is for others to determine and other competent institutions, but we know for a fact that affected a very small part of the country. Not to say that the citizens that live in that corner of the country are less important. I appreciate that they continue to weight population index at 45 per cent. It is a fairly huge figure, but we must appreciate that at the end of it all, when all is said and done, these services are being sent out to people. Therefore, any county that is densely populated, such as the one that I come from, should not be disadvantaged.

We just came from the county of Sen. Moses Kajwang' for Madaraka Day. With all the energy that they have and all these colleagues that come from densely populated counties, should not be disadvantaged. All these so-called devolved services are a factor of human beings. If you have more people in your county, then you need a higher percentage of resources to ensure that, for example, there is delivery of drugs in hospitals, pay health workers and employ agricultural extension officers.

Madam Temporary Speaker, I am a firm believer in the weight of population being maintained as the highest. It has been granted the highest weight at 45 per cent. I know there are connotations here and there. Last time when we did the Third-Generation Formula there was a conversation about counties that are least populated. In fact, people,

including leaders in this House at that particular time, made certain remarks that were considered offensive to counties with a smaller population.

I still insist that in the same way that our colleagues from smaller sized counties are asking us to bear with them, they should also bear with us with regards to the weight allocated to population as a factor of the formula. It is extremely important because services are actually a factor of the number of human beings that live in a particular county.

Number three, is poverty index. This is where I disagree with our Committee. I said it when we had our amendment here, that part of the reason we want our counties to succeed is that we hope that they will learn from the national Government. They should copy the things that have succeeded there and also learn from the mistakes of the last 60 years with regards to how we have managed the economy and this country and all the five administrations that have run this country.

Poverty index is important because it addresses the issue of marginalisation and counties that have been left behind. However, let us face it. Fifteen years into the devolution cycle, we should begin to motivate counties actually to be inculcators or hubs of growth. Counties where we notice good fiscal effort that eventually translates to growth, should have a percentage of it as a reward.

Madam Temporary Speaker, when we had our breakfast meeting with CRA last time, Sen. Moses Kajwang', if you recall, it was a big debate that we were rewarding bad habits. They argued and said it feeds through disenfranchisement and decisions that have been made over the last 50 years and we said, okay that was fine.

If you want to give the weight of poverty index at 18 per cent, at least shave two or three per cent to motivate counties that are doing better, so that they earn from a kitty knowing that if your fiscal prudence is worth being emulated by other counties, you should be rewarded. Fiscal discipline is the number one threat of county governments and the success of devolution. So long as a county government continues to spend more than half of its resources for paying salaries, they will continue to score high on the poverty index.

Madam Temporary Speaker, then you want us to weight them and grant them this amount of resources? I disagree with the Committee. I had hoped that Sen. Omogeni and our colleagues that are moving us to make an amendment, that as you urge us to consider you, that at least you will factor the decisions and thoughts of yesterday's *Kamukunji*, where colleagues were saying that we should find a way of rewarding good governance practice in this formula.

The same way the CRA had proposed to us in the Third-Generation Formula, fiscal effort was being rewarded. Counties that get good certification out of audit reports were being rewarded because we are encouraging counties to grow. Counties that meet targets on own-source revenue, budget and maintain a balanced budget, observe their pending bills and ensure that they are within reach and managed in levels that are prudent, these are the counties that in the next five to 10 years, we will begin to see growth.

The county gross domestic product of those counties will begin to edge over others. It will be possible for the people of Siaya to see the difference with the people of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Homa Bay and for the people of Bomet to see the difference with the people of Kericho based on the decisions they have made in the last 20 years or so. If we do not motivate our counties and set the criteria upon which we reward county governments that perform better, then we are being unfair to the country. That is a mistake that was made. We are actually in a World Bank programme. Many times, we come to this House---

Sen. Omogeni is pleading to inform me. I do not mind, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Senator, well you need to speak to ask for the opportunity and then you are granted, is it not?

Sen. Omogeni: Sorry, I just wanted to inform the Majority Leader about the point he is making on rewarding counties that experience fiscal responsibility. In India, 2.5 percent is reserved for that effort. So, I just wanted him to note that there is a jurisdiction called India that gives a lot of regard to fiscal responsibility. They actually call it fiscal responsibility and tax effort, meaning own source revenue. So, I fully agree with you.

The Senate Majority Leader (Sen. Cheruiyot): That is very good information, which you need to use, Sen. Omogeni, because you are the owner of this amended Motion. Shave this poverty index from the proposed, what is it, what is the percentage? I am trying to - 12 percent - Let us have it at nine or 10 per cent. The CRA had proposed three percent to us. We did not agree with them last time, but I believe, colleagues, that we must reward good behavior in our counties.

I want to plead with each one of you that let us find a percentage and we could even borrow from the guidance of CRA from the Third-Generation Formula of ensuring that our counties and county governments that manage their resources better are encouraged. I was speaking to the point that we are in a World Bank and all these IMF programmes, they are telling us, you know, fiscal consolidation. They are telling us reduce corruption. That is why they want us to pass the Conflict of Interest Bill. They are saying, consolidate this or the other. However, at the heart of that conversation, the most important thing that they keep on informing us is to keep our eyes on growth. If growth becomes your primary target, it answers all these challenges. People begin to complain less about being pressed by the tax burden. If you are able to show demonstrable growth, then people appreciate and know that which you are doing.

With those many remarks, Madam Temporary Speaker, like I have said to my colleagues from the 11 counties, persuade us better. However, on count of rewarding good behavior by our counties, the place to pinch from is on the poverty index.

I appreciate, Madam Temporary Speaker. Thank you.

The Temporary Speaker (Sen. Mumma): Sen. M. Kajwang', and for the Senators who will be speaking, remember we are discussing the amendment Motion.

Sen. M. Kajwang': Thank you, Madam Temporary Speaker. I spoke to the main Motion and I am glad to speak to the amended Motion.

