

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 8th September, 2021

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

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

PRAYER

PETITIONS

PROPOSED ENVIRONMENT INSTITUTE OF KENYA BILL

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Members, I have two Petitions to present before you. The first Petition is by Linda Munyao and other Members of the Environment Institute of Kenya (EIK) regarding the introduction to the Senate of the proposed Environment Institute of Kenya Bill.

Hon. Senators, I hereby report to the Senate that a Petition has been submitted to the Senate by Ms. Linda Munyao, Chairperson of the EIK, concerning a proposed introduction to the Senate, of the Environment Institute of Kenya Bill.

As you are aware, Article 119(1) of the Constitution states that-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in this Petition are-

(a) That, EIK is a professional association of all environmental experts in Kenya, which was registered under the Societies Act on 4th August, 2014.

The objective of the institute is to maintain, promote and improve standards in the conduct of environmental impact assessment, audit, strategic environmental assessment, social impact assessment and other relevant tools in environmental management.

Further, the institute promotes knowledge and capacity building in environmental management and sustainable development in the public and private sector through research and knowledge dissemination;

(b) That, in furtherance of the aforementioned objectives, the EIK has collaborated with the National Environment Management Authority (NEMA) to review various policies, regulations and laws relating to environmental management with a view to bring sanity and order in the sector as well as sustainability;

(c) That, the EIK has formulated the Environment Institute of Kenya, Bill, that seeks to make provision for the establishment, powers and functions of the EIK to provide for the training, registration and regulation of the environmental management

profession and to provide for the establishment of standards and practice of the profession across the country; and,

(d) That, the EIK has made efforts to actualize provisions of the proposed Bill through amending the Environmental Management and Coordination Act (EMCA) 1999 (2015), Environmental Impact Assessment (EIA) Regulations 2003 (2018) and currently, Environmental Management and Coordination Act (EMCA) 2015 (2020), all of which have been unsuccessful.

The petitioner, therefore, prays that the Senate intervene in this matter and introduces the Bill in the Senate for consideration, approval, and enactment into law by Parliament.

Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for giving me an opportunity to comment on this Petition. Every Kenyan has a right to petition Parliament on any matter. It is a constitutional right. I thank the petitioners for coming up with this Petition.

One of the issues that they have raised is the impact of assessment audit of the environment to promote knowledge in research. Their ventures are in order. However, when it comes to enacting of laws, it is the onus of Parliamentarians to do so because that mandate falls under their purview.

There is a procedure followed in enacting a piece of legislation in this House. Even if an organization wants to come up with a Bill concerning its mandate, it must ensure there is a legislator to sponsor it. It then has to follow all the procedures of ensuring that it sees the light of day.

Madam Deputy Speaker, in as much as they have brought a Petition to Parliament, there are procedures to be followed before it is enacted into a law. For example, it has to go through all the stages in the National Assembly and the Senate before it is assented to by the President. I do not think of a shorter way of doing this.

I support that the normal legal procedure be followed so that this Petition is enacted into a piece of legislation. I believe public participation will be conducted as required by the law to enrich it. If somebody or an organization comes up with a Bill, it is not a final document. It has to be improved by following all laid down procedures and eventually it will be assented to.

Thank you, Madam Deputy Speaker. These are my honest thoughts.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, there being no other request, Standing Order 232 (1) requires every Petition to be committed to the relevant Standing Committee for consideration. In this case, I direct that the Petition be committed to the Standing Committee on Land, Environment and Natural Resources.

*(Petition was committed to the Standing Committee
on Land, Environment and Natural Resources)*

In terms of Standing Order 232(2), the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

STATE OF THE *INUA JAMII* PROGRAM

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the second Petition to the Senate is by Mr. Taratisio Ileri Kawe concerning the *Inua Jamii* Programme. I hereby report to the Senate that a Petition has been submitted to the Senate by Mr. Taratisio Ileri Kawe concerning the *Inua Jamii* Programme.

As you are aware, under Article 119 (1) of the Constitution and I quote-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in this Petition are as follows:

THAT, the Inua Jamii Programme is the Government of Kenya’s flagship National Safety Net Programme (NSNP) whose objectives are to uplift the lives of the poor and vulnerable citizens through regular and reliable bi-monthly cash transfers. The programme includes the Cash Transfer for Orphans and vulnerable Children (CT-OVC), Older Persons Cash Transfer (OPCT), Persons with Severe Disabilities Cash Transfer (PWSD-CT), and the Hunger Safety Net Programme (HSNP).

THAT, the Petitioner having interacted with members from within his local community has heard and handled complaints on their behalf, regarding cases of mismanagement and irregular disbursement of funds for the programme;

THAT, there are many elderly persons who had previously registered for the Inua Jamii Programme, however, they have not benefited from the programme.

FURTHER, there are older persons who had previously been enlisted for the Inua Jamii Programme and were advised by the Government to register with the NHIF in order for the Government to start monthly contribution health cover to support them, however, the Government has not honoured the contribution.

ADDITIONALLY, in the last two years the Government committed to unveil a third phase of registering all older persons qualified for the Inua Jamii Programme, but to date this has not been done.

THAT, in July, 2021, the Government released its latest disbursement of Kshs8,758,120,000.00 to the beneficiaries enrolled in the Inua Jamii Programme and a further Kshs26,386,000.00 towards the Nutrition Improvement through Cash and Health Education (NICHE) complementary programme. However, a majority of the beneficiaries of these programmes are yet to benefit owing to mismanagement and irregularities in disbursement of funds.

THAT, there is urgent need for a comprehensive investigation and audit of the programme with a view to addressing malpractices and mismanagement in the programme.

The Petitioner, therefore, prays that the Senate intervenes in this matter with a view to-

- (i) Recommending a special audit on the Inua Jamii Cash Transfer Programme under the Ministry of Labour and Social Protection; and
- (ii) Recommending that appropriate legal action be taken against individuals and officials involved in mismanagement of the funds.

Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Thank you.

Sen. Wambua.

Sen. Wambua: Thank you, Madam Deputy Speaker. I want to take this opportunity to congratulate the Petitioner for bringing up this matter. The Inua Jamii Programme is a good programme targeting cash transfers to the elderly, orphans and to Persons Living with Disabilities. However, I have one small problem with the programme in terms of the structure.

One, the Committee to which will deal with this Petition needs to find out why this cash transfer initially was being processed through the Postal Corporation of Kenya and now through the Kenya Commercial Bank (KCB). There will be need to understand the rationale behind this shift. This is because there are more postal corporation offices in the rural settings than there are KCB branches in the rural settings where a lot of these people are.

The second issue that the Committee should look into is the management of the list of beneficiaries because it is a very serious issue. There are new persons qualifying to be enlisted and there are also people who exited through natural attrition, but their names are still enlisted as beneficiaries. Those lists are never updated and the management is very haphazard. There will be need for the Committee to make sure that the real bona fide legitimate beneficiaries get these funds to benefit them and to advance their goals in life.

Sen. Wetangula: Madam Deputy Speaker, this is about the second time in the last two or three months that Mr. Taratisio Ireri has brought very good Petitions to this House. I want to support the Petition and enjoin the distinguished Senator for Kitui County in what he has already observed.

In this country, through successive governments and successive years very good ideas aimed at alleviating poverty, suffering and other deprivations of our people always end up being cash cows for the privileged.

In a structure where we have *Nyumba Kumi* designed by the Government, where in every corner of the country there is an organization of 10 households, it should not be too difficult, one, to identify the legitimate possible beneficiaries of Inua Jamii Programme disbursement. Secondly, to avoid a process where most of the money ends up being paid to ghosts.

As Sen. Wambua has said, one wonders why such small money going to deprived families should be channeled through a huge bank with huge bureaucracy like the KCB when, in fact, we have a Government institution like the Postal Corporation of Kenya with branches in every village in this country that can easily be used to disburse money to the needy cases.

Secondly, even where the money is being disbursed, there have been incidents where we are told that money is being disbursed through M-PESA platform. Nobody tells the country whether the recipients have mobile cellphones and are registered M-PESA users.

Thirdly, as Sen. Wambua rightly said, when natural attrition sets in, there is never an update of those exiting the list due to natural attrition like death and so on. That is how you end up with ghosts receiving money. An amount of Kshs8 billion is not little money.

When you go to the villages and I am sure this applies to villages in Bomet, Nandi, Samburu and everywhere, you will find that there are more deprived people;

people in need who go to their leaders looking for small money who should be on this scheme.

We want the Committee of Labour and Social Welfare - I believe this is the Committee that will look into this matter - to push the Auditor-General who either by her office, or under the law, can hire an independent audit firm to carry out a forensic audit from the time this programme was started to date because we have so much money in this country.

Unfortunately the leadership of the Government is not here in this House. We have money in all manner of situations. There is money being given to women MPs. Money being set aside for bursaries. When you go to the villages, you will find an MCA disbursing bursaries, an MP disbursing bursaries, a governor disbursing bursaries, *et cetera*. There is no correlation and coordination on how this money is being accounted for.

You will find money meant for this Inua Jamii being given to agricultural subsidies, Universal Healthcare and many other things and yet people are suffering even more.

Mr. Taratisio must be saluted for bringing this thought-provoking petition that will cause this House to exercise its power and duty of oversight on how public resources meant for the ordinary, low-end citizens are being misused.

Thank you, Madam Deputy Speaker.

Sen. Cherargei: Thank you, Madam Deputy Speaker. I want to congratulate the petitioner for bringing this Petition to this House. I think this is a very timely Petition.

As my colleagues indicated earlier on, when you walk around the villages in funerals, harambees or any function, you will get one or two *wazee's* asking you, why are we not registered? Some will tell you that they have been registered, but have not received the cash transfer.

I remember in July this year, there was a disbursement of Kshs8.6 billion through the Cash Transfer Programme. That was for May, June and July where the Government said they were giving 8,000 beneficiaries under Inua Jamii Programme.

You can see that we still have a problem because the elderly will need medication. These are people who have served this country with distinction. They will need Kshs100 to buy that medication. The first tranche of Kshs8.6 billion was released on 21st July.

I agree with Sen. Wetangula, why would you use KCB, Equity Bank and all these fancy banks and yet those people do not even know how to approach a bank. Why do we not find a more accessible and convenient way where in every village that elderly person, that PWD can access the funds? As long as they have an ID, registration through the National ID should be done. Sometimes this registration is done through Nyumba Kumi initiative and the chiefs.

I think the Committee on Labour and Social Welfare should find out about the requirements and the process of registration. Is it done annually or bi-annually? Is it quarterly? How is it being registered? Is it registered with the CDF offices, county offices, chief's office? Who qualifies to get these funds? It is important that these questions are answered so that we protect this money. In Kenya, for example, there are many people who may be earning from this Inua Jamii Programme and yet they are very wealthy.

On the issue of who qualifies to get these funds, somebody who is a retired civil servant and they still earn pension; are they supposed to register with this programme? Those are things that our people in the village are yet to understand. We need efficiency in terms of managing this fund.

Finally, although our Majority leadership may be on a serious retreat on issues of this House, but I know they will refer to the HANSARD, is that drought and famine are ravaging the North Eastern part of this country. It is interesting that in the North Rift where the Chair and I come from, we have a lot of maize, even in Trans Nzoia and Bungoma. However, a few kilometres in Turkana, people are suffering because of famine. This is the right time for us to ensure efficiency of cash transfer. People are suffering in northern Kenya.

With the Coronavirus (COVID-19) pandemic, most Kenyans have fallen into hard economic times. With the famine in North Eastern, we expect these people to be given cash transfers to at least afford a meal per day.

I hope the people in charge of Inua Jamii Cash Transfers – the Principal Secretary (PS) and former Mombasa County Commissioner, Hon. Marwa should make sure this transfer becomes efficient. We are being told that boreholes have dried and pumps are broken down in Laisamis Constituency. These are Kenyans who are suffering.

Going into the future, we must ask the people who run Inua Jamii programme to ensure it reaches the intended ordinary Kenyans. These are the elderly, Persons With Disabilities (PWDs) and the vulnerable in our society. These are people who ask you for Kshs100 when you go to a function. We need to ensure that the Kshs2,000 is given to the right persons.

We pushed for the devolved system of Government and I hope the Committee on Labour and Social Welfare challenges the county governments. If the National Government gives Kshs2,000 to an elderly person in Kilifi County where my brother, Sen. Madzayo comes from, why can the Kilifi county government not top it up with Kshs500 or Kshs1,000? This will widen the social safety net and ensure all Kenyans are accommodated.

When this Petition will be before the Committee, I hope the whole House will be part and parcel of the process.

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

Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for giving me the opportunity to comment on the cash transfer programme to the elderly. The Government of Kenya initiated this transfer of money to the elderly with good intention. Experiments were done in the former Nyando and other districts to support the vulnerable and the poor. The Government started this programme to ensure it walks with its poor. It worked very well and eventually became to be referred to as the cash transfer.

This cash transfer was supposed to go to specifically the elderly, the vulnerable, the poor and the orphans. Allow me to site Lugari Constituency where I come from. I have unfortunately come across very many elderly who have been coming to my home and asking me how they can get this money. Some of them are helpless and their children are not with them anymore because they are grown. Some of them are widowed and they do not have anyone to support them.

The cash transfer is not transparent the way it is supposed to be. There is need for transparency and accountability. It is also important to ensure the elderly, the poorest and orphans are identified in counties. We need to have biodata to show orphans and their location and that they need the cash transfers. There are so many who are not benefitting from this noble Government initiative.

Madam Deputy Speaker, it is unfortunate that there are those who are on the cash transfers and then after some time, they are out. There is need to streamline this programme so that it serves its initial purpose of ensuring that it uplifts the poor and the vulnerable. There is also need to review this programme because where I come from in Lumakanda, I have encountered families consisting of an orphan living with his grandmother or grandfather. This means there are two people here who need help; the orphan and the elderly.

This cash transfer goes to just one family and it is insufficient. I think the amount should be reviewed so that it is specific to individuals. For example, if you are a PWD and vulnerable, then you deserve it. If you are an orphan, it should come to you as well. The same goes for the elderly who have no support.

In Europe, for example, there is a system in place to help the elderly such that once they have retired and they are not on permanent jobs, they get the money meant for elders. There is no question about it and they truly get it. They still enjoy the services such as healthcare and buying food that everybody else enjoys. This should also happen to our orphans and the vulnerable in Kenya.

I support this Petition and the fact that an investigation is needed. There should be a seamless way to ensure deserving cases truly benefit from this programme.

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

Sen. (Dr.) Langat, proceed.

Sen. (Dr.) Langat: Thank you, Madam Deputy Speaker, for also giving me an opportunity to add my voice on this. Last weekend while I was at home, I received so many complaints from vulnerable people asking me why their cash transfers had stopped. I appreciate that this Petitioner has brought this as a representation of so many Kenyans who are suffering because of not receiving this money.

