

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Monday, 17<sup>th</sup> August, 2020

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.154 of 14<sup>th</sup> August, 2020)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.*

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

#### CONVENING OF SPECIAL SITTING OF THE SENATE TO CONSIDER THE THIRD BASIS OF REVENUE SHARING

**The Speaker** (Hon. Lusaka): Hon. Senators, welcome to this Special Sitting of the Senate.

On the request of the Senate Majority Leader via letter Ref.No.SEN/SML/CORR dated 12<sup>th</sup> August, 2020, and with the support of the requisite number of Senators, I appointed today, Monday, 17<sup>th</sup> August, 2020, as a day for a Special Sitting of the Senate vide Gazette Notice No.154 dated 14<sup>th</sup> August, 2020.

In the Gazette Notice, I indicated that the business to be transacted at this Special Sitting shall be the consideration of the Third Basis for allocating among the county governments, the share of national revenue that is annually allocated to the county level of government.

Pursuant to Standing Order No.30 (4), I also notified the Speaker of the National Assembly of this Special Sitting, vide letter Ref. No. SSN/SNA/6/VOL.1, dated 13<sup>th</sup> August, 2020, as the business to be transacted at the Special Sitting will require the action of the National Assembly.

In accordance with Standing Order No.30 (5), the business specified in the Gazette Notice shall be the only business before the Senate during the Special Sitting, following which the Senate shall stand adjourned until Tuesday, 8<sup>th</sup> September, 2020, at 2:30 p.m., in accordance with the Senate Calendar.

Hon. Senators, before we resume today's debate, allow me to guide the House on where we are in this matter and provide a roadmap for the debate going forward.

As you are all aware, the Report of the Standing Committee on Finance and Budget on the Third Basis for Revenue Allocation among the County Governments was laid on the Table of the Senate on Monday, 13<sup>th</sup> July, 2020, and a Notice of Motion for its adoption given on the same day. However, it was not until 28<sup>th</sup> July, 2020, that debate on the Motion commenced. On that day, the Senate Majority Whip, Sen. Kang'ata, moved an amendment to the Motion, which was debated by the Senate, voted on and negatived.

Immediately the amendment proposed by the Senate Majority Whip was lost, the Senator for Nairobi, Sen. Johnson Sakaja, moved an amendment to the Motion by the Chairperson of the Standing Committee on Finance and Budget. However, at the rise of the House on that day, debate on Sen. Sakaja's amendment had not been concluded.

At the next Sitting of the Senate on 4<sup>th</sup> August, 2020, the Senator for Elgeyo-Marakwet, Sen. Murkomen, moved a Motion, pursuant to Standing Order No.105, to adjourn debate on the Motion by the Chairperson of the Standing Committee on Finance and Budget.

The Adjournment Motion was carried thereby adjourning debate on the Motion by the Chairperson of the Standing Committee on Finance and Budget, to allow for consensus building on the Third Basis for allocating among the county governments, the share of national revenue that is annually allocated to the county level of government.

On Tuesday, 11<sup>th</sup> August, 2020, the Senate resumed debate on the amendment by Sen. Sakaja to the Motion by the Committee. In the course of the debate on Sen. Sakaja's amendment, and pursuant to Standing Order No.62 (9), the Senator for Meru, Sen. Linturi, moved an amendment to the amendment by Sen. Sakaja.

The amendment by Sen. Sakaja, as further amended by Sen. Linturi, was debated, voted on and agreed to. Thereafter, the Speaker, pursuant to Standing Order No. 62(11), proposed the question on the Motion of the Committee on Finance and Budget as amended.

Hon. Senators, pursuant to Standing Order Nos. 58(1) and 62(8), the effect of the approval of the amendment by Sen. Sakaja as amended by Sen. Linturi is that the following proposed amendments for which notice had been given automatically lapsed and were dropped from further consideration by the Senate-

(i) The proposed amendment to an amendment by Sen. Wamatangi, which had sought to amend the amendment proposed by Sen. Sakaja;

(ii) The proposed amendment by Sen. Mutula Kilonzo Jnr. to the Motion by the Chairperson of the Standing Committee on Finance and Budget; and,

(iii) The proposed amendment to an amendment by the Senator for Kiambu, Sen. Wamatangi, which had sought to amend the amendment proposed by Sen. Mutula Kilonzo Jnr.

You will observe that none of those amendments is on the Order Paper for today.

Upon the question on the Motion of the Committee, as amended by Sen. Sakaja and Sen. Linturi being proposed, as required by Standing Order No.68 (11), Sen. Were moved an amendment to the Motion. Her amendment was seconded, and thereafter, the question was proposed.

Hon. Senators will recall that at the rise of the House on Tuesday, 11<sup>th</sup> August, 2020, debate on the amendment by Sen. Were was underway. That is, therefore, where we will resume our business this morning. Indeed, as can be seen in Order No.2 of the Order Paper, the Motion before the House is the Motion of the Committee, as already

amended by Sen. Sakaja and Sen. Linturi. This is the Motion that Sen. Were is seeking to amend.