Let me start with the good news. Kenyans and the residents of the 11 counties should know that the 11 Senators coming from these 11 counties have so far convinced the Committee on Finance and Budget and this House to ring-fence Kshs2 billion towards their counties to be shared equally. Sen. Osotsi, you must tell the people of Vihiga that the first Kshs2 billion that was ring-fenced was as a result of your lobbying.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. Mwaruma, you must tell the people of Taita Taveta that you got them Kshs2 billion more to be shared out equally amongst the 11 counties.

On that, I must congratulate the 11 because what brought them together were not geographical features or political commonalities, but the desire for their people to get more resources. To that extent, I want to congratulate the 11 led by Sen. Omogeni for bringing so far close to Kshs200 million to Nyamira because the original Kshs2 billion that was ring-fenced in the original report by the Committee, if it shared out equally, it will translate to almost Kshs200 million. A sum of Kshs181 million, which is not small money is capable of building probably 90 ECDE classrooms. If you make them ECDE centres, you can have as many as 50 ECDE centres. That is not small money.

The voters, the people in these 11 counties, must know that their Senators are here. They are robustly working hard to ensure that they get more resources. There is a little bit of a problem in the proposed amendment. Remember Bob Marley said, give them a yard, they take a mile. We have given them Kshs2 billion. They want Kshs4.46 billion. We have given them a yard, let them not take a mile. However, this conversation would have been fit, proper and very appropriate if we knew how much money was available for distribution. Right now, we are speculating. We say Kshs465 billion. The National Assembly said 405 billion. The political class is Kshs450 billion.

Governors were in State House, all of them, including those who failed to appear before committees. Some of them said they were sick and we saw them at State House. We shall deal with them. We shall find them. We shall use images of State House to put them in their place. Indeed, they were at State House. They discussed a lot of things. When you get information, the President was telling them about the limited fiscal space. The President was doing a soft launch on Kshs405 billion.

Madam Temporary Speaker, we will be here fighting as a Senate for Kshs450 billion, but our principal customers, who are the governors, have already been softened to accept Kshs405 billion. This is a House where no one can take me to court for what I say here. The argument is as follows.

You see, we in the broad-based wing of ODM are saying Kshs450 billion, nothing less and so, the calculation is simple. A sum of Kshs405 billion and then increase conditional grants to Kshs45 billion. You have Kshs450 billion. My deputy party leader will not reject that one because we said Kshs450 billion to counties, it can go as equitable share, it can go as conditional grants.

Ladies and gentlemen, this debate, if this formula does not sit on the critical path of Dollar, I want to encourage the leadership and the 11 Senators, the gallant 11 and the Committee on Finance and Budget, let us shelve this debate. We see how much money we have. Then we have these clever arguments when we know what is on the table. If we have Kshs405 billion on the table, then Kshs4.46 billion is taking a mile from a yard. If we had Kshs450 billion, then we do not need to ring-fence because automatically all of us are going to benefit. It would be like a rising tide that lifts all boats. Everyone is going to get more than Kshs6 billion. I believe this is a premature debate.

If we are going to commit ourselves today, then even we from the other 36 counties will be asked why we were not as gluttonous as Sen. Mwaruma, why we did not fight for our counties to get more. However, for our counties to get more, it means other

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

counties are getting less. That is not the concept of equity that this House is out to advance.

Madam Temporary Speaker, now that the debate is with us, and I have said it would have been neater to first conclude, allow me to say the following. As I have said, it would have been neater to first conclude the Division of Revenue Allocation Act (DORA). The money that goes to counties is not just the equitable share that we approve through DORA; we also have the additional allocations. As a House, we must fight for the realisation of the constitutional rights and entitlements of local communities and counties, such as Kwale and Taita Taveta.

Kwale County was supposed to receive approximately Kshs1.7 billion or maybe Kshs1.2 billion in mineral royalties. Every Kenyan is aware that Base Titanium has been extracting titanium from Kwale and exporting it to China, other markets, or Australia, wherever it may be. However, Kwale has never received a single cent from these mineral royalties. Taita Taveta has a lot of critical minerals in the soil. We should be pushing for realisation of that revenue rather than fighting over whether to ring-fence Kshs2 billion or Kshs4 billion.

We should also be looking at own-source revenue. One of my best counties in terms of fiscal responsibility is a county represented by Sen. Kinyua. We have seen some good success stories from Laikipia County. I hope they will be sustainable. I hope when Sen. Kinyua takes over, he will sustain the momentum that past governors have put in place. Laikipia County has an own-source revenue of Kshs1 billion and they are calling themselves a small county. Why are you calling yourself a small county if you can generate Kshs1 billion in own-source revenue a year? The same applies to the mighty Homa Bay County.

Why should we argue that these counties need Kshs6 billion when Laikipia County already has Kshs6 billion? One of the most creative proposals brought to this House was the infrastructure bond from Laikipia County. They had identified the projects they wanted to undertake, determined their costs and knew how they are going to finance it based on their own-source revenue of about Kshs1 billion. With this foundation, they could project forward, anticipating that within four or five years, they could access the markets to borrow Kshs5 billion or Kshs10 billion, fully aware of how they would repay it. These are the avenues we should be encouraging counties to pursue.

I feel very pained on behalf of Sen. Omogeni. Already he has convinced us to ring-fence Kshs2 billion. Already Kshs187 million is going to Nyamira County, regardless of whether they have two or three assemblies. Whether the governor has a degree or not, he has already convinced us. Whether the governor is doing a good job or not, already he has convinced us.

Sen. Omogeni, I would be very hesitant to give you a further Kshs200 million for it to be spent by two assemblies, some sitting under a tree and another one sitting in somebody's residence. I will not accept.

The Senate Majority Leader (Sen. Cheruiyot): On a point of order, Madam Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mumma): Senate Majority Leader, what is your point of order?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, Nyamira is my neighboring county, just like Homa Bay; we share a border. Therefore, allow me to speak on their behalf when their Senator is in a difficult position, retorting Sen. Kajwang' and, as a result, moving further away from his amendment while defending the rights of the people of Nyamira County.