There are two issues here; first, there is a group of people who have tried in the last four years to register themselves in Huduma Centres across the country to benefit from this programme, they have never been successful. Another group of people have been receiving. However, all of a sudden, this money just stopped.

This programme needs thorough investigation and audit in order to establish why this registration is not effective to the point where majority of Kenyans are not beneficiaries and yet it is their right. There needs to be an investigation to also establish the regular stoppage for those who have been receiving.

The other challenge facing these transfers is the delays. Sometimes it takes too long for this money to arrive. Sometimes it even takes three months. This is what benefits these people and enables them pay for the National Health Insurance Fund (NHIF) and other insurances. These are vulnerable people and they are always sickly.

Madam Deputy Speaker, the other challenge I discovered is that due to the delays, the relatives of the elderly take them to KCB branches nearby. When they do not get the transfers, they go back home. This is risky for this age group of people during these times

of Coronavirus (COVID-19). It is unsafe for them to be walking around with their relatives in urban centres.

I suspect two challenges in this process. One maybe that there is a requirement for policy reforms so that Sen. Wetangula said there are other avenues that can be used to ease the process and ensure these people receive their cash even in their nearest shopping centres. I also suspect a lot of corruption in the process. Where does this money go whenever these people do not get their cash?

I urge and deeply request that Committee that will handle this Petition to take their time effectively and bring us clear information. First, on registration processes of these people, and second, a compressive list of beneficiaries from every sub-county. If possible, the Government should even post to the offices of Assistant Chiefs in the villages so that it is clear who the beneficiaries of this money are.

I support this Petition.

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

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order Sen. Cherargei?

Se. Cherargei: Madam Deputy Speaker, I would like to bring to your attention and that of the House that the Senate YouTube Channel is not working. I hope that our technical team can work on that because there are many Kenyans who would like to follow the proceedings of this House.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Cherargei. I direct the technical team check on that issue. It will be very sad if we have been off air since the sitting started.

Proceed, Sen. Shiyonga.

Sen. Shiyonga: Madam Deputy Speaker, I thank you for giving me the opportunity to support this Petition that has been brought to this House by Mr. Tartisio Ileri Kawe. I support it because the Inua Jamii Programme was well thought out, but its implementation was poor.

I commend the petitioner for bringing this Petition to the Senate. The Inua Jamiii Programme was meant to uplift the living standards of disabled and other vulnerable groups. There are many vulnerable people who have not benefitted from his programme. As the petitioner has stated, there is need to do a forensic investigation.

Sen. (Dr.) Musuruve: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. (Dr.) Musuruve?

Sen. (Dr.) Musuruve: Madam Deputy Speaker, allow me as the Senator representing Persons with Disabilities (PWDs) to inform Sen. Shiyonga to use the right term when talking about PWDs. The PWDs are not disabled. Parliamentarians should refrain from referring to PWD as disabled.

The Deputy Speaker (Sen. (Prof.) Kamar): For the benefit of all the other Members, what term do you want her to use?

Sen. (Dr.) Musuruve: Madam Deputy Speaker, for the benefit of all the other Members, it is good to refer to the PWDs as opposed calling then disabled people.

The Deputy Speaker (Sen. (Prof.) Kamar): I hope all the Members have taken not of that.

Sen. Shiyonga: Madam Deputy Speaker, I agree with Sen. (Dr.) Musuruve on the terminology PWD.

Sen. (Dr.) Musuruve: On a point of order, Madam Deputy Speaker. Kindly allow me to make it right on the Floor of this House. It is Persons with Disabilities (PWDs) not persons living with disabilities.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. (Dr.) Musuruve. I am sure all of us are learning these terms.

Proceed, Sen. Shiyonga.

Sen. Shiyonga: Madam Deputy Speaker, I commend Sen. (Dr.) Musuruve for correcting me on the terminology. It is PWDs.

We need in-depth investigation on the systems of managing the funds. The Inua Jamii Programme is supposed to benefit the people who are unable to acquire the minimal needs of a family. However, I have an issue with the disbursement of the funds. Why are the funds disbursed by only one bank yet we have very many other channels of money transfer to the people? Why are the funds disbursed through the KCB only? Who made that decision? Why KCB only? We have very many other channels of money transfer such as M-PESA which can reach the beneficiaries on real time.

The people who receive cash disbursements from the Inua Jamii Programme are the vulnerable in the society. As I have said, those are the people who need the money because they are facing numerous challenges in day today activities.

There are so many bureaucracies that the beneficiaries are subjected to in the bank before they get this money. Many of the beneficiaries give up on accessing it because of those numerous challenges that they experience from the banks.

The fund itself runs into billions of Kenyan Shillings, but it is poorly managed. If the funds were managed well, every listed beneficiary would benefit from it. The population of vulnerable Kenyans who are supposed to benefit from this is growing. Is it not true that the people who were first registered are the same ones who are still benefitting? What about the people who are supposed to be benefitting now yet they are out of the programme or cannot access the registration platform?

In conclusion, it is very important for us to do a thorough forensic audit on all the people who are suspected to be stealing or benefitting unlawfully from the programme. The Government also needs to be made aware that regardless of it releasing the money, it does not reach the intended beneficiaries hence the need for a thorough audit. We need to cut down on the cartels that are benefitting and ruining this noble programme.

I am a Member of the Committee on Labour and Social Welfare of the Senate. When this Petition will be before our Committee, I will give my contribution because this is a serious issue. I urge the Members of the Senate to do the same so that this programme benefit as many people as possible.

Madam Deputy Speaker, I thank you for giving me the opportunity to comment on this petition.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, 30 minutes are over, but I would like to give Sen. (Dr.) Milgo and Sen. (Eng.) Hargura two minutes each to comment on this petition.

Sen. (Dr.) Milgo: Madam Deputy Speaker, I thank you for giving me the opportunity to contribute to this petition. The Inua Jamii Fund was meant to assist the very needy in the society. A lot of money has been allocated and disbursed by the

Government to the vulnerable people in our society. However, just like the Women Enterprise Fund and the Youth Fund, there has not been an audit to ascertain whether those funds get to the intended beneficiaries. Accessing the funds through the banks is a nightmare. Most of the needy people have never gone to school. Even if they went to school partly, they cannot access the banks. There are many other ways that these funds could be wired such as through M-PESA or Pesa Pap to the intended beneficiaries.

The other time, we were complaining about the Youth Enterprise Development Fund and Women Enterprise Development Fund. All these monies should be put together and sent to the counties where these people are. The Government can use the administrative officers to identify the needy cases and ascertain that a certain amount of money has reached them.

Otherwise, this Petition is coming to our Committee and we will give it more input. We challenge the concerned people to ensure they use a better method of wiring and provide data on all beneficiaries and ensure they bring everyone on board.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Eng.) Hargura, proceed for two minutes.

Sen. (Eng.) Hargura: Thank you, Madam Deputy Speaker. I support this Petition. This is a noble idea and a fund that is supposed to assist our vulnerable members of the society. As has already been said, there is a problem with the way the fund is being disbursed starting even with the targeting.

There are issues of who identifies these vulnerable persons in the community in terms of the elderly, PWDs and orphans. Deserving people are left out by whoever is doing the identification. There must be a very clear way of doing that identification.

Once identified, as the Petition has raised, the mode of disbursement--- For example, using KCB in my county, there are only two branches in Marsabit and Moyale. We have centres as far as 500 to 600 kilometres from those branches. Somebody in Ileret who has been identified to benefit has to travel those kilometres to get that money. It does not cover the transport to that place.

We have advancement in technology where Kenyans have taken up the use of mobile money transfer. Why is it not being used, yet that is the easiest way to reach Kenyans? Nowadays, network coverage even in those remote areas is almost 100 per cent.

With that kind of investment, it does not assist in any way that we are still insisting that the most vulnerable members of this community still travel kilometres to go and collect the monies that are given. It even creates more problems to that individual. If they get that money directly, they will improve their livelihoods. Now they will incur more costs and trouble to even go and access that money.

What the Petition has raised is very pertinent and we need to have a serious engagement with the Cabinet Secretary (CS) for Labour and Social Protection on this.

The Deputy Speaker (Sen.(Prof.) Kamar): Hon. Senators, Standing Order No.232(1) requires every Petition to be committed to the relevant standing committee for its consideration.

In this case, I direct that the Petition be committed to the Standing Committee on Labour and Social Welfare. In terms of Standing Order No.232(2), the Committee is required, in not more than 60 calendar days from the time of reading the prayer, to

respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

(Petition was committed to the Standing Committee on Labour and Social Welfare)

The Deputy Speaker (Sen. (Prof.) Kamar): Next Order. Let us have the Chairperson of the Senate Committee on Finance and Budget.

REPORT ON PETITION: REFORMS ON THE DESIGN AND STRUCTURE
OF THE PROCUREMENT FRAMEWORK IN KENYA

Sen. Kibiru: Thank you, Madam Deputy Speaker. Pursuant to Standing Order No.232(2), I beg to lay the Report of the Standing Committee on Finance and Budget on a petition to the Senate concerning Reforms on the Design and Structure of the Procurement Framework in Kenya.

(Sen. Kibiru laid the document on the Table)

The Deputy Speaker (Sen.(Prof.) Kamar): Next Order. Sen. Kibiru, you are a Member of the Senate Business Committee (SBC). Most of the Papers are under the SBC.

PAPERS LAID

FINANCIAL REPORTS OF VARIOUS WATER
AND SANITATION COMPANIES/FUNDS

Sen. Kibiru: Madam Deputy Speaker, I beg to lay the following Papers on the Table of the Senate, today, 8th September, 2021-

- (i) The Kenya Evaluation Guidelines for the National Integrated Monitoring and Evaluation System.
- (ii) Report of the Auditor-General on the financial statements of Lodwar Water and Sanitation Company Limited for the year ended 30th June, 2019.
- (iii) Report of the Auditor-General on the financial statements of Kakamega County Water and Sewerage Services Company Limited for the year ended 30th June, 2019.
- (iv) Report of the Auditor-General on the financial statements of Ngagaka Water and Sanitation Company Limited for the year ended 30th June, 2019.
- (v) Report of the Auditor-General on the financial statements of County Assembly of Isiolo Car Loan Scheme Fund for the year ended 30th June, 2019.
- (vi) Report of the Auditor-General on the financial statements of Imetha Water and Sanitation Company Limited for the year ended 30th June, 2019.

- (vii) Report of the Auditor-General on the financial statements of Kwale County Trade Revolving Fund for the year ended 30th June, 2019.
- (viii) Report of the Auditor-General on the financial statements of Elgeyo-Marakwet County Executive Car and Mortgage Revolving Fund for the year ended 30th June, 2019.
- (ix) Report of the Auditor-General on the financial statements of Gatundu Water and Sanitation Company Limited for the year ended 30th June, 2019.
- (x) Report of the Auditor-General on the financial statements of Kirinyaga County Health Sector Service Fund for the year ended 30th June, 2019.

(Sen. Kibiru laid the document on the Table)

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

STATEMENTS

FINANCIAL STATUS OF HARAMBEE SACCO

Sen. Cherargei: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Tourism, Trade and Industrialization regarding the financial status of Harambee SACCO.

In the Statement, the Committee should-

- (1) State the current financial status of Harambee SACCO and whether it is in compliance with the Sacco Societies Regulatory Authority (SASRA) requirements, including liquidity ration and liabilities.
- (2) Explain whether the lending operations of the SACCO have been in a way impacted by the SACCO's Kshs1.34 billion payoff to over 5,000 members who have exited in the last few years.

They need to justify whether the Sacco is in a position to meet its financial obligations in view of the recent exit of a considerable number of its members.

This follows in the footsteps of the Moi University Pension Scheme that you took us to in Uasin Gishu.

They need to describe the impact of the Sacco's investment in fixed assets on its liquidity and whether the investments were in compliance with the law.

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is by Sen. Omanga but she has delegated it to Sen. (Rev.) Waqo.

Sen. (Rev.) Waqo: Madam Deputy Speaker, she has requested that we deal with it tomorrow.

The Deputy Speaker (Sen. (Prof.) Kamar): Okay. So, we will defer Statements number two and three which are both under Sen. Omanga.

ALLEGED INCREASED RATE OF KIDNAPPING OF CHILDREN

ALLEGED EVICTION OF RESIDENTS OF NAIROBI
CITY COUNTY STAFF HOUSING UNITS

(Statements deferred)

The fourth Statement is by Sen. Kasanga.

RAMPANT CASES OF POLICE BRUTALITY,
EXTRA-JUDICIAL KILLINGS AND MOB JUSTICE

Sen. Kasanga: Madam Deputy Speaker, I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations, regarding the rampant cases of police brutality, extra-judicial killings and mob justice in the country.

In the Statement, the Committee should address the following-

(1) Explain the steps being taken by the Ministry of Interior and Coordination of National Government to curb the rampant cases of police brutality and extra-judicial killings of citizens by police officers in the country;

(2) State the steps taken by the Ministry, if any, to address killings of suspects by members of the public through mob justice;

(3) Outline measures the Ministry is taking to ensure that the County Policing Authority and community policing structures established in line with Section 41(9) and 126 of the National Police Service Act are fully operational and are meeting their objectives.

(The Deputy Speaker (Sen. (Prof.) Kamar) spoke off-record)

Sen. Kavindu Muthama: I am the Vice Chairperson of the Committee on Delegated Legislation.

The Deputy Speaker (Sen. (Prof.) Kamar): The Vice Chair of the Committee is here and she has an urgent document to lay.

PAPER LAID

Sen. Kavindu Muthama: Madam Deputy Speaker, I beg to lay the following Paper on the Table of the Senate of the Senate today 8th September, 2021-

REPORT ON THE PUBLIC FINANCE MANAGEMENT
(SINKING FUND) GUIDELINES, 2021

The Report on the Sessional Committee on Delegated Legislation on the consideration of the Public Finance Management (Sinking Fund) Guidelines of 2021.

(Sen. Kavindu Muthama laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kamar): You also have a notice of Motion.

NOTICE OF MOTION

ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

Sen. Kavindu Muthama: Madam Deputy Speaker, I beg to give notice of the following Motion-

That the Senate adopts the report the Sessional Committee on Delegated legislation on the consideration of the Public Finance Management (Sinking Fund) Guidelines of 2021 laid on the Table of the Senate on 8th September, 2021, pursuant to Section 18 of the Statutory Instruments Act, Section 205 of the Public Finance Management Act and Standing Order No. 221(4)(b) and its entirety, the Public Finance Management (Sinking Fund), Guidelines, 2021.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senator. You have done very well knowing that this is your first time.

Next Order.