Is it in order for my good friend, Sen. M. Kajwang', to disparage the entire people of Nyamira County based on the conduct of some of their leaders? We have witnessed similar issues in this House, including from Homa Bay County. They once had a governor who, when required to appear before the County Public Accounts Committee (CPAC), would put on spectacles and claim he could not see the figures clearly. Despite this, we never denied Homa Bay County its funds. Therefore, I urge Sen. M. Kajwang' to pursue his argument without disparaging an entire county.

I thank you.

The Temporary Speaker (Sen. Mumma): Sen. M. Kajwang', do you want to retreat a little on the comments you have made?

Sen. M. Kajwang': Madam Temporary Speaker, that Motion was before the House just three weeks ago. It was brought by the Standing Committee on Devolution and Intergovernmental Relations, which is a Committee of the House. Sen. Omogeni, again moved an amendment to that Motion. However, the point is that there are bad habits, and I agree with the Senate Majority Leader that---

The Temporary Speaker (Sen. Mumma): Sen. M. Kajwang', what you are explaining to the Senate Majority Leader is that Sen. M. Kajwang' did not speak about the entire people of Nyamira County. He spoke about two assemblies, and that is factual.

Sen. M. Kajwang': Yes. Thank you, Madam Temporary Speaker. The interest of counties and their governments is sometimes different from the interest of their governors or their leaders. Our role as a Senate is to defend the interests of counties and their governments rather than the governors.

Regarding the fiscal responsibility measure, I would be happy to approve this amendment if I was convinced that there was a way we were going to reward good behaviour and punish errant behaviour. If we do not have that option in this formula, I would be very hesitant to give much more money to some of the counties here.

Isiolo County is on the schedule of the 11 counties. I said in the substantive debate that Isiolo is not a small county. Isiolo is designated as a capital and the centre of gravity of Kenya. You can be a big county, but with a small leadership mindset at the top. That is what makes you look like a small county. I would be very hesitant if a county like Laikipia, which I have described to be very fiscally responsible, was to receive Kshs400 million more out of this formula, especially if the irresponsible ones will be getting the same amount, unless we had a formula for differentiation. We must increase the pie. If it is Kshs405 billion, then we will be confirming to those who think that the Senate is also playing small. We have the opportunity, instruments and duty to ensure that we support devolution. That support is through increasing the allocation to our counties.

When we talk of Kshs450 billion, we are not saying go and take the budget from State House, the Deputy President's employment programmes or from the national

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

security. We are talking about functions that have already been assigned to counties that continue to be held at the centre. These functions are clear and they include roads, water, health, agriculture, libraries, museums, *et cetera*. If you cost them, then the Kshs500 billion that governor's were asking for would be the number. However, the governors were having dinner at State House last night, and they have already been softened to Kshs405 billion. So, let us revisit this conversation once that matter is concluded.

The danger we face is that today, there is a caucus of 11 counties. I do not know what unites them, as they are neither neighbors nor culturally coherent. They are not small, as some of them have very serious leaders in this House. I believe what unites them is their hunger for more funding for their people, and there is nothing wrong with that. There is absolutely nothing wrong with that. That is why you came to Nairobi; to fight for your people. However, the risk is this. Tomorrow, Sen. Eddy Oketch and I will move an amendment as a caucus of blue economy counties, and say that let us ring-fence a further Kshs4 billion to the 11 listed blue economy counties.

Secondly, the third day, counties with a high HIV prevalence and burden, which was softened through USAID that has fled. We could bring a legitimate argument on the floor of this House and say that there are five or six counties that have high HIV prevalence and the data is there. We could request that we ring-fence Kshs5 billion to help us put in place interventions following the flight of USAID.

Next, you will have another caucus of counties affected by desert locust. They will tell you that the desert locust is coming this year and so the Senate should ring-fence another Kshs2 billion. The additional 17 billion will have been ring-fenced to special caucuses and special lobbies, and the Senator for Kakamega County will have nothing to say unless he is going to build a caucus of bullfighters or maize consumers. They could also say they also need another Kshs4 billion to be ring-fenced for them. Even though this is a legitimate route to legislation, it is a dangerous one because it is no longer law making, but deal making. I would support the original Kshs2 billion ring-fence.

The Temporary Speaker (Sen. Mumma): Sen. M. Kajwang', do you want to be informed by Sen. Omugeni?

Sen. M. Kajwang': Yes, I would like to be informed.

Sen. Omugeni: Madam Temporary Speaker, I just wanted to inform my good friend, Senator for Homa Bay County, that the reason we have put Kshs387 billion as the baseline is to save eight counties that were going to lose money, a county that is at the risk of losing Kshs2.2 billion if we go by the formula of the Committee without using Kshs387 billion as the baseline.

So, affirmative action has already been incorporated in the formula by putting Kshs387 billion as a baseline in order to save eight counties from losing and Nyamira is not one of them, but we are accepting that baseline collectively as 47 Senators to protect the eight.

The 11 caucus is also another affirmative action to protect the ones which are at the bottom because the eight that are being protected are at the top. I just wanted to inform the Senator that the affirmative formula is already in this particular formula.

Sen. M. Kajwang': Madam Temporary Speaker, I hear the Senator. I think I am going to file a further amendment that, of the ring-fenced Kshs4.46 billion, we amend it

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

to include 12 counties, including Homa Bay County. Therefore I will be very happy to report to my people that I have delivered some Kshs400 million.

Let me conclude by saying this, if we are honest with each other, the Third-Generation Formula, which split this House right in the middle held harmless the so-called small counties because we froze Kshs158 billion and said that Kshs158 billion was not going to be subjected to the new formula.

The proposed Fourth-Generation Formula, the Sen. Roba formula, has held harmless the so-called small counties by freezing or ring-fencing Kshs387 billion. The group of 11, the G11, has further convinced the House to hold harmless by ring-fencing Kshs2 billion. That is sufficient. If we had Kshs450 billion, we would all be able to go home smiling that we have increased the allocations to our counties.

Let us also think about not just the conditional grants, let us think about the Equalization Fund and look at how it is distributed amongst these counties. Some of these counties have had historical cases of marginalization and so you might find that there is a bigger allocation of the Equalization Fund to mitigate some of these shortfalls that we are talking about.

Let us also ask ourselves the effect on per capita allocation. If we do this mathematics, this BODMAS equation that we are trying to do here, you will end up with a high per capita allocation in Isiolo compared to Kakamega then the Senator for Kakamega or Homa Bay will have to struggle to explain to the people who elected him why Isiolo or Tharaka Nithi has the highest per capita allocation and not the counties that we represent. We are here for purposes of equity.

Further, the proponents of this amendment need to give us simulations because this is not something you just talk about *hivi hivi*. You need to tell me that if you move from Kshs2 billion to Kshs4.46 billion, therefore, Homa Bay is losing Kshs100 million or is gaining or is holding constant. Without that visibility, it would be extremely dangerous for any Senator in this House, outside the group of 11, to support this amendment when you do not know what impact it is going to have on your county.

I finalize by urging the leadership of the Committee on Finance and Budget that if you put this matter to the vote this afternoon or today, perhaps it will be lost and perhaps it was a good idea, but let us first understand how much money we have at our disposal.

To the governors, you cannot use this Senate only when it is convenient. We have governors who refuse to appear before our committees, but when they hear that there is a pie being shared somewhere, all of a sudden even the ones who are sick find their way to State House. Shame on those governors who escape accountability, but want to hang on the Senate or want to criticize the Senate when it comes to allocation of resources. It is the duty of Senate and the National Assembly to determine the allocation of revenue between national and county governments---

The Temporary Speaker (Sen. Mumma): Give him one minute to finish what he was saying.

Sen. M. Kajwang’: President Ruto, this is what we mean when we talk about being faithful to the Constitution and devolution. Talk to the right institutions that have the constitutional mandate. The Council of Governors (CoG) is nowhere in the Constitution when it comes to division and allocation of revenue.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I thank you.

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale, please proceed.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, this Motion before us reminds me of what my teacher of English who taught me the art of smart negotiation told me many years ago. He warned us that; give someone an inch and they will take a mile. Those are not my words, but those of the late Edward Adwanyiga, the man who taught me English.

I am saying this because I am one of the proponents of this affirmative action and when we did it as a Committee, we carefully looked at quantum. I am impressed that young Moses has captured the principle of quantum. That if it is Kshs2 billion, it makes sense, but if you just open it up, it will end up disenfranchising other counties.

I want to beg the 11 Senators, we have given you an inch that makes a huge difference. Please do not attempt to take a mile by asking for Kshs4.6 billion. Let us do this because the Constitution of Kenya leaves no lacuna on how the money should be shared both in the letter and in the spirit. The letter is very clear. It is the principle of equity and not equality.

So as to buttress it further into the spirit of the Constitution, we have said let the equal share be increased, but not be a threat to the principle of equality. We have done it in this fourth formula.

In the eye of the Senate through the Committee, we have said let no county lose or be left behind. So, Sen. Omogeni, the mover of the Motion, let me take you to just two examples. The eye of the Committee is saying that let us not leave these 11 counties behind. Let us hold their hands. You have done it; we have held your hand. In this simulation, look at county number 35, Nyandarua. Young Methu is not here. He is busy in Wamunyororo, but I can speak for him.

I wish somebody could remind him to go to Wamunyororo when the Senate is not sitting. This is where you have the highest political platform in the country, far more than in the funerals where some of us speak, in the bullfighting arena where we speak, in the harambees where some of us rarely go because we do not have the money, but not in Wamunyororo.

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

Sen. (Dr.) Khalwale: I have not touched you. What is out of order?

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

Sen. Munyi Mundigi: Bi. Spika wa Muda, nataka kumuelezea Sen. (Dr.) Khalwale kwamba mtu awe wa Wamunyororo ama wa chama gani, tukiwa hapa tunawakilisha kaunti 47. Kwa hivyo, kama kuna Seneta ambaye hayuko hapa---

The Temporary Speaker (Sen. Mumma): Sen. Mundigi, can you explain what you are saying? What is Wamunyororo and what is your point of order?

Sen. Munyi Mundigi: Seneta Khalwale amesema mambo ya hizi kaunti 11 zinataka kuongezewe pesa, lakini Maseneta wengine wa hizi kaunti wako kwa Wamunyororo. Ningetaka kumwambia kwamba, tuko na kaunti 47 na hatuko mambo ya Wamunyororo.

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale, can you withdraw your reference to Wamunyoru. This House does not know what that means.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I wish I had commenced my debate in Swahili. If you allow me, “pengine kama ningefanya hivyo, Seneta wa Embu angenielewa”.

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale, I will give an exception to this. Explain in Kiswahili.

Sen. (Dr.) Khalwale: Bi. Spika wa Muda, Seneta wa Embu angenielewa. Sikua nafanyia Seneta wa Nyandarua madharau. Nilikua namkumbusha kwa sababu, *he is a new Member*. Ajenda kubwa ya kaunti inasukumwa na nafasi unayopewa katika Bunge ya Kenya. Hiyo nafasi ni kubwa kuliko ile unapata nyumbani na ndio maana, nikatumia jina la Wamunyoru. Badala ya Wamunyoru ningesema Malinya, kule kwetu. Ninaomba anielewe na sio kumtania.

The Temporary Speaker (Sen. Mumma): Wamunyoru refers to what?

Sen. (Dr.) Khalwale: To a village, just like Malinya or Bushiangala

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Murango.

Sen. (Dr.) Murango: Bi. Spika wa Muda, ni makosa pia. Waswahili husema, samaki wote hunuka lakini wanamshuku kabale.

Kiongozi wangu, Bw. Khalwale, kuna siku hayuko kwa Seneti kwa sababu tofauti. Kama juzi, alikua na mtoto mdogo na sikumwona huku. Wakati Seneta wa Kakamega akisema Seneta Methu ako Wamunyoru na hajaambiwa na Seneta Methu kama ako huko au sehemu zingine kwa sababu, ninajua kule yuko na sio Wamunyoru, ni haki kweli?