BILL

First Reading

THE SPECIAL NEEDS EDUCATION BILL (SENATE BILLS NO.44 OF 2021)

*(Order for First Reading read - Read the First Time and
ordered to be referred to the Committee on Education)*

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

MOTION

APPROVAL OF THE COUNTY GOVERNMENT CASH DISBURSEMENT SCHEDULE FOR FY 2021/2022

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Cash Disbursement Schedule for Financial Year 2021/2022, laid on the Table of the Senate on Tuesday, 7th September, 2021, and that pursuant to Section 17 (7) of the Public Finance Management Act and Standing Order 183 (3), the Senate approves the County Governments Cash Disbursement Schedule for Financial Year 2021/2022.

(Sen. Kibiru on 7.9.2021)

(Resumption of debate interrupted on 7.09 2021)

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cherargei, you had 19 minutes.

Sen. Cherargei: Thank you, Madam Deputy Speaker. I wanted a clarification because the last time you gave me 29 minutes but I have been told it was a grammatical error.

I thank you for this opportunity. I support and congratulate the Chairperson of the Committee on Finance and Budget, Sen. Kibiru for this Schedule.

I am happy that the fight that we had in this house for the third generation formula has come to fruition.

This is our core mandate. I expected all of us to be here yesterday. This is why the Senate exists.

Before I make my few comments. I would like to say that security forms a critical part of our country and counties. Therefore, our hearts and prayers goes to the people of Laikipia because of the insecurity issues that they are facing at the moment.

We hope that the insecurity situation and the challenges that they are facing will be arrested to stabilize the situation. Our counties cannot function without a stable security. I hope that the security agencies addresses it.

I saw my regional commander saying that the bandits are using M16, the heavy machines which are normally held by foreigners. The Government should come clean so that our people do not continue to lose property and lives.

I saw the National Assembly Security Committee two weeks ago, and they acted really speedily. The issue of redeployment of security officers within the Deputy President's office came up. The Cabinet Secretary (CS) for Interior and National Coordination was very quick. I hope that the people in charge of security are not addressing political issues. This is the time we need them to be on the ground.

Madam Deputy Speaker, I have three points. Secondly is that it is unfortunate that we passed the County Allocation of Revenue Act (CARA) 38 days ago. The CS of the National Treasury should have within 18 days submitted the cash disbursement schedule as provided for under the Public Finance Management (Act). However, it is only 38 days later and it is affecting our calendar.

I heard that someone wanted to blame the Senate, yet it is the work of the CS in charge of the National Treasury. As we talk, this money has not been disbursed in the last two months. This is a clear violation of Article 219 of the Constitution. The disbursement of cash made to counties should be as provided for under Article 219 of the Constitution.

Madam Deputy Speaker, for the first time, counties are lamenting. Everybody is complaining of the slow disbursement of cash. I have said this before. I heard my colleagues saying yesterday that the way the CS of the National Treasury is running it with inefficiency and incompetence is very sad.

He is violating Article 219 of the Constitution. If this country was functioning, he would have been sanctioned and surcharged. When you look under Article 226 (5)--I want to advise my brother, Ukur Yatani because he may imagine that he would only be surcharged. The Constitution provides that even after you have been the holder of an office, you can still be surcharged and followed up.

Madam Deputy Speaker, the problem that we are facing in this country is delayed disbursement of cash to our counties. At the moment, the northern frontier counties are

facing issues of famine and drought. This is both in parts of the North Rift and Northern Kenya. This money should have been disbursed in a timely manner.

I think that the CS of the National Treasury in no uncertain terms has violated the Constitution. He has run what we are talking about inefficiently and in an incompetent way. There is also the issue of the Equalization Fund that should have gone to counties that are facing many challenges in terms of ensuring that we have hospitals, schools and other many other things.

From where I stand, the CS of the National Treasury has run it down and ensured that this thing does not work. The counties are complaining year in and year out. He blames the Senate saying that we have delayed it. He has violated Article 229 of the law by bringing it after 38 days instead of 15 days.

Madam Deputy Speaker, as I move to the second point, I think that the only time I have seen the CS of the National Treasury being serious is when he launched some political formation call the *Upya* Movement. I hope that he will be looking into serious issues like ensuring that they protect counties.

I have just said it here. It is important to be honest. The drought is ravaging. I have given an example of Laisamis Constituency. The boreholes have dried and the rigs that drill water have broken down. Our people are suffering, and yet somebody somewhere is not using the mandate that we have given him. I believe that the CS should be sanctioned and surcharged where possible. He has ensured that the counties continue to suffer.

Madam Deputy Speaker, thirdly, I am happy that for the first time Nandi was--- I saw the Orange Democratic Movement (ODM) leader talk about one man, one vote, one shilling. As we were pushing for counties, there were some Senators calling themselves Team Kenya. I am happy that after that fight, we came to one agreement.

Nandi County used to earn Kshs5.3 billion. I am happy that with the addition of Kshs1.6 billion, Nandi County will earn Kshs6.3 billion in the Financial Year 2021/2022, similar to Uasin Gishu County. Governors should be honest to the *wananchi*. Sen. Wetangula's Governor should be telling *wananchi* about the money that he is using to fix roads in Bungoma and the money he has given to the bursary. It is because of the Senator.

Madam Deputy Speaker, we are not rubber stamps. Before your Governor, Hon. Mandago, sponsors 51 students to go to Finland, he should tell those people that the money he is using is because Sen. (Prof.) Kamar stood firm and ensured that there was additional money that came Uasin Gishu.

This is similar to many other counties like Machakos and the Nairobi City County, although it is under the Nairobi Metropolitan Services (NMS). There is Sen. Kwamboka, Sen. Kasanga of Makueni, and many others like Sen. (Dr.) Ochillo-Ayacko, my friend from Migori.

The addition that we fought for through this--- I remember that for four months, we fought here and could not see eye to eye. At that time, Sen. Wetangula was my best friend. I can tell you that we need to congratulate ourselves, your office, the Parliamentary Budget Office (PBO), and many others for standing firm.

Madam Deputy Speaker, next is the issue of performance of our counties. For example, in Nandi County, according to the Auditor-General, there were 491 projects under the County Integrated Development Plan (CIDP). Of the projects, 310 are yet to

start, 110 are stalled and one project is complete. Only one project, yet we have disbursed for the last four financial years. Nandi County has not been able to show something tangible except a single project of an Early Childhood Development (ECD) center.

Going forward, we must agree that the money we dispense must be used on the intention that it had. For example, in own source revenue, we need to challenge counties. In Nandi County, in the Financial Year 2017/2018, they had projected Kshs82 million but ended up collecting Kshs62 million. I am just giving an example with 2017/2018. You can see that there could be leakages because in Nandi County, we have cess, fees, land rates, and land rent.

We also have the Kiborgo Tea Estate which the county government does not even know the acreage, yet we need that cess. It can be used to make roads in Nandi County from Kiborgo Tea Estate. People in the Chemas and Mosop areas are growing sugar cane. That cess should be used to fix feeder roads and to provide bursaries to ensure that our people get the money. Even our young men who drive *boda bodas* pay fees. They need proper parking areas. Nandi County is very rainy. They need a proper place where they can park their *boda bodas*.

With no uncertain terms, it is shocking that we have not performed well in the own source revenue. Local revenue collection has been a problem in Nandi County. I do not think that the leakage is by design. It is not by default. It looks like there is a way that governors operate, especially in my county. They ensure that they get some small money for *harambees* and handouts.

Madam Deputy Speaker, on the issue of health, which is very key, I really wanted to mention this because of the Coronavirus Disease (COVID-19). For all the Level Four and Level Five hospitals, including the Kapsabet County Referral Hospital, the only thing that you can get in all the dispensaries that we have in Nandi County is gloves and painkillers, yet our people are under attack from the COVID-19 issues that we need to fix.

As we roll out the vaccine across the counties, a few months ago, the oxygen plant in Kapsabet County Referral Hospital collapsed. When the Members of the County Assembly (MCAs) wanted to visit, they were chased away. If you go there, the standby generator that is there is functioning halfway. If you go to Chepterwai, Kaptumo and Mosoriot, the generators that are there are not working yet we are working hard to pass this cash disbursement.

When you go to the ground, things are very different. On the street, people tell you that *vitu ni* different *kwa* ground because the money that we are passing is not reaching the intended purpose. For example, we were supposed to have 45 maternity wards under the CIDP, but for the last four financial years, the county has only achieved only two maternity wards.

We only have one gynaecologist, and therefore our women from Maraba, Tinderet, Chepterwai, Kabyiet, Mosoriot Kemeloi and many other hospitals have to go without the services of a gynaecologist and a pediatrician. You can see that out of 45 maternity wards that the CIDP intended to construct in the last five years, only two are completed.

For five years, out of 45 maternities that they intended to construct, only two have been completed.

Madam Deputy Speaker, if you look at laboratories, every dispensary should have a laboratory because of the prevalence of Malaria, amoeba and other diseases in the area that I come from. We should have laboratories so that our people can get tested and get the right medication.

The intention of the county was to construct 124 but only two have been completed during the four financial years. This means that the money that we are working hard here to ensure that it is disbursed, the fight that we had here might end up being an exercise in futility because we should have ensured that our people get proper medication.

I want to challenge my colleagues to find time to know what is disbursed to their counties. I want to thank the office of the Controller of Budget because they have worked with us seamlessly. I wrote a letter to them and demanded to know the amount of money that Nandi County has disbursed from 2017 up to 2021. Up to now it is about Kshs20 billion and when you look at the money that has been given to Nandi vis a viz the projects that they have done, it is totally opposite; nothing has been done.

For example, they were supposed to be given 20 ambulances and yet out of the 20 ambulances that were budgeted for under CIDP none has been delivered. It is very unfortunate that we have disbursed almost Kshs25 billion and this disbursement is not even inclusive of conditional grants and on-source revenue. These are equitable, sharable disbursements that we have.

I think we need to be very careful. I do not know how we will hold our counties accountable because any CIDP project that has been put, they are budgeted for.

There are 13 new health facilities in Nandi which are not even accessible. When you go to a place like Cherondo you have to use a *gunia* to carry people to hospital. When somebody dies you have to use a *gunia* to carry the coffin up to a place like Cherondo and many others in Kapchorwa Ward; places like Kosoiywa, Kamamut, Kamanyaruat, Chepkemil, Mosombor, Siksik, Kamboiywa, Kibonse, Kamelilo, Chebuyakoris and Kabutiet are places where people do not have access to dispensaries. These are far flung areas that these people should be able to walk in and get medication. You can imagine if somebody gets sick with COVID-19, how will they get supplementary oxygen?

Going into the future we must agree on how to fix these things. Most of these issues have been devolved.

It is important for our people to have clean, accessible and safe water. We need counties to be honest in terms of water provision because access to clean water is a human right. In Nandi all water projects have not been started and yet the Controller of Budget wrote that Nandi County has received over Kshs20 billion in the last four financial years.

One interesting thing is that tenders have been awarded for water projects in Nandi but no project has been started. They are violating Article 43 of the Constitution on access to clean water. For example, we have Sinende-Maraba in Aldai sub-county, Biribiet in Chesumei, Nandi Hills Town Spring which should be serving Nandi Hills Town; Kapkorio A and B in Kapsabet Ward; Kapchobose water project in Nandi.

The award of tenders for all the water projects in Nandi County has been given but the work is yet to start. Money has already been disbursed yet our people cannot

access safe and clean water. We want to prevent the spread of water-borne diseases. How do we achieve this when water as a function has been devolved?

I think it is very sad that a town like Kapsabet does not have clean drinking water and the issue of sewerage is still a challenge.

When you look at the health projects in Nandi, the only complete project in Nandi in terms of the health department is only a morgue in Nandi Hills Sub-County Hospital. The question should be; why is the county in a hurry to complete construction of a morgue as opposed to building a hospital? I thought priority should be given to treatment because we do not want anybody to die.

That is the only achievement that the county government has done for the last four years. That is the only thing they can show for this more than Kshs20 billion that has been allocated, including conditional grants.

As you are aware, Nandi is an agricultural county. We depend largely on dairy products, tea and sugarcane. I know the Chair does not grow sugarcane in her county but you can see the problems we are facing Nyando because of the issues of sugarcane.

You saw that our farmers in Chemelil, Chemase, Kisumu County and Nandi because of a mechanical breakdown in Kibos Sugar Factory and Miwani Sugar Company that are doing partial maintenance, our farmers continue to suffer.

We expected counties to step in and assist our farmers in terms of ensuring that farmers are able to sell sugarcane. I hope that there will be some intervention on the issue of farmers that continue to suffer. We depend on dairy and I am happy that there are tea sector reforms that are ongoing.

To conclude on the issue of cattle dips, in Nandi, during the 2016/2017 and 2017/2018 financial years we were supposed to have constructed around 60 cattle dips but only 10 are complete and yet money has been allocated.

We were supposed to have 600 sexed semen to improve milk production within Nandi but up to now nothing has been done for the last four years.

All governors need to work hard and ensure that they give value for money, transparency, fairness and accountability.

Madam Deputy Speaker, when you look at the roads, I know you and I share the same problem in that we have heavy rainfall and the roads are very bad. A bridge in Chepkumia Ward is yet to be complete and yet Kshs2.1 million has been allocated. Somebody might say Kshs2.1 million is a little money but it can change the life of a villager somewhere in Chepkumia. Even when you look at Ainabsetan box culvert in Mosab sub-county and look at another one in Kapsabet Ward. I want to appeal that accountability is not negotiable.

Finally, the best Council of Governors chairperson we had was Isaac Ruto. The current chairperson of the CoG, Gov. Wambora cannot even ask the National Government through IBEC and other forums to release money to counties and yet they say the Senate is not doing its role. Our role is to pass CARA. It is the work of the CoG to assist us even in terms of accountability.

Gov. Wambora and the CoG should tell the Government to release the money. They should also work hand in hand to demand that the National Government disburses money on time and as per Article 219. It is not a favour that they are looking for.

I wish Sen. Malalah would listen to this because I have seen his intention to run for Governor of Kakamega; it is important that he listens. I know that quite a number of

us will be running for governor; Sen. Malalah, Sen. (Dr.) Ochillo Ayacko and others; we do not need to see the same mistakes.

Sen. Malalah, I hope you appreciate that you were arrested because of this formula. Please do not go repeating the mistakes that we are seeing in Kakamega County government. You are doing very well. I can see you are behind Musalia Mudavadi, which is okay.

That is okay. I do not know if my brother, Sen. Madzayo will be running for a governor seat, but I hope he will assist somebody who will run for governor to run better because we fought for these things. Even you Madam Deputy Speaker; although you are yet to confirm, but some indications tell us that you are headed that direction.

(Laughter)

As your neighbour, we might meet in the Council of Governors (CoG), God willing. I know Sen. Wetangula is going for the presidency.