Si vizuri kusema, Seneta Methu ameenda Wamunyoru akakosa kuja Bunge la Seneti. Kuna watu wanaomchagua na wanatusikiza siku ya leo.

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale, to the extent that you have suggested that a Senator is at a place called Wamunyoru, please withdraw and continue with the debate.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I withdraw the word “Wamunyoru”.

Speaking on behalf of the great people of Nyandarua and if we go by the simulation, I was appealing to the Senator for Nyamira that it is arbitrary and not scientific because they had left out Nyandarua in their arbitrary selection of 11 counties. They are adding the 11 counties Kshs405 million and in the process, the formula that affords to move at its own pace will drag behind the other counties because they did not play affirmative action. They should not do it. We have given them an inch, they should accept it and not demand for a mile.

Relax, Nyamira. I say this with absolute respect to all the 47 counties in Kenya. I, therefore, appeal to colleagues that the route for us to go, having accepted Kshs2 billion as affirmative action is to focus on the national economy, it performs better, there be better fiscal management, so that more money is available for sharing. Then the counties will perform better on own-source revenue.

Madam Temporary Speaker, allow me to appeal to the governors and Senators of the following counties; Kisumu, Homa Bay, Siaya, Busia and Migori. You have an

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

opportunity like no other county in Kenya to grow your own-source revenue because of the God-sent gift of Lake Victoria. I will be appealing to the Senate to allow the Senators of these counties for a trip to either Finland, Estonia, Sweden or Norway. They will see how they play with their lakes.

When I was last in Estonia many years ago, one of the things you cannot afford to leave is that because you have a Schengen visa, they allow you to keep on shifting between Estonia, Finland and Norway without any disturbance. You pay a small fee for the cruise ships and those ships have capacities of 400 to 800 people. They are forever full with the little money they make there. They have perfected the blue economy there in terms of transport.

Madam Temporary Speaker, I believe and pray that you, leaders from those counties, will take advantage of Lake Victoria. We would like to see cruise ships from Kisumu to Homa Bay, to Kendu Bay, to Sio Port, to Port Victoria, to Entebbe, to Bukavu and to Mwanza. You will make billions of shillings out of own-source revenue. That is the route to go. Do not fight for the little Kshs2 billion that this Senate wants to give.

I also agree with the Senator for Homa Bay when he said that we should start fellowships amongst counties. We can start a fellowship with Vihiga, Taita Taveta, Homa Bay, Kakamega and Marsabit counties; where we have serious mineral resources. We will demand that we want affirmative action. The amount of gold in Kakamega is so serious that the President in his wisdom and Government have decided that for all the gold that will be mined in Kakamega, in all the gold mining counties of Kenya and in all the gold mining countries of East Africa, the refinery will be built at Muritambisa in Ikolomani and that construction is ongoing.

Madam Temporary Speaker, we need to speak louder to this because, the old leadership wants to confine us in small talk like the talk of Kshs405 billion when we should be talking about bigger resources we can share as a Republic. On the issue of sharing, if they make us to think small, they will disrupt our thinking big.

Why not sit our governors or take over as governors and think big, the way in 1965, Singapore thought big? They had a small economy, but because of thinking big, they made simple decisions of governance. Like in human resource, the President said; we are not going to hire you for any other reason, but we will hire you because of competence. Kenya today is like many other failing African countries. We shortchange professionals so as to hire relatives or friends. The end result is that our professionals who are denied promotions become disenfranchised and they do not perform.

Today we have got a great chance. We have got over 40 universities churning out young and brilliant professionals. I dream and hope to live to see a country where a youth can apply for a job online and because of their academic excellence, they defeat the son of Dr. Khalwale whom they beat at the university, even when Dr. Khalwale is the Senator for Kakamega, and they get a job ahead of mine. I say that with equal appliance to children of Senators in this House today. The same should apply to all Cabinet Secretaries and even the President.

We want our children to compete equally because if a child is good, he or she is good. Sen. Osotsi, it should be like running a 100-metre race. You either run under 10

seconds because you are Ferdinand Omanyala or not. Let our children compete. That is the essence of fairness.

Madam Temporary Speaker, I want to beg the Senate Majority Leader. Senate Majority Leader, you have been persuasive two times during your contributions about rewarding performance. I agree that is the way it should be. However, you are dealing with crooks. This is not the first time we have tried to recognise and reward fiscal effort, but you know how they responded.

When they discovered that we were using own-source revenue, they started showing to have improved from the previous to the current year, so as to attract that money. How do they do that? If a county has a potential of raising, for example, Kshs300 million and the following year they end up raising Kshs700 million, you have no choice, but to say that they did well even when they were misappropriating money because that county may have a potential of collecting over Kshs700 million. Therefore, they give a lower figure, which they can achieve to continue conning all of us. We are dealing with Kenyans; people with no integrity whatsoever. How such criminals found themselves in places of high calling---

Sen. Munyi Mundigi: Hoja ya nidhamu, Bi. Spika wa Muda. Ningependa Sen. (Dr.) Khalwale atueleze nani anaita *crooks* katika kaunti 47 nchini Kenya. Je, ni Maseneta, Magavana au Wabunge wa Bunge la Taifa? Asidhani kuwa hatujui maanake Kiingereza tunakielewa vizuri sana.

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale, who are crooks?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, unless you are a visitor in Jerusalem, there are no angels in positions of leadership. That is why we dealt with several cases of impeachment in a short time. That is why this House has a record of about 13 cases of impeachments attempts. It is usually---

The Temporary Speaker (Sen. Mumma): Just name who the crooks are.

Sen. (Dr.) Khalwale: Crooks are leaders who are elected into office, but they have no integrity. If you want to give me an opportunity to name them, let me do so next time round, so that I come with a substantive Motion.

The Temporary Speaker (Sen. Mumma): When is that?

Sen. Methu: On a point of information.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I have been supporting Nyandarua in the absence of my son, but now he would like to inform me.

The Temporary Speaker (Sen. Mumma): Sen. Methu, you can inform Sen. (Dr.) Khalwale.

Sen. Methu: Madam Temporary Speaker, Sen. (Dr.) Boni should stop calling me his son because I saw his post of a newborn, but my son is already six years. My brother cannot be a newborn yet I am a father of a six-year-old. He gets a child every day.

The most outstanding point that I wanted to inform Sen. (Dr.) Khalwale is that in referring to crooks, in his submission, he meant governors who inflate their own-source revenue for them to beat the requirement. They simply want to say that they have improved their own-source from Kshs300 million to Kshs700 million yet in essence, their potential is not Kshs700 million, but more than Kshs1 billion. Those governors are always rewarded yet they have not done well.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. (Dr.) Khalwale: The Senator of Nyandarua County has corrected me that I should never call him my son. In fact, I will not call him my son again until he shaves his beard and combs his hair for him to look young, which is his correct age.

(Laughter)

As I thank him for that information, I also wish the Standing Orders would have allowed him to speak to the Senator of Embu County in Kikuyu, Embu and Meru. I was not brought here to come and teach him to learn a language.

The Temporary Speaker (Sen. Mumma): Order, Sen. (Dr.) Khalwale. Can you finish your debate? Your time is actually up.

Sen. Osotsi: Thank you, Madam Temporary Speaker. First of all, I stand here to support the amendments by the Senator of Nyamira County. The amendments proposed by the Senator of Nyamira County is a product of negotiations. It is not his own amendments. It is as a result of negotiations.

We sat down with the Chairperson of the Committee on Finance and Budget and talked to a number of Senators, including the Senate Majority Leader and Sen. (Dr.) Khalwale. We came here because we thought that there was some white smoke coming out.

Madam Temporary Speaker, we now have four formulas. We have the formula proposed by the Commission on Revenue Allocation (CRA), the initial formula that was proposed by the Committee on Finance and Budget, and an amended formula by the Committee on Finance and Budget. That amended formula proposed that the formula be amended, so that the 11 counties share an additional Kshs2 billion. Now, we have Sen. Omogeni's amendment, which is proposing that instead of the Kshs2 billion that the Committee on Finance and Budget is proposing, we increase it to Kshs4.5 billion.

All the Members who have stood here have not categorically opposed the amendment by Sen. Omogeni. They have asked us to justify these amendments. I will justify by saying this. I happen to have contributed to the initial Motion on this matter, where I clearly indicated that the formula proposed by CRA seemed to have favoured the so-called smaller counties in a fundamental way. I said that Elgeyo Marakwet County was gaining Kshs150 million under the CRA. Isiolo County was gaining Kshs900 million under the CRA and Lamu County was gaining about Kshs400 million under the CRA compared to what the Committee had proposed.

Madam Temporary Speaker, Laikipia County was gaining about Kshs210 million by the CRA; Nyamira County was gaining about Kshs90 million by the CRA; Taita Taveta County was gaining Kshs240 million by the CRA; Tharaka Nithi County was gaining Kshs270 million by the CRA; Vihiga County was gaining Kshs360 million by the CRA and Samburu County was gaining about Kshs300 million by the CRA.

So, if the CRA was giving us more money and our Standing Committee on Finance and Budget is giving us less money, we needed a balance to get somewhere in the middle.

(Loud Consultations)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Temporary Speaker (Sen. Mumma): Order, Senators, can we listen, please. Sen. (Dr.) Murango, please, order!

Sen. Osotsi: Madam Temporary Speaker, we needed to get somewhere in the middle. That is why, we came up with a figure of Kshs4.5 billion.

So, the figure of Kshs4.5 billion is like a stabilisation factor between the formula that was initially proposed by the CRA and the formula that was initially proposed by the Standing Committee on Finance and Budget. So, we were getting somewhere in the middle.

If you talk about Kshs2 billion, then we will still be below what the CRA was proposing to give the small counties. We do not want to be in a situation where we will all say we would rather go for the CRA allocation and not the Committee. We want to trust our own Members who sit in the Committee on Budget and Finance, but can we have a balance?

The balance that we are seeking is what Sen. Omogeni is proposing in this formula. That instead of the Standing Committee on Finance and Budget giving us an affirmative fund of Kshs2 billion, let them give us Kshs4.5 billion, so that we get somewhere in the middle, between what the Committee initially proposed and what the CRA had given us. That is the basis of the Kshs4.5 billion. You must note that in this formula, no county is losing. No single county is losing because of the baseline allocation of Kshs387 billion. That is what we are currently getting. So, no one is losing.

The formula has three parts. It has a baseline ratio of Kshs387.425 billion, it has an affirmative aspect of Kshs4.5 billion and it has the third component, which shares out the difference. So, every county is gaining. What we are simply saying, as we affirm the counties which get more money to go up, let us also affirm the small counties; the 11 small counties, so that they also reach somewhere near where the big counties are. We are not asking for too much. If you do basic arithmetic based on this formula, yes, the 11 counties will each get an additional Kshs405 million, but in this formula, based on the Kshs405 million, the bigger counties, the remaining counties, will all get an average of Kshs279 million.

So, if you do simple arithmetic from all these, you take Kshs405 million, which we are getting, minus Kshs279 million, which the rest are getting, then you see the difference is about Kshs220 million. Surely, if you are getting billions of monies, you mean you cannot sympathize with the small counties by just giving them an extra Kshs200 million? We are not asking for much. We are simply saying, and everyone here appreciates based on the debate that was there last time, that the smaller counties are really suffering. If it is based on that fact, then Kshs200 billion on top of what the others are getting as an extra on Kshs387 billion is not asking for too much. Colleagues, please think about us. As we say, this money is going to the people we represent not the Senators.

Madam Temporary Speaker, the Constitution provides under Article 203 for affirmative action. It also talks about ensuring that there are no economic disparities within and among counties. If we go with the formulas that we have had before, in the first, second and third series, then we are not complying with the Constitution. I said here

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

when I was making my contribution, God forbid. If we pass this formula without taking care of Article 203(1) of the Constitution, with this country which has become litigious, tomorrow someone will go to court and the whole process will stop. We do not want to reach there. We are simply saying, that we have an element of affirmative action in this formula so that we do not open up risks for people going to court to challenge the formula that will come out of this process.