Madam Deputy Speaker, if some of us become governors, God willing, let us not repeat these mistakes. Let us know the value and hard work we have put to ensure these resources go to counties. I thank Sen. Kibiru who has been steadfast. I request him that next time he has an urgent issue like this, kindly, allow us to come for special siting to that our counties do not grind to halt.

I thank Sen. Kibiru and his Committee for having been steadfast. I hope that as the money goes to Kirinyaga County, the current Governor can appreciate the fact that Sen. Kibiru has really fought for this money as the Chairperson of the Committee. I saw her wobbling saying Mt. Kenya this and that and she want to run on a different party. We welcome everybody to the United Democratic Alliance (UDA) and the wheelbarrow movement because this is where issues of hustlers can be fixed, going into the future.

I would wish all the 67 of us get an opportunity to speak to a Motion of such intense. Division of revenue is our core mandate.

(The red light on the timer went off)

Madam Deputy Speaker, I thought you would add me one minute after endorsing you as the incoming governor. Anyway, there is always next time.

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

Sen. (Eng.) Hargura, proceed.

Sen. (Eng.) Hargura: Thank you, Madam Deputy Speaker, for giving an opportunity to contribute to this Motion on the adoption of the Disbursement Schedule by the Senate. One of the main functions of the Senate is protection of counties and their governments. The most important things in devolution are resources.

If you look at the history of this country when we had the first regional governments, they were wound up for being denied resources. So, when counties go for two months without funds, then we have to be very careful because we might be going down the same road. Somebody who does not want devolution to work will not say so. He will just ensure it does not get resources. That is where we might be heading and we have to be careful.

In performing our functions, we know very well that the process is clearly stated. We come up with the revenue sharing formula. The last time we worked on that formula, it was very clear that it is a very important exercise for this House. We had to clearly state our ground and made sure whatever formula we came up with, it did not disadvantage any part of this country. I thank my colleagues because we, as a House, made sure that we came up with a formula where no county was losing.

Madam Deputy Speaker, if you also look at the few years that we have had devolution, this Senate had to work hard to ensure we participate fully in this process right from the Division of Revenue. At the beginning, there was a feeling from the National Assembly that the Senate had no business in the division of revenue and that we should just seat and wait. If they give us Kshs0 to share among counties, that is what we are supposed to share. We went to court and made sure we had to get our right and that is why we participate in the division of revenue.

After that, there was the issue of what comes first once we have ensured division of revenue is done. Is it the national budget that is passed by the National Assembly or division of revenue? The National Assembly felt that they could still go ahead with the budget while we argued on the division of revenue. The courts were very clear that, that is not possible and that there must be division of revenue first before we go for the national budget. The National Assembly budgets for the National Government on whatever they have been given from the division of revenue.

There has been a situation where the National Government felt it is doing counties a favour and that they are a prefect over the counties. However, the Constitution is very clear. These are all levels of Government which are clearly being stated out and they should complement and cooperate between the two of them. None should be seen to be lording it over the other. That is why the courts were very clear that division of revenue has to be done first so that we know what is for counties and what is for the National Government.

After that, we have to do allocation of revenue, the horizontal one among the counties. We have done. However, the sad thing is that the first quarter of the financial year is ending and counties have no money. Some county staffs have gone without salaries for the last three months. Medical services and other services are not delivered to our people. Right now, the arid regions which some of us represent here are experiencing serious droughts. Boreholes are already collapsing because of overdrawing water. There is need for relief food to the residents who already have their livestock – their main source of livelihood – facing drought.

Madam Deputy Speaker, counties are supposed to come in at this level. However, because of not having funds, it now feels like counties are not doing their work. It is the National Government, especially the National Treasury which is not disbursing the money. We are being told that it is because revenue collection is not enough. Whatever is there should be shared. If there is a shortage, it should be felt even at the national and county level. Counties have not got anything for the last two and half months. By next week on 15th, they should be getting the third tranche which they have not received.

It seems like there is a plan to make sure counties are seen to seem not to be working. They are sabotaged and, at the end of the day, we are trying to undermine devolution. It has to come out clearly that counties have to get money. If you look at the figures in the disbursement Schedule, it means that by mid last month, counties should

have received Kshs61 billion. However, they have not received it by now. They are supposed to receive Kshs93 billion by next week, 15th September, 2021, but they have not received anything. Of course, the Kenya Revenue Authority (KRA) is collecting revenue. So, we cannot be told that it is because revenue is not being collected.

In the first month of the financial year, my county should have received Kshs582 million; Kshs618 million by mid-August; and, Kshs619 million by mid-September. That is a total of Kshs1.8 billion of which they have not received anything. That shows how much counties are being strangled. It is high time the National Treasury understands that its sole purpose is to ensure they prudently manage Government recourses and ensure they disburse as required.

There is a strain on the resources which we know most of it is because of the reckless borrowing that we have gone into. More than 70 per cent of our revenue is going into servicing debts. We have put ourselves in this situation by not living within our means. These are some of the effects, but they need to be shared. Counties also need to receive something. If there was goodwill from the National Treasury, then counties should have received something. If they have not, then it shows very clearly that we are having problems.

Lastly, Madam Deputy Speaker, Sen. Cherargei has put it clearly, that this Schedule comes with timelines. It is for the Cabinet Secretary (CS) for the National Treasury to come up with these schedules immediately we have passed the County Allocation of Revenue Act. Once that Act has been assented to by the President, then it gives 15 days CS to come up with this schedule. Now, we are close to 40 days. We can see where the problem is and this need not be repeated. People have to take their work seriously. When you take a job, that should be your first concern. Otherwise, Kenyans are suffering because somebody is not doing his work and that is not good.

Kenyans are suffering because somebody is not doing his or her work and that is not good. Senators should process this Motion quickly and approve the disbursement so that we pass the ball back to the National Treasury for them to disburse the funds to the counties. People are suffering due to lack of release of funds.

Madam Deputy Speaker, I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Madam Deputy Speaker, I thank you for giving me the opportunity to make a few remarks regarding this important matter. A budget, just like food; its importance and usefulness is only found in the disbursements. You only get to know whether food tests good when you eat it.

The Senate has done its bit. We have pushed one another and we have equally pushed the National Government to give us additional funding. When those funds are not disbursed to counties, they remain beautiful in the books but they are surely not useful for the people that they were intended to provide services for.

The Senate has never stopped and will never stop at just passing the budget but will provide a schedule that should be complied with by the National Treasury. Year in, year out, the National Treasury has failed to comply with that schedule and even the one that we are debating today, is unlikely to be complied with. That is why we should relook the Constitution and amend it to create a National Treasury for both levels of Government. The idea of having one National Treasury to serve both levels of

Government creates a preference and inclination for the National Treasury to be only sensitive on matters that affect the National Government only.

Currently, the National Treasury does not act with alacrity on matters that affect county governments. People are suffering in the counties that they live in and where they expect to be served from. The surest way of killing devolution is to fund county activities in a manner that is not intermittent or regular. The National Treasury is currently funding the activities of the counties in a manner that is guess work.

Madam Deputy Speaker, as beautiful as the resolution we are about to pass is, will require an enforcement mechanism so that we do not pass such resolutions in vain. Together with my Committee of County Public Accounts and Investment Committee (CPAIC), I have had the privilege of looking at the audited accounts. There are three issues that never go away. The issues relate squarely to poor or late disbursement of funds. The first one is called budgetary performance. It does appear that the late disbursement of funds to these counties contribute to very poor budgetary performance. Counties are unable to absorb funds that are allocated for recurrent activities because the funds are not there.

Counties are unable to absorb and utilize funds that are allocated for development activities because the funds are never disbursed. When the financial year is closed on 30th June, you will find that the counties, in their books, still report that they have not received the funds and the Auditor-General records that there was poor absorption of funds. That is an issue that is squarely blamable on the National Treasury but the sufferers are the public who should be the recipient of services that have to be procured using the cash that is never disbursed. Senators keep lamenting about this issue but I think that we need to equip ourselves better to deal with this issue. If we do not deal with this issue, devolution will remain a mirage. Devolution will not give joy or cure a litany of issues and ailments that afflict citizens in our counties.

Madam Deputy Speaker, the second issue that is a common occurrence in the Auditor-General's report is the issue on stalled projects. You will find that every county, including my own, Migori County, claiming that projects that they started in any particular financial year at its closure are stalling to the extent of 90 per cent of those projects. The county governments attribute such stalling to late or poor disbursements of funds. They reckon that the contractors have to get out of site, sue them, activities have to come to a stop because funds have stalled. The projects that are initiated are the ones that the people in the counties expect to benefit from or utilize during the course of that financial year.

The issue of stalled projects is justifiably attributed to the late disbursement of funds. As we continue to allow the National Treasury to fail to disburse funds, we are going to stall as a nation, people and counties. If we all stall, it will have devastating and far reaching consequences that are better arrested as soon as possible. Sometimes, the National Government callously says that there are no funds to disburse. However, I do not think that is the situation. The penchant with which we borrow expensive loans from unknown sources and faceless organizations is worrying. I do not know which entities benefit from the borrowed monies and why they are borrowed in the first place. We continue to borrow but the actual activities which require prioritization when it comes to funding are never funded so we end up with stalled projects, poor budget performance as well as poor budget control.

When the final disbursement is released towards the end of the financial year or soon after the financial year has ended, it becomes problematic because at that particular time, it is not possible to enter into contracts. There may be only one week left in that financial year so it becomes impossible to enter into any contract., It also becomes so hard to determine how that money is spent. Budgetary performance and control is therefore a problem in the counties as a result of what I have stated.

Madam Deputy Speaker, the other item that is conspicuously visible in the report of the Auditor-General is the issue of pending bills. The bills spent and those who are responsible for paying them claim that they are pending because they did not have money because the money was not disbursed in time. The issue of pending bills is sticking out in counties like a sore thumb. The contractors in my county of Migori have been blacklisted by banks. The banks cannot lend them money to complete projects that they have been awarded to implement in the county because the banks have come by the knowledge that the counties will never disburse funds.

These projects in the counties also have other sub-contract related to casuals who perform them. A particular stalled project and a particular pending bill causes a lot of suffering and difficulty for everybody associated with that project. If you are a laborer, who is perhaps constructing the county headquarters in Migori County or the governor's or speaker's residence, you depend on the payment you receive daily to meet your daily obligations.

The county government is unable to give you that money. Unfortunately, you are unable to offset your obligations and you live a miserable life.

Madam Deputy Speaker, the issue of disbursement is an important one that should not be treated casually. It goes to the very heart of survival of devolution and the relevance of county governments.

How I wish that the current and future national governments would prioritize the proper establishment and support of devolved units in their manifestos when they are seeking votes.

Sen. Omanga: On a point of information, Madam Deputy Speaker.

Sen. (Dr.) Ochillo- Ayacko: I am just about to conclude, so allow me to decline the request for information because I am ---.

(Loud consultations)

The Deputy Speaker (Sen.(Prof.) Kamar): He has already responded that he does not want to be informed.

Sen.(Dr.) Ochillo- Ayacko: I want you to be given on opportunity to contribute on your own---

Sen. Omanga: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): You cannot change a point of information to a point of order. I hope you are not informing but are on a real point of order.

Sen. Omanga: Madam Deputy Speaker, is it in order for Sen. (Dr.) Ochillo- Ayacko, to insinuate that they are not in the current Government? They are in the current Government and have taken most of the committee chairs---

The Deputy Speaker (Sen. (Prof.) Kamar): That is not a point of order. Maybe it was information that he did not want.

Sen. Omanga: Yes, but he has noted.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Ochillo- Ayacko, please wind up.

Sen. (Dr.) Ochillo- Ayacko: Madam Deputy Speaker, just allow me to put the record straight. Government has three arms and everybody here is part of an arm of Government. We are not here as busybodies but distinguished Senators, flying the flag of Kenya. Sen. Wetangula may wish to clarify that. I do not serve in the Executive. Even those on the Majority side do not serve in the Executive.

We are all public officials serving the people of Kenya from this arm of Government.

Being a Member of the Senate Committee on Finance and Budget and being Senators, it is our responsibility to find a lasting solution to this. We are going to pass this Cash Disbursement Schedule as has been done in the past. It will be ignored as it has been in the past and that is unfortunate. Time has come for us to think of a way and mechanism that what we pass here does not happen in vain.

I beg to support.

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

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

Sen. Wetangula: Thank you, Madam Temporary Speaker. This is one of our core mandates as Senators to preside over allocation of revenue. In our wisdom as legislators, we have also gone beyond allocation of revenue and now superintending over the National Treasury's responsibility to disburse funds to the counties and the times at which such funds should be disbursed.

This Schedule carries the signature of the official signatory to the National Treasury of the Republic of Kenya, the CS for Finance, Hon. (Amb.) Yattani. I believe that his signature means something; will be honored to the letter and that these Schedules we have sent, will be respected and funds will be disbursed to counties on time.

Even as we constantly cry the misuse of funds, the theft of funds by governors and their cohorts, devolution remains the Kenya Constitution, 2010 gift to the people of Kenya. It is devolution that has changed many things in the counties.

Counties that were classified as Arid and Semi-arid(ASAL) and those who were sometimes closed districts such as where the Senator of Isiolo comes from and West Pokot, can now sit in their capitals and determine their agenda. With the little money they get, they can take control of their destiny. If well used, the money this Senate allocates to counties can do a lot.

Unfortunately, we have situations where most if not almost all counties are net exporters of capital to Nairobi. We fight to take money to Kakamega, Isiolo, Bomet and Bungoma. Those we have entrusted with the money steal it and bring it to buy prestigious properties in Nairobi.

Counties are not out there sustaining and improving the economy of Nairobi City County at the expense of the people who should benefit from devolution.

As my colleague from Migori has said, the National Treasury has not lived to its billing in terms of disbursement of funds. Sometimes we who sit in the Senate Committee on Finance and Budget are treated to a charade where governors say they have not received money while the National Treasury says it has disbursed all of it.

Now with this Cash Disbursement Schedule, our Committee chaired by my able colleague from Kirinyaga should have quarterly meetings with the CS to confirm that the disbursements have been done. The CS should and must be obligated to come before the Committee to table the disbursements he has released to the counties. Once this is done, we have to hold the institutions of governance in this country to account.

There is absolutely no reason for this House to fight. We remember the standoff we had on the Division of Revenue Formula. Twelve times the Formula came here and failed until we came together in a bi-partisan manner and agreed on a formula.

Unfortunately, this money that goes to the counties we have quite a cabal of governors who do not know the difference between public and private resources. The money goes to the counties and the governors think it is their private enterprise. Some are even resorting to spending public resources.

My distinguished young Senator from Kakamega Sen. Malalah saw this in Bungoma over the weekend. The governor spent public resources to hire hooligans and goons who attacked and injured some young people accompanying Sen. Malalah to the funeral of his Personal Assistant. It is a shame. There is nobody out there who has money to hire goons. They are using public resources which is an abuse.