We have also been challenged to demonstrate why we need more money. If you come from a small county, there is no factor that favours you. Population factor, sectoral factors like health, water and even poverty do not favour you. Incidentally, the smaller counties are also poor in many ways. For example, my own county, if you have a big family living on a quarter acre piece of land, that is already poverty. What kind of poverty are we looking at? One cannot farm or do anything else, but only consume. The smaller counties are suffering.

Number two, let us also look at the inherited factors at the advent of devolution. These counties inherited, for example, staff establishment from the defunct local authorities, which had almost the same staff establishment across all the local authorities in the country. The staff that Kakamega inherited from the defunct local authority is almost the same number that Vihiga inherited and they just did a top-up. We are talking about many factors that this county has inherited and which they have to spend on.

I also want to refer Members to other jurisdictions that do this kind of thing; that have strong devolution. I will pick an African example. Nigeria has been doing revenue sharing since 1954, even before they got independence. They have gone through experiences and now their formula has matured. They decided to adopt a concept that was going to ensure equality of states. In our case, equality of counties. They said the minimum share per state shall be 40 per cent of the total shareable money. They also said they will peg population, at 30 per cent. They will peg health, water, and other infrastructure at 10 per cent and 10 per cent on land. Why do we not adopt the same? If we want to ensure devolution works for everyone, let us adopt the same.

So that instead of fighting for which county is big, which county is small, we agree on a significant percentage that is going to be shared equally. Yes, the Committee has tried to put in an equal share of 35 per cent. That 35 per cent is on only about Kshs13 billion. That is very little. How I thought they should put that 35 per cent on the bigger figure of Kshs405 billion so that will make sense to all the counties.

Madam Temporary Speaker, on the issue of the Third-Generation Formula, some of the factors that have been put there are not based on sound data, including population. Population figures in Kenya have been challenged in court. Even the factor on health, which was in the third series, is also challengeable. That is why if you look at other jurisdictions, like I have given you Nigeria, the figures and factors they have picked are fewer and accurate. They talk about land, health, water and population, but give significance to equal share.

We should do the same. I think the Commission on Revenue Allocation (CRA), which is tasked with giving us this formula, needs to do a lot more so that when they bring a formula here, we do not spend a lot of time arguing over it because it is based on solid facts, solid data and it is agreeable. Otherwise, if they do not do that, I am beginning

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

to think that CRA has no purpose in this country. It would even serve the purpose by just being a department in Parliament. This is because if you spend five years, and you come up with a formula here that creates controversy, a lot of argument, and you have done it for five years, and you exist, then your existence now is questionable. Why are you there? We want a formula that is going to uplift everyone.

Madam Temporary Speaker, going back to the example I gave of Nigeria, they have adopted a concept of ensuring fairness and encouraging industry. That is encouraging the states or the counties to produce more. What is it in this formula that motivates the counties to produce more? We want to give a county money, more money, because they have idle land and we are fighting so hard on that. We must ensure that we also think about how we can develop a formula that encourages counties to do more.

That is why I like the idea of fiscal effort, and fiscal responsibility. What effort are counties doing to generate own-source revenue? What effort are counties doing to ensure there is fiscal display, to ensure that there is fiscal effectiveness in the counties? That is where CRA should put more focus, so that they can develop data and benchmark for determining fiscal responsibility in the counties.

I am aware that some counties receiving a lot of money do not even spend it within their counties; instead, they spend it in Nairobi. That is the truth. Funds are allocated, we see large buildings emerging in Nairobi, but there are no tangible developments on the ground. The only visible effort might be the issuance of bursaries. However, even those bursaries, since I sit in the Committee that oversees them, are often given to individuals who do not reside in the county. They originate from those counties, but live elsewhere.

Another challenge small counties face is capital flight. For example, in my county, since we do not have sufficient infrastructure funding, we cannot build quality hospitals or provide adequate housing. As a result, most people working in the county reside in Kakamega or Kisumu, causing our money to flow back to larger counties. How can we support these counties to secure enough funds for development, generate more own-source revenue, and ultimately foster industrial growth in those counties?

Madam Temporary Speaker, I agree with Sen. M. Kajwang' that as we discuss this formula, we must also consider how to push for more money. In our division of revenue---

The Temporary Speaker (Sen. Mumma): Your time is up. I add you one minute to conclude.

Sen. Osotsi: Our biggest battle is the Kshs465 billion allocation, as there is no justification why counties should not be added money. Counties are now burdened with the Housing Levy, the enhanced National Social Security Fund (NSSF) contributions, the County Aggregation Industrial Parks (CAIPs), stipends for Community Health Promoters (CHPs), the Doctors' Collective Bargaining Agreement (CBA), and many other financial obligations.

The national Government will do a favour by increasing this money to Kshs465 billion. As the Deputy Party Leader of the Orange Democratic Movement (ODM) party, I confirm that we have signed a Memorandum of Understanding (MOU) with the United Democratic Alliance (UDA) party that we need Kshs450 billion. If they do not support

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

this, we will review the agreement because that is the most important aspect of the MOU. We cannot say we have signed an MOU---

The Temporary Speaker (Sen. Mumma): Your time is up. Sen. Mungatana, proceed.

Sen. Mungatana, MGH: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute. When this Motion was first introduced, and the Chairperson of the Finance and Budget Committee intended to move it, I was among the many Senators who persuaded him not to proceed. Instead, we advocated for a *Kamkunji* or informal negotiations.

That idea was carried and we convened for the first round of negotiations. At that time, I was advocating for Tana River County, urging the Chair to adjust some indices, such as the poverty index and geographical landmass. However, my colleagues persuaded me that we should not alter the formula, as no county is losing funds, that all the counties are gaining marginally.