As this is happening, institutions of governance are watching. The police are there watching helplessly. Maybe they are on the payroll of the same offending governors.

We want to see the Auditor-General auditing to find out on what vote in any county money does money come from to pay hooligans to terrorize people? Which vote has this kind of money?

Madam Temporary Speaker, all leaders in the country must be held to account. Public resources are just that. We warn these governors that there is no time limit on criminal responsibility. Even if they think that they are on the right side of the sitting Government and they get away today, they will be caught up with in future when they leave office.

Look at what is happening to President Zuma in South Africa. I am sure when he was in office, he never believed that such things would happen to him. However, because there is no time limit on criminal responsibility, you will be caught up with. You will be held to account for all the largesse that you have from the ill-gotten wealth.

The people of this country demand accountability in the use of public resources, which is not an option for anybody. Sen. (Dr.) Ochillo-Ayacko has told us that he is chairing County Public Accounts and Investments Committee (CPAIC), which has not been doing well. The gossips we hear out there from governors is that they come to CPAIC carrying briefcases. Therefore, we also compromise our responsibility as a House that must oversight the success of devolution.

Madam Temporary Speaker, I also urge my Chair, as we have discussed and agreed, that we fast-track the amendment to the Public Finance Management Act, so that county assemblies get their direct disbursement from the National Assembly, so that they are not held at ransom by offensive governors.

If county assemblies will discharge their responsibility as primary oversight institutions in the counties, you cannot expect them to do a good job if their salaries and allowances are determined by governors, who give them money as and when they feel that they should give them something. In fact, in many cases, they blackmail them before giving them the money. He who pays the piper calls the tune.

Madam Temporary Speaker, we must fast-track the amendment and bring it here, so that we free county assemblies from the clutches of greedy governors who think that they own the county and the assembly. It is not right.

We can borrow a leaf from our Parliament, which is not dependent on the Executive to run its budget. We have our own budget that is directly disbursed to the Parliamentary Service Commission (PSC). That is why Parliament summons any office of government to come to account.

This morning, in our Committee on National Security and Foreign Relations, we had invited the Inspector-General (IG) of Police. You were the one chairing and when he sent his personal assistant, you sent him away. I salute you for this. You told him that he is the personal assistant to the IG and so, constitutionally, he is not the IG. His level of accountability to the people of Kenya is personal and constitutional; it cannot be delegated. He has already been delegated with authority under the Constitution. The law says that a delegate cannot delegate; *delegatus non potest delegare*. A delegate must carry his or her responsibilities.

Madam Temporary Speaker, this disbursement is important. Just like what one of the Senators said, we have passed this before and put it in our records. It went to the National Treasury and it ignored it. I hope that they will not ignore it this time. The Constitution and the law must have teeth.

Whoever does not honour what the laws says, must be held personally accountable, so that these resources go to support our people in the villages who woke up in 2010 and queued, not to vote for any individual, but in the words of the Constitution, “we the people of Kenya, giving ourselves authority and power, we vote for this Constitution to determine our destiny going to the future.”

I urge that we pass this. My county is getting a whopping Kshs10.6 billion before we add on conditional grants, which will come through The County Government Grants Bill. Therefore, we will end up with about Kshs12.7 billion, which must be used for health, roads, to support farmers, women and youth.

Some counties have youth programmes only in books and nothing goes on. The only youth who are supported are those who are abused by those in authority; putting them in danger by hiring, giving them crude weapons and setting them to fight each other. It is a big shame.

So far, the Auditor-General is doing a good job from the reports that we see. She is climbing hills that people fear to climb. She is bringing reports that are pointing out massive loss of public resources and there ends her duty.

She is a servant of Parliament. Once she audits and releases her report, the Houses of Parliament must hold the Director of Public Prosecutions (DPP), Director of Criminal Investigations (DCI) and Ethics and Anti-Corruption Commission (EACC) accountable in terms of recovery of stolen resources, and punish the thieves.

Madam Temporary Speaker, we live in a country where people are respected not because of the content of their heads and character, but the weight of their pockets. This is not right.

When you tell people that so-and-so is not an accountable leader, they say he is a thief, but he is our thief. We must change this psyche. This is because a thief in Moyale, Bungoma or Mombasa is a thief. *Mwizi hana jina lingine*. A thief is an enemy of the people of Kenya and he or she must be dealt with as such. Anybody who dips his hand in the public till is an enemy of the people of Kenya.

As my distinguished young Senator from Kakamega said, a child from Garissa deserves what a child in Nairobi, Bomet or Machakos deserves. However, when leaders turn public resources to private resources and children are dying, while they are building palaces in Nairobi, it is a failure on our system and we must collectively carry the shame or shoulder the responsibility to correct our society.

Thank you, Madam Temporary Speaker.

Sen. Malalah: Thank you, Madam Temporary Speaker. I have been notified by my good Chairperson of the Committee on Finance and Budget that he is about to move The County Government Grants Bill and, therefore, I should limit my time. I will go by his request and only use five minutes.

For the record, I support this important business this afternoon.

This afternoon, it must go on record that as the Senator for Kakamega, I am passing the Disbursement Schedule that will ensure that in this Financial Year, Kakamega County will cumulatively get Kshs12.34 billion before grants.

Madam Temporary Speaker, you are alive to the fact that after we pass the County Governments Grants Bill, we shall come here to pass the grants that are supposed to go to our counties. Therefore, we are going to get more than Kshs12.43 billion for the Financial Year 2021/2022.

Theoretically, when you look at this document, if the monies are disbursed in a timely manner--- I have seen that every month we shall have monies disbursed to our respective counties. Theoretically, it makes sense, but practically, in the past, our counties have not been receiving their disbursements in good time. This calls for a better way to implement the Schedule that we are passing here today.

Madam Temporary Speaker, delayed disbursement to our respective counties affects so many things. In some counties, you will find that we have health workers who have not been paid since January. In Kakamega County, we have the *Kazi Mashinani* workers who have not earned a single cent since January this year, yet monies have been disbursed to the counties. This, therefore, calls for timely disbursements.

Secondly, late disbursement of monies to the counties affects service delivery. We have some services, say cleaning services, which require timely disbursement of monies to pay the companies that are undertaking that exercise. If we have delayed disbursement of monies to our counties, we shall affect service delivery at the county level.

We have issues of procurement of essential things like medication in our hospitals. You will find a situation where we have a clinic that is open, but has no medicine. All this has been occasioned by delayed disbursement of funds. It is important for this House to rise to the occasion and ensure that it performs its oversight role and pushes the National Treasury to disburse monies in the correct timing.

As Sen. Wetangula has suggested, we need to summon the Cabinet Secretary (CS) of the National Treasury to be accountable to this House and tell us how he disbursed monies quarterly. I think that we will leave this to the Chairperson of the Committee on Finance and Budget to ensure that we manage the process of disbursement of monies to the counties every quarter as we move on. This is so that we do not pass the Schedule and leave it to the National Treasury to implement it the way it is.

Madam Temporary Speaker, this has also affected county governments. We have county governments that have pending bills since 2013. We have suppliers and contractors who have strained financially. We have contractors who have even died out of stress. We have contractors who offered services to the county government. They have certificates that are pending to be paid. They have not been paid because of late disbursement of money.

It is important that as we pass this Schedule, we also remind our respective governors that once these monies are released to the county governments, let them prioritize dealing with pending bills. This is because they are accumulating bills, which is putting our counties in a very hard financial status. When they receive this money, let them also practice financial prudence.

Madam Temporary Speaker, we have county governments that do not prioritize their monies. If they receive these monies on a monthly basis, as a governor, one has no reason not to pay salaries or take up their monthly obligations. It is important that we remind the governors, who are going to take part in appropriating these funds, that they should prioritize the finances when they get to them.

This is the last financial year to the second term governors. We are coming to the end of their tenure and it is important that no governor should leave large pending bills to the coming dispensation. It is important that the Auditor-General and the National Treasury ensure that governors who were elected in 2013 leave their counties when they have paid their baggage.

Most of the governors are overcommitting the county government, so that when they leave, they leave the baggage to the incoming governors. We want to cushion the coming dispensation, so that we ensure that when some of us take up government in the next dispensation, we do not inherit baggage from these governors.

Therefore, we shall insist, as Senators, that all the pending contracts are done before the end of this Financial Year. I will ensure that the projects that Hon. Oparanya began in 2013, especially the flagship projects--- I am alive to the fact that governments do not exist in terms of political lifelines.

We must ensure that whatever was started by Hon. Oparanya must be completed before he gets out of office. He committed almost Kshs6 billion to do the Kakamega County General Teaching and Referral Hospital. As we speak, the contractor for Kakamega County General Teaching and Referral Hospital withdrew from the site since 21st January.

Up to now, nothing is going on in the construction of Kakamega County General Teaching and Referral Hospital. As the Senator of Kakamega, I will insist that Hon. Oparanya must commit these funds that we are passing here today, to ensure that we have a referral hospital in Kakamega before he leaves office.

I am also going to ensure that Phase Two of Bukhungu Stadium, to which he committed almost Kshs2.7 billion, starts. He must complete that project before the end of

his tenure. In 2015, Gov. Oparanya started Shamakhubu Level Four Hospital. Up to date, that project has stalled. As the Senator for Kakamega, I am going to ensure that Gov. Oparanya is accountable to the people of Shinyalu by completing the Shamakhubu Health Center.

Madam Temporary Speaker, Gov. Oparanya started a project called Shinyalu Tea Factory. Up to now, he has only erected a six door toilet there. You wonder: is a tea factory equivalent to a toilet? As the Senator of Kakamega, I am going to ensure that before Hon. Oparanya thinks of leaving his current office, he must ensure that the people of Shinyalu, Ikolomani, Khwisero, and all the tea farmers in Kakamega get the Shinyalu Tea Factory.

It is sad that the Malava milk processing plant has stalled in Kakamega. Nothing is going on, yet it was a flagship project that was initiated in his tenure. Since 2016, nothing has been done about the Malava milk processing plant. As the Senator of Kakamega, I warn and tell Gov. Oparanya that we are releasing Kshs12.34 billion here today. He must complete those projects.

This is not his personal, family or pocket money. These are the resources of the people of Kakamega. Therefore, as I pass this Schedule today, I tell him that it will not be business as usual. We are going to ensure that he finishes all his flagship projects.

He promised the people of Kakamega a maize processing plant. He is remaining with ten months to the end of his tenure. The people of Lugari have no maize processing plant. It is important that we remind him that we have a scorecard for him. He has been in office since, 2013 and it is my responsibility as the Senator for Kakamega to ensure that he finishes these projects for the benefit of our people.

Madam Temporary Speaker, I want to implore upon the Treasury to ensure that timely disbursement of money is done to the county governments, so that we do not have people hiding behind this late disbursement issue.

Again, when you look at it critically, the Treasury has tried because right now we do not have any monies pending to the counties in the last financial year. It means that the Treasury has already disbursed monies for the Financial Year 2020/2021. Therefore, there is no reason for any governor in this Republic of Kenya to try and say that they have pending bills, yet the Treasury has already disbursed full amounts since devolution started.

Therefore, governors are the ones to blame. It is our responsibility as Senators to ensure that we man these governors, especially during the remaining 10 months to the elections.

Lastly, this is an electioneering year. We want to ask those governors who have aspirations to either vie as second term governors and/or as presidential candidates; to tell them that we are going to microscopically oversight their funds. They are not going to use these funds to do campaigns. We have seen governors using public funds to do campaigns. We have seen government vehicles in convoys, propagating or championing a certain aspiration in the county government.

We are going to ensure that no Government machinery or county government asset is being used in campaigns. I will be at the forefront to tell all prosecutorial organs to be vigilant about governors, who are going to use county government machinery to campaign.

If you want to campaign - and this is also a warning to mine because I speak for Kakamega, and we only have one governor in Kakamega called Hon. Oparanya: This is a warning. If we go to the county over the weekend and see you using county government machinery to campaign, we shall tell the police to arrest you. If the police fail to arrest you, we shall use other means to ensure that you do not use county government machinery to campaign.

Thank you, and may God bless the people of Kakamega.

The Temporary Speaker (Sen. Pareno): I hope that is not a threat.

Sen. Malalah: No, it is not a threat.

The Temporary Speaker (Sen. Pareno): You should employ other peaceful or legal means.

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

Sen. Malalah: Yes, I am willing to be informed.

The Temporary Speaker (Sen. Pareno): Yes, Sen. Wetangula. You had better inform him about the implications of his statements.

Sen. Wetangula: Madam Temporary Speaker, I want to inform my distinguished colleague from Kakamega that, actually, under the Constitution and the law, there is what we call the power of citizens to arrest. In cases where the law enforcement officers fail, omit or ignore, citizens can exercise that power in the law to arrest an offender and hand him over to agencies for prosecution.

Sen. Malalah: Thank you, my senior, Sen. Wetangula. I will faithfully follow your instructions. We shall give a chance to the police officers to arrest the governors who will be misusing our resources, failure to which I will apply your second advice of using the citizens to arrest and take them to the police.

Thank you, Madam Temporary Speaker.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me an opportunity to add my voice to this Motion.

I support this Motion on disbursement of funds to county governments. When we look at the constitutional mandate of county governments, they are very specific. In the Second Schedule, Part II, there are 14 specific functions of county governments.

These functions cannot be implemented without funds. When it comes to funds, there are no two options; funds have to be disbursed as fast as yesterday. We must all remember that the Senate is about county governments and ensuring that services reach the common man. This cannot happen if money is not there.

It is clear so that the Kenya Government was part of the State parties that signed the Abuja Declaration and the Maputo Declaration. These two declarations are very important in ensuring that farmers are able to do their work and be boosted in their activities. When money is sent to counties, it is the onus of the county governments to ensure that they are doing something to motivate farmers. It is also the onus of county governments to ensure that health centres are up to date.

I want to insist that when it comes to health, we have no two options because our health is important. I want to give an instance of what I have seen in the county government. In my county walks in my constituency, when I visited Lumakanda Hospital, which is a Level III hospital--- It is unfortunate that when you go to Lumakanda Hospital, there are no drugs and the maternity wing is not equipped. Sometimes patients share beds and this should not happen in a country that is a signatory to the two

declarations. County governments have a mandate to ensure that they are fulfilling the constitutional requirements.

Another mandate that I have seen county governments not fulfilling, and I have seen this in Kakamega--- In Kakamega, I have visited different wards. I have been to Lumakanda, Mautuma and Lugari wards and seen that there are still schools that are made of mud. You find that the walls are erected from mud and the floor is carpeted with cow dung. This should not happen in a situation where money is being taken to county governments.

It is important that money is taken to county governments, but there is need to oversight and ensure that county governments are carrying out their mandate.

As a resident and leader in Lugari, I am not happy about the situation as I see it in Lugari, where there are some schools made of mud. It is my desire that all schools in Lugari should be made of stone; permanent structures. If they are not permanent structures, it will have an impact on the learners. In some schools where the structures are not made of concrete stone, you will find that children have jiggers. We must avoid such an eventuality.

It is a pity that when I walk to Lumakanda Hospital, I see mothers going through a harrowing moments when it comes to delivery services. This is something that must be corrected, and I want to see it corrected in Lugari.

County governments know very well that they have a duty to encourage farmers, especially in a place like Lugari that produces maize. There is need for county governments to ensure that they are motivating farmers in all parts of the country, so that they are encouraged to farm. Some farmers are even abdicating their roles of farming simply because sometimes they plant their maize, but do not have a place to take it. The county government should ensure that farmers have an exit plan for their maize, just to encourage them.

As I was walking through Mautuma, I saw that there were some roads that were impassable. This has an effect on transportation. I saw the problems that *boda boda* riders in Lugari are facing. It should not happen. County governments should ensure that all roads are accessible, so that if someone wants to move from one section of the constituency to another, they will be able to do that with ease. I have seen people stranded with their crops. The roads are impassable and after harvesting, they do not know what to do. This is common especially during the rainy season. Many roads in Chekalini are impassable because they have not been murramed.

There is need for county governments to ensure that all rural roads are accessible, to enable people do business with ease. Leaders need to insist that county governments should do this. In as much as we say money should be disbursed to counties, we need to audit and confirm that the money disbursed is prudently used. This money belongs to *wananchi* and they must get the services.

Madam Temporary Speaker, I support this Motion. I believe that when money goes to counties, the impassable earth roads in Lugari will be murramed, so that *wananchi* can get the services they need. Just a point to note that there is a lot of rural-urban migration. This is because most rural areas remain very unattractive since county governments have not developed attractive sceneries. It is a constitutional requirement because it is one of the 14 functions of county governments. They also have to ensure

they come up with attractive incentives to encourage the youth to remain there and still be productive.

I have seen idle *boda boda* riders because they do not have any support. Kakamega County Government should ensure that they support those *boda boda* riders in Lumakanda, Mautuma, Chekalini, Luandeti and all the other places. You cannot allow youths to be idle. We must make sure we utilize their energy and minds. We must create employment for our youth because we have to leave the baton to the right people. If we do not utilize them in the right way, we will end up leaving the baton to people who are not ripe for the jobs.

I support this Motion.

The Temporary Speaker (Sen. Pareno): I see no further interest in this. I, therefore, call upon the Mover to respond.

Sen. Kibiru, proceed.

Sen. Kibiru: Thank you, Madam Temporary Speaker. As I respond, my Committee extends its appreciation to the distinguished Senators who have contributed to this debate. In the interest of time, I will summarise what they have highlighted because, shortly, we will be discussing the Grants Bill. I request the Senators who are around that, shortly, we shall be discussing an equally important Bill: The County Governments Grants Bill.

Many Senators have emphasized the need for the National Treasury to wake up and do the work, instead of talking. As a Committee, we have been requested to call the National Treasury every quarter to come and report on the disbursement.

As I mentioned in my report, we have given the National Treasury seven days from the day we approve the schedules to ensure that monies for the last two months, which is adding up to about Kshs62 billion, is disbursed to counties.

The distinguished Senators have emphasized the need for counties to ensure that once they get the funds, the funds are optimally utilised. We need value for money. I am happy that my County of Kirinyaga is getting close to Kshs1 billion before the grants. I would request that money is put into good use, especially into the services that the people there are complaining about.

Sen. Wetangula mentioned the issues we have brought up in the amendments of The Public Finance Management (PFM) Act. We have been working on the amendments and, soon, we shall table the Amendment Bill, where we have ensured County Assemblies become Independent and are able to utilize their funds.

Besides that, Madam Temporary Speaker, we shall also be recommending a single treasury account, where all Government monies will go. The interest here is that the National Treasury should never delay disbursement to counties just because there are no funds. We recommend that the National Treasury should be able to get an overdraft from the Central Bank of Kenya (CBK). After all, it is where all the money should be going.

Without much ado, I beg to reply and request that, pursuant to Standing Order No. 61(3), you defer putting of the question to another day.

The Temporary Speaker (Sen. Pareno): Hon. Senators, this being a matter that touches the very core of counties and calls for a vote by delegations, I, therefore, defer this matter to the next Order Paper.

(Putting of the Question on the Motion deferred)

BILLS

Second Reading

THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021)

Sen. Kibiru: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No.141 (1), I beg to move that The County Governments Grants Bill (Senate Bills No.35 of 2021) be now read the Second Time.

As I mentioned yesterday, as I was going through the Cash Disbursement Schedule Motion, for the first time, we have a schedule that does not include conditional grants. This is as a result of a ruling that was made by our courts. Out of that, the Committee called a number of stakeholders, and we have been debating on the best way forward as per that ruling.

As the Committee spoke to the National Treasury and the Judiciary, we realised that we were mark-timing. As an initiative by the Committee, we decided to come up with this Bill, which has followed all the procedures.

The County Governments Grants Bill (Senate Bills No.35 of 2021) primarily seeks to provide for the allocation and transfer of conditional allocations from the National Government's share of revenue and development partners of county governments, pursuant to Article 202(2) of the Constitution for the Financial Year 2021/2022. It provided for the framework for the management, control and accounting for both conditional and non-conditional grants.

Madam Temporary Speaker, Article 202(2) of the Constitution provides that:

“County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.”

Therefore, this Bill seeks to provide a framework for the transfer of additional allocation under Article 202(2) of the Constitution from the Consolidated Fund to the respective County Revenue Fund (CRF) account.

Further, the Bill intends to comply with the High Court's ruling on Petition No.252 of 2016. In this matter, the Court held that Article 202 of the Constitution, as read together with Article 218 (1) (a), do permit conditional or unconditional grants to be provided for in the annual Division of Revenue Act (DORA). The court held that such conditional or unconditional grants can be used at the county government level under Article 190 of the Constitution or through an agreement between the two levels of Government.

The agreement should respect the institutional and functional integrity of both levels of Government, but not in the annual Division of Revenue Act (DORA).

Madam Temporary Speaker, that is where we got the departure where we could not combine the sharable revenue and the grants. The ruling that was made by the courts had a great impact in the manner in which conditional grants are managed in the country.

Initially, they were included in the Division of Revenue Bill and consequently, the allocation done through the County Allocation of Revenue Act or (CARA). However, with the High Court ruling, this cannot be contained in the DORA and CARA. That is a departure from the tradition and in line with the direction given in the ruling. The development prompted the Committee to sponsor this Bill.

The Bill is intended to transfer the additional allocation to county governments from:-

- (1) The National Government's share of revenue to the counties.
- (2) Proceeds of loans and grants from development partners which will ensure that additional funds are available to certain vital development functions such as health, agriculture and housing.

The Bill provides that an agreement shall be entered into by the National Treasury with the respective county government, setting out all conditions attached to an allocation made under this Act. Any intergovernmental allocation under this law is required to be approved by the respective county assembly.

Madam Temporary Speaker, the Bill states that public participation is a requirement for any intergovernmental agreements on conditional grants, which county governments may enter into. Thus, the county government must involve the respective residents before entering any agreement. It is well spelt that the county governments cannot just wake up and get into an agreement. They must carry out public participation.

Further, the National Treasury shall submit to the Senate all the agreement together with any other documents relating to it entered into with the county government. This shall be done within seven days of entering into an agreement. We are very clear that we need to give timelines because, like we have seen before, institutions including the National Treasury have no respect for time or urgency in disbursing monies to the counties. According to this Bill, they will be required within seven days to submit the same to the Senate.

The Cabinet Secretary shall publish a monthly report on actual transfers of all conditional allocations to county governments. Here, we are talking about monthly reports, which will be required by law to publish. Further, the respective county governments books of accounts should reflect all transfers on conditional allocations by the national Government. This is an obligation to the county governments.

Madam Deputy Speaker, reporting by the county treasury on these conditional allocations as part of its consolidated quarterly and annual reports as required under the Public Finance Management Act. Previously, the counties could get away with it, but we are now putting it in law that it is mandatory for the county treasury to give the required reports as per the Public Finance Management (PFM) Act, 2012.

The Bill provides for all the agreed upon conditional allocations/ grants earmarked for disbursement to various county governments for the Financial Year 2021/2022. The Conditional allocations from national governments share of revenue of Kshs7.537 billion include: -

- (i) Leasing of medical equipment of Kshs7.205 billion; popularly known as MES;
- (ii) Supplement for construction of county headquarters for five counties at Kshs332.00 Million;
- (iii) The conditional allocations from proceeds of loans and grants of Kshs32,343,890,512 from development partners including-

- (a) a grant from the World Bank to finance Transforming Healthcare Systems for Universal Care Project (THSUCP) of Kshs2.235 billion;
- (b) a World Bank credit to finance Agricultural and Rural Inclusive Growth Project (NARIGP) of Kshs6.395 billion;
- (c) a World Bank loan to finance the Kenya Climate Smart Agriculture Project (KCSAP) of Kshs7.838 billion;
- (d) a EU grant to finance Instruments for Devolution Advice and Support (IDEAS) program of Kshs230.730 million;
- (e) a World Bank credit to finance Water and Sanitation Development Project (WSDP) of Kshs5 billion;
- (f) a grant by DANIDA to finance Universal Healthcare in Devolved System Program of Kshs701 million;
- (g) a grant from the World Bank for Kenya Devolution Support Programme (KDSP) – level 2 known as KDSP Capacity Building (“level 2”) Grant of Kshs4.6 billion;
- (h) a loan from Government of Sweden to finance Agriculture Sector Development Support Programme II (ASDSP II) of Kshs1.3 billion;
- (i) both loan and grant from the German Development Bank (KfW) to finance Drought Resilience Programme in Northern Kenya (DRPNK) of Kshs370 million;
- (j) a credit from World Bank to finance Emergency Locust Response Project (ELRP) of Kshs800 million;
- (k) a loan from the World Bank to finance Kenya Informal Settlement Improvement Project (KISIP II) of Kshs2.8 billion; and,
- (l) a grant from the United Nations Fund for Population Activities (UNFPA) to finance the 9th Country Programme Implementation of Kshs73.866 million.

Madam Temporary Speaker, you will realize that most of the funds listed are going to the services in the counties, especially in the health sector. It is important that we pass this Bill, so that the counties can get the money especially when they are dealing with the COVID-19 pandemic as well as give our people services.

As many Senators have stated, the county governments must be responsible with the funds that we are allocating to them. Since it is intended that this Bill will be an annual Bill, it is proposed that the Public Finance Management Act (PFMA), 2012 be amended to necessitate simultaneous submission and consideration of The Division of Revenue Bill, The County Allocation of Revenue Bill and The County Governments Grants Bill.

During the public participation, some stakeholders raised a few issues on the Bill. These issues have since been considered and the Committee will be presenting a few amendments to the Bill. The Committee recommends that the Bill be considered and approved expeditiously to allow county governments access additional (conditional) allocations required to be utilized within the current financial year.

Madam Temporary Speaker, as I stated before, this is a straightforward Bill. I request the Senators to participate, so that we can pass it together with the cash disbursement schedules. This will ensure that we take money to the counties.

I beg to move and request my distinguished Vice-Chairperson to second the Bill.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I am told that democracy in its modern sense arose out of issues of funds. Somewhere when the *Magna Carta* was being written and philosophized about, it was about “no taxation without representation.” The people who were paying taxes to the feudal system at that time were very offended by the fact that they were doing it without having representatives to list their priorities and oversee how their taxes would be used.

This Bill is giving both the national and county governments an obligation to be scrutinized. Grants, conditional or otherwise, provide avenues for the national Government to keep certain funds and dump them in counties purporting to assist them without an accountability or oversight framework.

Without this Bill, the national Government, in the name of supporting counties, will purport to build a bridge or do waterworks without the agreement of the counties, while spending taxpayers’ money. That money will be given out to a specific county as a contract or grant, a contractor will be sourced and then whatever ostensible reason for that grant will emerge through a contractor being identified to do whatever it is.

Public participation is what is missing out of it. The public on whose ostensible behalf a public project project is being undertaken, were not aware in their budget process as county executive and residents that such a thing would be prioritized in their county.

The national Government through those who oversight them such as the National Assembly will not have held public participation to know that the “grant” would be having a footing in that county. We end up with a situation where public resources are expended from the Ministries of Agriculture, Water, Lands or ICT for a project in Homa Bay County or Migori, where residents of those counties were not aware. They were not consulted and it was not in their plans. They may not know its importance or use of it.

For example, in Kakrao Ward in Migori County, there is a monstrous polytechnic that was constructed by the national Government, but has no students. This is because there was no public participation involving members of the public from that ward, Suna East Constituency or from Migori County. It has no teaching staff. Persons purporting to be tutors there are expected to come from counties that were not involved at its inception. Members of the public were not involved in prioritizing it. That big project is lying there and yet public funds were expended on it. In our books, both the national Government and county government, it was purported to be beneficial to the people of Migori.

Coming to Awendo where I was born, there is a grant that has been given to the people of Awendo that is supposed to be for urban projects. When one is at Awendo, there is a field where some projects that look like a park, mini stadium or some public thing, are going on. When one asks the people of Awendo when they agreed to that thing and what they intend to do with it and the benefit it will be to them, they do not know.

I am suspicious and doubtful that they will utilize it well. However, that project in our national books is purportedly for the people of Awendo and for their benefit. There is no framework to oversight the project, how the contractor was identified and how much the contract is.

The National Assembly will hold the national Government to account for funds that are directly used by the national Government. The county public funds will be oversighted by the Senate, pursuant to Article 96 of the Constitution.

This grant is neither a national Government project because it is domiciled in counties nor a county project because it did not pass through the county planning and budget. Who oversees it? It is very dangerous to spend public money without a proper framework for oversight.

We know that the counties need partnership and help from the national Government. That is important because we want more money for counties. However, when I began my presentation, I said that from the outset of democracy, it was about “no taxation without representation”. Taxes can never be spent or public project initiated without the participation of the people and involvement of their elected leaders. That is what this Bill intends to cure.

The mischief that is resident here is perhaps the one that encourages the national Government to keep a lot of money and dole them out as grants. If the national Government was not responsible for projects in counties, it would not keep such monies. We even hear them trying to procure fertilizers and fingerlings for counties. How do they know about fish in Lake Victoria, the need for fertilizer in Kegonga in Kuria East Constituency, or the need for fertilizer and tobacco growing in Komosoko Nyamosese Ward in Kuria West? The county government is best suited to know, yet it will be told to go and collect its fertilizer lying in some store in Nairobi.