Madam Temporary Speaker, another thing we agreed on in that *Kamukunji* was that all of us will speak as Senators of the Republic of Kenya. We were not going to be pulling on our side, we were going to try and find a middle ground. Unfortunately---

(Loud consultations)

May I be protected?

The Temporary Speaker (Sen. Mumma): Order, Senators.

Sen. Mungatana, MGH: Unfortunately, these agreements that we made in the *Kamukunji* seem to have disappeared or dissipated somewhere along the way.

(Loud consultations)

The Temporary Speaker (Sen. Mumma): Sen. Omogeni and your team, you are actually too loud.

Sen. Mungatana, MGH: Madam Temporary Speaker, we agreed as a principle that we are going to make sure that no county loses any money. In that *Kamukunji*, we also agreed that, okay, there are 11 counties which were read out to us and let us add Kshs2 billion, so that we can support them.

That figure of Kshs2 billion figure was agreed upon in the same *Kamukunji* because we were talking there. Some people were saying Kshs1 billion, some were saying Kshs3 billion and some were saying let us then put it at Kshs2 billion. It was an arbitrary figure that was agreed upon.

We left there knowing that we have basically come to an agreement. We also agreed that the Chairperson, Sen. Ali Roba, will come and move this Motion on the Floor of the House and that if anybody has a better idea, then they will do like what Sen. Ali Roba did. Sen. Ali Roba brought in a simulation whereby you can see from county number one to county number 47 what exactly we are getting and which amounts, how much each county is getting. I personally felt and very strongly so, that we must support. Everybody must gain. As a principle, we must support the smaller counties.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

According to our custom you do not argue with your younger brother. If you are fighting over land and you are older, it is better for you to leave that piece of land and go and find another piece of land; buy it, but you do not fight with your younger brother.

In fact, if your brother visits you in Nairobi or in your house, he has the laxity or the latitude to sleep in your house if he is so inclined. His wife, his family, can sleep in your house. However, I cannot go to my younger brother's house and sleep there. My wife and children can sleep, but I cannot sleep there. This informs the principle that we must take care of our younger brothers. It is African, it is what it is.

We agree, absolutely and it is coming from a deep conviction that we must carry everybody together. Having left that *Kamukunji* knowing that we are coming to move a Motion, and there was an amendment that was going to be brought at Kshs2 billion, then, in fact there was no mention of Kshs4 billion. At the maximum, it was Kshs3 billion and the minimum was Kshs1 billion and we agreed on Kshs2 billion. When we were leaving, I was very happy because I was sure we had agreed on something. So, it came as a shock to me when an amendment was moved. Now we are talking about Kshs4.6 billion. More than twice what we had agreed on. No basis has been made for that.

Very good arguments have been made here by Sen. Wambua that number one, we did the 0.387 factor, which equalized all of us. Number two, the 35 per cent share, we also equalized. Number three, we were putting Kshs2 billion for our brothers. I was listening very carefully and the argument is our brothers representing the 11 counties were going to get at least three times in terms of accommodation.

Madam Temporary Speaker, then today, I see an amendment Motion that says we will get more than twice what we had agreed. The correct thing they should have done is to call for a fresh *Kamukunji*. They should have brought simulations here to show us that what they are saying, first of all, will not reduce on what we are all supposed to get and secondly, they are not taking advantage of the fact that we agreed quickly with them.

My take is that they are pushing their luck too much. It is like what I said the other day. When you are swimming in the sea and you get a misfortune, one of the rocks cuts you a little bit and blood starts leaking, all the carnivorous sea creatures will come for you because there is blood. They will have smelled blood and they will not stop until they finish with you.

Madam Temporary Speaker, I wonder why there is this kind of behaviour? Why not be content? We said that we should start with this little bit. In fact, there was no harm in that agreement. I have tried to listen to Sen. Osotsi in order to see if he can move me from where I am. I have tried to listen to Sen. Omogeni who moved the amendment and Sen. Kisang' who seconded the amendment.

I am trying to see what it is that would justify that an informal agreement of Kshs2 billion reserved for them goes more than twice. Unfortunately, I have not been convinced. That money is Kshs181 million going to them, which the 37 counties will not get. As the debates are going on, it is becoming clear that some of the so-called small counties are raising revenues of over a billion shillings. We were given an example of Laikipia County.

I know as we continue with this debate, more things will come out like the question and the reasoning behind why all the counties should get Kshs181 million. Why

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

can we not develop another micro formula that justifies another county getting Kshs200 million and another one getting Kshs100 million. People are going to shift positions. We had agreed that we were not going to disturb the formula, but now the issue of financial responsibility is coming. People are now saying; no let us tweak the poverty index by two percent or 2.5 percent.

Madam Temporary Speaker, the whole thing is going to open up. Why, because, people are not listening? When you have a deal, take it first and hold it. You are not going to convince 37 counties to give you Kshs4 billion and we had agreed on Kshs2 billion. It is going to be very difficult and then more things are going to come up.

One of the speakers is even saying that we stand down this Motion and wait for mediation and DORA to be confirmed, we wait for everything. We had a deal. The deal was on the table and we were going to confirm it. We are going to vote for it with clean hearts. It is now going to debate. It is opening up so many fronts.

Madam Temporary Speaker, I plead with my colleagues; my prayer is that you step down this push. Allow people to accommodate what they had taken. They had agreed Kshs181 million for each one of you. They were not questioning many things. They were just saying; we are accommodating on principle. Step down on this. Let us not open all these fronts. Let us agree that we are going to reserve that Kshs2 billion.

People are now talking about ring-fencing. This is because, you are lengthening this thing. You get a deal, run away with it. I am begging my colleagues who are in this 11. People are even saying that we go for caucus. Someone else has said they are going to add their county, so that they are 12. When will it end? Why can people not just have the wisdom of accepting what they have?

I beg to oppose.

The Temporary Speaker (Sen. Mumma): Sen. Mungatana, if you have not finished, you will have a balance of eight minutes to conclude.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate stands adjourned until Tuesday, 10th June, 2025 at 2.30 p.m.

The Senate rose at 6.30 p.m.