The appropriate use of this money would be if there was a framework both for accountability and who is responsible for procurement.

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

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

I congratulate our Chairperson, Members of my Committee, staff and stakeholders who helped us visualize the need for this Bill. It is important for accountability and devolution. It is the way to go.

If we all do our part in small but important bits, at the end of our tenure here, we will have done something others will have an opportunity to build from. This piece of legislation will encourage dialogue and constructive engagement between the national Government and county governments. We cannot just walk into the backyard of a county government, take over his activities and put money without involving it. County governments will also not walk into the national Government domain and purport to do certain things that should be the exclusive responsibility of the national Government. This will end or reduce such confusion. It will also end and reduce duplicity, double planning, and wastage of public resources.

It will allow the stronger arm to know what the weaker arm is doing and needs. Without this kind of synergy, we will have projects that suffer from under-usage because of poor planning.

I want to conclude my contribution by allowing other potential contributors time to do so.

Madam Temporary Speaker, I beg to second by saying that this is a transformative proposal. Those who believe in transformation of our work environment and responsibilities---

Sorry, Mr. Temporary Speaker, Sir, I do not see well from where I am. I am apologetic. I am not left-handed as they say in the west. Those who mistake men for women and *vice versa* are left-handed. I am right handed euphemistically.

Mr. Temporary Speaker, Sir, this is a transformative proposal. I hope it will receive the unanimous support of this Chamber and that of both the national and county governments and the National Assembly.

(Question proposed)

Sen. Kavindu Muthama: Thank you, Mr. Temporary Speaker, Sir. Before I go to the County Government Grants Bill, I want to contribute to the Disbursement Schedule. We were told to wait until he reads this so that we can contribute for both of them.

I will start with the Disbursement Schedule and then go to the County Government Grants Bill.

The Disbursement Schedule is a crucial and critical role for the Senate.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order Senator. We are informed that the Disbursement Schedule has already been discussed and dispensed with. We are only waiting for voting. So, restrict your contributions to Order No. 10, the County Government Grants Bill (Senate Bills No.35 of 2021).

Sen. Kavindu Muthama: Mr. Temporary Speaker, Sir, I will go ahead and contribute to that.

Senators are not aware when conditional grants are sent to the counties. There is also no public participation. Therefore, the public and the Senate rarely knows how the money is used.

Mr. Temporary Speaker, Sir, protect me because they are disrupting me. The counties should involve public participation in the conditional grants to the counties and the transfers. They should also do exactly what they are meant to do with that money.

I know that recently, a grant of Kshs217 million was released to the Level Five Hospital in Machakos County. As we speak, there is no medication in that Level Five Hospital. Patients of the Coronavirus Disease (COVID-19) are dying like chicken. Therefore, a private body should oversight this money.

Mr. Temporary Speaker, Sir, there are so many contractors and suppliers in Machakos County who have not been paid. There are also stalled projects. I ask the Governor of Machakos to pay all the suppliers and contractors before he exists office.

This goes for all contractors and suppliers. Even the Community Health Volunteers (CHVs) call my office every now and then demanding for their pay. Doctors have not been paid. Even the little money to pay cleaners has not been availed. I ask for the disbursement of the monies in good time so that they can be utilized.

With these grants, we should see the strengthening of public finance management. Civic education should be carried out so that people know what they are supposed to do.

I support. Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Kwamboka.

Sen. Kwamboka: Thank you, Mr. Temporary Speaker, Sir. I thank the Chair of the Committee on Finance and Budget for coming up with the County Governments Grant Bill (2021). This is a straightforward Bill. It touches on accountability and the

framework. Counties normally receive grants but misuse them. It is high time that the Chair of the Committee on Finance and Budget came up with this framework to see how these grants can reach counties. The people should be aware how much the grant is, and there must be participation with the county assemblies, so that the public knows how the funds that are coming to their county are supposed to be used.

When this money goes to the counties, majority of the governors take this money as if it is their money and they can spend it the way they like, not knowing that they are accountable to the citizens of this Republic.

So, come to the agreement between the National Treasury and the counties, it is good that that agreement should pass through this House so that the leaders from the 47 counties can participate and know exactly what is going on in their counties.

Mr. Temporary Speaker, Sir, when we talk about the cash disbursements, it is so sad that the National Treasury takes a long period of time to disburse money to the counties. In particular, during this difficult time of the COVID-19 pandemic, it is so sad that the counties have not received their money.

It is high time that the Chairperson of the Committee on Finance and Budget summoned the CS, Finance to appear before this House. We want to know what is causing the delay. Who is sabotaging this Jubilee Government? There is sabotage somewhere because if the money is there, why has it not reached the counties? People are dying, people are having problems, the contractors have not been paid and we see that there is no service delivery in the counties. Hospitals do not have drugs due to the delay of the funds from the national Treasury to the counties.

I support this Bill and I thank the Chairperson of the Committee on Finance and Budget.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, there being no other request to contribute to the order, I call upon the Mover to reply.

Sen. Kibiru: Thank you, Mr. Temporary Speaker, Sir. Once, again, I thank the distinguished Senators for their contributions. Like many have said, this is a straightforward Bill but it sets out the structure of disbursement of the conditional and non-conditional grants to the counties.

Senators have emphasized that the funds which are sent to the counties is not private money. It is money that should be utilized as per the requirements and in order to serve wananchi.

One of the queries that the auditors normally raise in their reports is absorption of funds that are disbursed to the counties.

It is high time that the county governments utilized the money expeditiously so that we can make use of the funds to offer various services that are supposed to be extended to our citizens.

Somebody mentioned about issues of checks and balances in the governance issue. The Committee has an inquiry into the efficacy of IFMIS. If we can utilize technology appropriately, we can enhance on its use on governance and more so put in place structures for checks and balances.

Governance issues have been raised and we want to see what IFMIS can be able to do for us so that we become proactive. As they say in the health profession, prevention is better than cure.

Let us not always - like Sen. (Dr.) Ochillo Ayacko's team has continued to do - be morticians.

We should be proactive in taking care of the funds that are taken to counties. I also thank the Secretariat for the good work they have been doing. I hope we will continue and bring the amendments that have been alluded to.

Mr. Temporary Speaker, Sir, pursuant to Standing Order No.61(3), I request that you defer putting of the question to another day.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I defer putting of the question to tomorrow afternoon.

(Putting of the question on the Bill deferred)

Next Order.

Second Reading

THE PUBLIC PRIVATE PARTNERSHIPS BILL
(NATIONAL ASSEMBLY BILLS NO.6 OF 2021)

The Temporary Speaker (Sen. (Dr.) Lelegwe): The Mover is absent. Therefore, the Order is deferred.

(Bill deferred)

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO.9 OF 2021)

The Temporary Speaker (Sen. (Dr.) Lelegwe): The Mover is absent. Therefore, the Order is deferred.

(Bill deferred)

Second Reading

THE DISASTER RISK MANAGEMENT BILL
(SENATE BILLS NO.14 OF 2021)

The Temporary Speaker (Sen. (Dr.) Lelegwe): The Mover is also not present. Therefore, the Order is deferred.

(Bill deferred)

*Second Reading*THE KENYAN SIGN LANGUAGE BILL
(SENATE BILLS NO.5 OF 2021)

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I beg to move the Kenyan Sign Language Bill that is here for the Second Reading.

Madam Temporary Speaker, I will be very brief. This Bill is among those that had gone through the first---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Senator! You need to move the Bill in a proper manner.

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, I beg to move that The Kenyan Sign Language Bill (Senate Bills No.5 of 2021) be now read a Second Time.

I will be very brief because this is one of the Bills that went through the First Reading and Second Reading and was brought back for concurrence. The Bill has actually gone through public participation as well. The public that came to add their voices to this Bill included scholars. I remember Prof. Ndurumo, who came and gave a strong voice. The deaf, who are PWDs, also came to add their voice.

In a nutshell, this Bill seeks to effect Article 7 (3) (b) of the Constitution on promoting Kenyan Sign Language. It also seeks to promote Article 54 (1) (b) that speaks on issues of the Kenya Sign Language.

Mr. Temporary Speaker, Sir, we should ensure that the deaf are included in the mainstream. In promoting the Kenyan Sign Language, it means that the deaf will be given a hearing even in the corridors of justice. Many at time, when the deaf have a case in court, their thoughts are sometimes misinterpreted. The information they receive may also not be precise. However, this Bill will address such issues so that they receive justice along the corridors of justice as well as receive a fair hearing.

This Bill also seeks to ensure that there is sign language interpretation in all Government agencies and departments. The obligation of the national Government and county governments will be to ensure that when there are any state or county events, sign language interpreters are there so that the deaf are also able to access the services that everybody else is getting.

Mr. Temporary Speaker, Sir, the Bill not only talks about social integration but academics as well. The deaf have not been able to get the mainstream language; the language of the wider society so they end up being disadvantaged. This Bill seeks to speak on the issue so that the deaf are also included in academia. There is provision that sign language should also be taught to persons with the ability to hear so that integration and communication will be easy for them. The Bill also encourages that the deaf should be taught English as well as Kiswahili because those are the mainstream languages.

Persons who are deaf do not live in a cocoon. They live in a society with everybody else. When such persons leave school, it is in order that they be integrated properly to the society so that they are able to get services as well. Apart from the education support in schools, it also speaks on issues of Technical and Vocational Education and Training (TVET), colleges as well as primary schools where the Kenyan sign language should be taught as a discipline so as to ensure that everybody is able to understand the basics of sign language which has worked in Australia where sign

language is taught to the mainstream people so that they are able to communicate well with the deaf.

It is my hope that Senators will support his Bill. I am aware that many Members of this House supported this Bill strongly when it was first read. I am therefore hopeful that fellow Senators are going to support this Bill because they have always supported issues of disability. I hope that when this Bill goes to the National Assembly, our sisters and brothers there will fast-track this Bill so that it does not drag for it to see the light as the end of the tunnel.

When Sen. (Prof.) Kamar, who is my co-sponsor, and I worked on this Bill, we did this from an informed perspective. Having taught in a school for the deaf and having specialized on special education at the undergraduate, post-graduate and at doctorate level, we are well informed on what is happening on the ground. We know that the deaf in this country are going to benefit so that they eventually join the world of professionals just like anybody else so that their work is not just to sell sweets along the corridors or polishing shoes. The deserving deaf should get good jobs like anybody else.

Mr. Temporary Speaker, Sir, I call upon Sen. Kwamboka to second this Bill.

Sen. Kwamboka: Thank you, Mr. Temporary Speaker, Sir. I rise to second this Bill. I congratulate Sen. (Dr.) Musuruve for representing PWDs very ably in this House and the country.

This is a good Bill that promotes the Kenyan sign language. It is high time that deaf people were recognized in this country and given a chance like any other citizen. It is good they be recognized more so in all the places such as the Judiciary, churches, schools and even here in Parliament. We never know who will be nominated next time in both Houses.

The deaf pass through a lot. If you visit some schools and see what they are going through, they need to be recognized. It is high time the registrar of this sector makes sure they are registered and given certificates of registration so that they can be known and given a chance to perform their duties anywhere. They should be given opportunities to work with other people in companies and anywhere.

This Bill will give this country a good platform so that we can have many other countries coming to benchmark.

For the deaf, I urge this Senate to consider this Bill and help the deaf citizens of this country. Once it goes to the National Assembly, they should make sure they pass it for the sake of the deaf who are citizens just as we.

I beg to second.

(Question proposed)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo- Ayacko: Thank you, Mr. Temporary Speaker, Sir, for granting me an opportunity to be part of this love for humanity.

Our disabled citizens are people just like us. In fact, God Almighty confers upon us the duty to care for those who are disabled, lowly, the poor and those in difficulties. While one traverses this earth and have opportunity to serve, it is their duty to serve those who need it most.

I am happy to be associated with the excellent work of the distinguished colleague, Sen. (Dr.) Musuruve). She is a person who has never wasted a moment but to emphasize the need and desires of PWDs. Her presence in Parliament has been of invaluable contribution to the position Parliament has held for a long time.

Mr. Temporary Speaker, Sir, disability is something that people do not desire. It is something that nature imposes on us. It does not matter the nature of that disability because it does not take away our humanity and entitlements as people.

Mr. Temporary Speaker, Sir, the State being the personification of our collective humanity has a duty that found its way conspicuously in our Constitution. The Constitution at Article 7 (3) (d) is loud and emphatic to the extent that it imposes a duty upon the State to do what it must and ensure that sign language together with other languages that can only assist the disabled is entrenched in our system.

Mr. Temporary Speaker, Sir, what we are doing today and what has been initiated by Sen. (Dr.) Musuruve is a duty imposed on this State. The State need not be reminded. Here we are reminding the State that we are no State if we cannot take care of our most neglected, extremely poor. Who will take care of them if we do not?

His Excellency God has many ways of doing things. We are told that he does not live on earth, but we are told to be like Him in order to join Him in heaven when our tenure on earth ends. Since He is the provider and carer for the less fortunate, it is our duty also as individuals to be the service providers, assistance, helpers, protectors and defenders of the less fortunate.

Mr. Temporary Speaker, Sir, I am happy that through this humble platform called membership of the Senate, we are performing that function. That function must be supported by Government if it needs God's blessing. If COVID-19 is to go away, if our economy is to recover, and if the divisions are tearing our nation apart are to be cured and prosperity is to reside among us, we must use every opportunity and ounce of energy given to us by God to take care of our needy neighbours.

Loving thy neighbour as you do to yourself is the decree that His Excellency Jesus left us with and we must do it. If you do not do it when you are some place - I hear it is called purgatory - I do not know what you will say in penitence. I do not know what you will say in remorse and expiations for your sins. This is because all I have sinned and fallen short of God's glory.

Mr. Temporary Speaker, Sir, if you are mitigating your tenure on earth in order to join God in heaven, what will you say? What did you do with the opportunities and privileges given to you by God to be alive, in Senate and be able to have knowledge of the needs of others? I believe this will be supported unanimously because it affects everybody and all of us and it is our duty.

If you look at Article 54 of the Constitution, it is equally clear that we must promote sign language because it is the right of people living with disability to have the development of that language.

Mr. Temporary Speaker, Sir, I wonder how a human being would fully participate in the activities of society if that society is not speaking a language you understand and if you do not speak or understand the language spoken by that society. How without promoting this? How without ensuring that people who may not otherwise interact with us or understand us would participate meaningfully, productively and effectively in the lives of our society. That is if we do not promote this.

We have many of them. The previous census was not specific on how many we have. We do not know how many more will join us and how many more will join in the future. So, to prepare the present and the future for people living with disability of this kind, it is our duty to build sign language as an important foundation for development or holistic development of society.

Mr. Temporary Speaker, Sir, I believe that the promoters of this Bill intended that it be developed in school and promoted in universities and education curriculum and the legal system. However, on my part, I would not have loved this list to be exhaustive. It must be developed everywhere. I do not think that people living with disability of this kind must only understand what is taught in schools. There are other places which are not schools or school is not defined that they have to go to.

I do not think that people living with disability may just need to understand *stricto sensu* legal proceedings. There are many more proceedings that must be understood. Some of them are not *stricto sensu* legal in nature, but as a human being you must participate in them. My take is that the measure of our development is how we are able to give people living with disability an opportunity to participate in all aspects of life, particularly those who are not able to speak or understand our language.

Mr. Temporary Speaker, Sir, this category of people may want to be sports stars, football icons, movie icons, and dancing idols. They may want to be all these. Why must we limit them? What is it that we do not want them to achieve? How do we know that the achievement of this may not contribute to the meteoric rise and stardom of this nation?

I believe Sen. (Dr.) Musuruve and her co-promoter who is the Deputy Speaker and Member and distinguished Senator of Uasin Gishu County. I want to congratulate them on their insight and thoughtfulness and their love for their neighbours. If they do not commit any other sin, I believe this will earn them a ticket straight to heaven for those of us who believe that there is heaven.

Mr. Temporary Speaker, Sir, even people who want to leave epitaph or footprint on earth that they did good and served the greater humanity with fairness and love, I believe they will earn their place by doing this.

I do not want to speak long on this topic. However, I just want to conclude by saying that we are a better society if the least of us is made able. We are an excellent society if the lowest is brought up. We are collectively poor if we put in place policies that are only for the privileged.

In fact, we are not born with privilege, we acquire it temporarily but we do not know that many of us may not acquire what we have acquired. With our privilege, let us level all hills and lower them. Let us lower all valleys for everybody so that excellence becomes easy to all.

Mr. Temporary Speaker, Sir, thank you very much. Congratulations to our two sisters.

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

Sen. Cherargei: Mr. Temporary Speaker, Sir, from the onset I congratulate our able Senators; Sen. (Prof.) Kamar and Sen. (Dr.) Musuruve; for this brilliant and wonderful idea. As a Senate, we are a House of union where we speak for the marginalised, minority, people living with disability and all Kenyans from all walks of life. That is why every Kenyan is following what the Senate is doing. They believe they will all ways speak for them.

I congratulate my two sisters and wish them the best. Sen. (Dr.) Musuruve has become a serious trailblazer in terms of defending and promoting the issues of people living with disabilities, which is slightly more than six million Kenyans according to the 2019 Kenya Population and Housing Census. I commend her and this is brilliant.

Mr. Temporary Speaker, Sir, I thank the Senate. When I was the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, I drafted the pleadings that we moved to High Court with; most of these 24 legislations that were brought back to the House. I am happy when I see such legislation being brought up and many others. After that ruling of the High Court and Supreme Court, it has given us a space. Now the National Assembly must take any business we transact here seriously.

I hope when it is taken to the National Assembly after the Communication between you and the Speaker of the National Assembly, these Bills can be processed faster so that they can assist our people and ensure they benefit. All of us are in the business of legislation, oversight, protecting interests of counties and the nation at large. This is very important and I hope our colleagues will finish this.

Mr. Temporary Speaker, Sir, I know in the interest of time and since my sister wants to reply, to be able to go for division, maybe two comments only with your permission. I just want to go back to the Constitution in Article 7 where it talks about the national, official and other languages. When you look at Article 7 (3)-

“The State shall-

- (a) promote and protect diversity of language of the people of Kenya;
- (b) promote the development and use of indigenous languages, Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities.”

What we are doing is anchoring into proper legal framework this Bill that our colleagues have brought before the House. This Article 7 does not exist in vain. It is clear. When you look at the Bill of Rights, it is comprehensive. Many people are praising Kenya having advanced human rights like South Africa and many other developed nations.

Mr. Temporary Speaker, Sir, even our proceedings are live. There should be a sign language interpreter showing. We are not even complying. When you go to YouTube or livestream in some of the television platforms, as a Senate, we should be having an interpreter. This is so that the people who are deaf and do not listen can see what is being transacted.

I hope even today, where they are, they are watching and somebody is translating to them what we are saying. I can assure them that they have found a voice in this House by the name of Sen. (Dr.) Musuruve who has stood with them and Sen. (Prof.) Kamar for speaking for them.

Mr. Temporary Speaker, Sir, this law in itself, has been violated. I have seen especially private media houses trying to observe it, however, as a Government or even next to you, we should be having an interpreter seated there. We never know the future of this Senate. In future, we might have a Senator who is deaf elected by Kenyans. We are encouraging Kenyans to elect people living with disabilities. What will happen when do not have an interpreter. As a Parliament, we must start with compliance first so that it becomes easy. That is the constitutional provision.

I think the nation and every Kenyan should understand. The people living with disabilities should understand this. The provision does not exist in vain. It exists for the benefit of all Kenyans. That is very important so that we go into the future. I have seen and I hope Sen. (Dr.) Musuruve will hear this. I have seen the place of devolved units, which we also need to strengthen. In fact, if we can have all the 47 county governments becoming part of this Bill, this will become easy.

Mr. Temporary Speaker, Sir, the Constitution is very clear that nothing should limit access to justice. I want to thank you for that. As a legal practitioner, I can say to you that it is important. People who are deaf sometimes look for justice. However, because they cannot listen and understand what is happening - let me not use the word understand - they sometimes are not accessible to justice. That is why we are challenging that we need the Judiciary to take up this matter and ensure we have interpreters and people of sign language in our courts so that it becomes easy.

Secondly, I am happy she has indicated in this Bill that we need a registered interpreter and a person who knows sign language, because there are people who can do this job. I wish we had a list. In fact, I know it is now being offered in many universities. I challenge young people to take these courses. They should be part of it so that it becomes easier.

Mr. Temporary Speaker, Sir, in conclusion, because we want to allow our colleague to reply, it is finally on the career development. I do not know the place of this in Competency Based Curriculum (CBC). Nowadays it is funny with this CBC, because they tell your child to bring a picture of what they ate in the evening at home.

I hope in this career development where we have sign language interpreters, we should include them in the curriculum development going into the future. They can work with Ministry of Education. I can see CBC apart from being expensive, it has become inconvenient to most of the parents that we are talking about. I hope in the place of career development, we should develop the strategy that is in place. This is so that it does not become a problem like CBC.

Mr. Temporary Speaker, Sir, apart from CBC being inconvenient, it is very expensive. You have heard many parents complaining on the order of things. Sometimes they can even tell your child - I talked with some parents today in the morning - to bring a picture of a mosquito resting. How can you take a picture of a mosquito resting? These are challenges that we are facing. I hope with this career development we should have a clear, short, precise, and brief curriculum development for the sign language interpreters in this Republic.

I wish my sister all the best when it comes to division. We shall support it. I want to say that in Nandi County - before I forget with all due respect - we have the school for the deaf in Kapsabet. Most of those schools do not get support. I hope with such a Bill in place, some of the schools will be funded so that our schools like Kapsabet School for the Deaf can have opportunity to grow their careers.

I thank you so much.

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

Sen. Kavindu Muthama: Mr. Temporary Speaker, Sir, I thank you for this opportunity to contribute to this important Bill. I congratulate Sen. (Dr.) Musuruve. You

have been really on spot when it comes to persons living with disabilities (PWDs). You have really been their defender and voice. May God bless you.

In this Senate - like the Senator has said - we should have sign language for them. Even in Parliament, we should have sign language. These people living with this kind of disability are in distress. Many of them are even depressed because they cannot understand what is happening. They just live under the mercy of all of us because we have not put things in order for them.

I support this Bill and pray that it shall find the light of day through this Senate and Parliament. This is because they should also be fully represented in courts and hospitals. Most of them, once they are arrested by police, suffer a lot because they have no sign to show that they are deaf. They are just normal human beings like all of us. By the time the police realise that they are deaf, they go through a lot of beatings and mistreatment. The police think that they are just quiet and are not responding to their questions. Therefore, in police stations, we should have officers who understand the sign language to represent the deaf who go there.

We should have them in hospitals also. When they go to hospitals, they should be fully represented to explain their sickness and communicated back to by the doctors. We should have the sign language officers all over even in churches, mosques and even in public transport, if possible.

Mr. Temporary Speaker, Sir, because of the time and I am sure she would want to respond, I would stop there. I congratulate Sen. (Dr.) Musuruve.

I beg to support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, since there are no more requests, I call upon the Mover to reply.

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, thank you. I beg to reply. I begin by thanking my fellow Senators for supporting this Bill. I thank Sen. Kwamboka for seconding the Bill. Her input is quite invaluable.

I thank Sen. (Dr.) Ochillo-Ayacko for adding to this Bill and reminding us that the state is obligated to ensure that this Bill sees the light at the end of the tunnel. This is so that sign language becomes a mandatory language like any other, and it is also included in studies.

I thank Sen. Cherargei for coming out strongly and especially reminding the county governments to take this document as their business, so that sign language is devolved in Technical and Vocational Education and Training (TIVET) institutions and all schools and institutions of learning.

Mr. Temporary Speaker, Sir, I also thank Sen. Kavindu Muthama for coming in also to support this Bill. I thank all the Senators in this House for coming out strongly to support issues of disability anytime they come to the Floor of this House.

I believe that when this Bill goes to the National Assembly, it will get the true support that it has received from colleagues in the Senate, so that we have a truly inclusive society from the word go. This is so that the deaf people do not live in a cocoon, but are part of the society that we live in.

Mr. Temporary Speaker, Sir, I wish to request that you defer the putting of the question to a later date pursuant to Standing Order No. 61 (3).

Thank you and I beg to reply.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I, therefore, defer putting of the question until tomorrow afternoon.

(Putting of the question on the Bill deferred)

Second Reading

THE HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 6 OF 2020)

The Temporary Speaker (Sen. (Dr.) Lelegwe): The Mover is not present. Therefore, the Order is deferred.

(Bill deferred)

Hon. Senators, as you can note from the Order Paper, Order Nos. 16 to 19 are Committee of the Whole. I, therefore, defer all those orders.

COMMITTEE OF THE WHOLE

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

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

THE BASIC EDUCATION BILL
(SENATE BILLS NO. 4 OF 20201)

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL
(SENATE BILLS NO 32 OF 2020)

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)

(Committee of the Whole Deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Again, we defer Order Nos. 20 to 22 because the Movers are not present.

MOTIONS

ADOPTION OF REPORT ON IMPASSE ON THE 2020/2021 BUDGETARY ESTIMATES FOR KIRINYAGA COUNTY

THAT, the Senate adopts the Report of the Standing Committee on Devolution and Intergovernmental Relations, on the impasse on the budgetary estimates for financial year 2020/2021 for Kirinyaga County, between the County Executive and the County Assembly, laid on the Table of the Senate on Tuesday, 25th May, 2021.

(Motion deferred)

ADOPTION OF REPORT ON THE OPERATIONALIZATION OF NATIONAL CONSTRUCTION AUTHORITY (DEFECTS LIABILITY) REGULATIONS, 2020

THAT, the Senate adopts the report of the Standing Committee on Roads and Transportation on its inquiry into the operationalization of the National Construction Authority (Defects Liability) Regulations, laid on the Table of the Senate on Thursday, 24th September, 2020.

(Motion deferred)

FAST TRACKING CULTURAL DEVELOPMENTS IN COUNTIES

THAT, WHEREAS Kenya is a multi-ethnic and multi-racial country with rich and diverse cultural resources such as traditional medicine and foods, arts, craft, music, dances, dress among others;

AWARE THAT, the Constitution, in its preamble acknowledges the cultural diversity of the Kenyan people who are determined to live in peace and unity as one indivisible sovereign nation whilst, Article 11 of the Kenyan Constitution recognizes culture as the foundation of the nation;

NOTING that, while the Department of Culture under the Ministry of Sports, Culture and Heritage has been playing some of the key roles in promotion of cultural integration, formulation of policies and standards that will guide the development of culture, little information has been available to the Kenyan public;

ACKNOWLEDGING, that culture performs a significant role in the life of a child, the cultural background in which a child is brought up affects the totality of his or her life's activities;

CONCERNED, that our children are losing their sense of identity due to the negative influences due to inadequate cultural identity catalyzed by globalization which has led to catastrophic consequences to the next generation as experienced in our country where a majority of young people are showing symptoms of feeling suicidal, anxious, feeling of hopelessness, anger, violence, feeling isolated, and paranoia;

NOW THEREFORE, the Senate urges the Cabinet Secretary, Ministry of Sports, Culture and Heritage to –

a) Formulate cultural development policies and initiatives to inculcate stronger community values, safeguard Kenya's heritage, recognize local heroes and promote socio-cultural opportunities in the counties; and

b) Formulate strategies to create an enabling environment for protection and promotion of diversity of cultural expressions in all counties.

(Motion deferred)

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

PROVISION OF COLOSTOMY BAGS TO COLON CANCER PATIENTS
AND SURVIVORS IN COUNTY HOSPITALS

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, proceed. Senator, if you are not ready to move the Motion, you can request for deferment.

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, I seek your indulgence. I would like to move the Motion. It was an oversight.

I beg to move the following Motion: -

THAT, AWARE THAT the colon is part of the digestive system with a major role in the absorption of water, minerals and elimination of waste;

FURTHER AWARE THAT colon cancer can cause serious blockage of the colon that may necessitate removal of parts of the colon, the entire colon or the entire colon and the rectum;

COGNIZANT THAT persons who have gone through ileostomy, colostomy and urostomy need to use a bag to empty their wastes for the rest of their lives post-surgery;

CONCERNED THAT urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags are not listed as goods exempt from tax or zero rated in the First and Second Schedules of the Value Added Tax Act 2013, and, therefore, attract 16 per cent value added tax and customs duty;

ACKNOWLEDGING THAT Article 43 (1) (a) of Constitution of Kenya states that everyone has a right to the highest attainable standards of health, and health is a devolved function and therefore under the mandate of the county governments;

NOW THEREFORE, the Senate calls upon the Ministry of Health and in partnership with the Council of Governors (CoG) to:

- (i) create and maintain a register of all the colon cancer patients and survivors in county hospitals, including the biodata of the histology of the patients;
- (ii) provision of colostomy bags for those who are permanent users;
- (iii) include the purchase of palliative care products in the health budgets of all county governments;
- (iv) ensure all county hospitals stock these palliative care products to enable increased access and lower commercial prices; and,
- (v) engage the Treasury and Kenya Revenue Authority (KRA) to waive taxes on long-term health consumables such as colostomy bags, prosthesis and others in the upcoming budgetary cycle to ease the burden on Kenyans.

Thank you. I beg to move.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve you will have a balance of 18 minutes to continue moving the Motion.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 9th September, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.