Hon. Senators, going forward, I wish to give the following guidance-

(1) Debate on the Motion at Order No.2 in today's Order Paper shall be considered and disposed of in accordance with *inter alia*, Standing Order Nos. 61 to 68, Part XVII on Rules of Debate and Part XIX on Order in the Senate and in Committees.

(2) At the conclusion of the debate on the amendment by Sen. Were, I will put the question in the same terms as had been proposed. If the amendment is carried, I will then propose the question again on the Motion as further amended. If on the other hand the question on Sen. Were's amendment is negatived, the Senate will resume debate on the original Motion as amended by Sen. Sakaja and Sen. Linturi, as is appearing in the Order Paper.

(3) After disposing off the amendment by Sen. Lokorio, we shall move on to the other amendments that are set out in the Order Paper and upon disposing of all the amendments, including amendments to those amendments (if any), and pursuant to Standing Orders 67 and 68, I shall finally put the question on the Motion as it appears at Order No. 2, or as shall have been amended, as the case may be.

(4) As directed in the last sitting of the Senate, for fairness and to utilize our time efficiently, the movers of amendments will be restricted to ten (10) minutes in moving their amendments while all other Senators will have a maximum of five minutes each in contributing to motions on amendments.

(5) The speaking time on debate on the Substantive Motion remains as provided for under Standing Order 106 (4), which is not more than twenty minutes, except for the mover when moving and replying and the Senate Majority and Senate Minority Leaders.

Honourable Senators, in conclusion, I call upon each one of us to exercise restraint and engage in a sober and calm debate as we seek to find the best basis for allocating among the county governments the share of national revenue that will be allocated to the county levels of government.

I thank you.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Speaker, Sir, I rise under Standing Order No.105 and 60(h) to move that the House adjourns to enable Senators discuss an issue of urgency national importance, concerning three of our colleagues.

Sen.(Dr.) Lelegwe is on his way to Maralal having been arrested; Sen.(Dr.) Langat of Bomet is threatened with arrest and Sen. Malalah of Kakamega County is also been threatened with arrest.

I request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker Sir. In 2016, we were debating a very contentious Bill; The Election Laws (Amendment) Bill. On our way to this Senate, we alighted at the roundabout and parked our cars as far back as the All Saints Cathedral. The police had barricaded Parliament.

I think it was Sen. Orenge who requested the then Speaker, Hon. Ethuro, to make a ruling. Your predecessor, Hon. Ethuro, adjourned the Special Sitting for one hour and ordered the then Inspector General (IG) of Police to order the Police to leave Parliament Road. We did not proceed until they left.

*(Applause)*

It is very strange that our colleagues--- Sen. Malalah was in Kakamega yesterday. He conducted a public function and travelled for this Special Sitting. At 3.00 a.m. police were outside his door blocking his gate with a Government of Kenya (GK) vehicle and are still there.

Sen. (Dr.) Lelegwe was being looked for yesterday, and was arrested this morning on his way to the Senate. The Senator of Bomet is under siege; the Police have parked outside his gate. The police have turned the residences of the Senators of this House into a parking lot.

Mr. Speaker, Sir, it is not feasible that you can lead a House, where your Senators are under siege. If a Senator is being arrested, there is no reason a police officer would go and just lay about at their gates. It is painful.

The reason we have a Special Sitting and are here, under Article 123 of the Constitution, is so that whoever has numbers will carry the day. We neither objected to the formula nor carried guns into the Senate. Nobody was going to win by force.

This matter has upset me so much that I went into my archives and retrieved a magazine called *The Economic Review* of 23<sup>rd</sup> June, 1997. It has the picture of the former President Moi seated where you are seated when the proceedings on the budget were going on.

On the day, the now Senate Minority Leader, Sen. Orengo, did something very unusual. He sought for an adjournment of the budget; this gentleman seated here, whom I respect so much and calls me his son.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., let me give some guidance. Allow the Order to be called, then we resume. We have not resumed the debate---

*(An hon. Senator spoke off record)*

He was seconding, but we have not resumed debate. I just want the Order to be called out, then I allow you to continue. It is just for procedure.

Proceed, Clerk.

## MOTION

### APPROVAL OF THE THIRD BASIS FOR REVENUE ALLOCATION AMONG THE COUNTY GOVERNMENTS

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Third Basis for Revenue Allocation Among the County Governments, laid on the Table of the Senate on Monday, 13<sup>th</sup> July, 2020, and that pursuant to Article 217 of the Constitution, approves the proposed Third Basis for Revenue Allocation Among the County Governments as contained in the Report, subject to the deletion of recommendation appearing as paragraph 26 of the Report and substituting therefor the following new recommendation -

**(26)** The Senate resolves that pursuant to Article 217 (1) of the Constitution, the Third Basis for sharing revenue among counties, for the

Financial Year 2020/2021 to 2024/2025 be as follows-

**a) Equitable share not exceeding Kshs. 270 billion**

The following formula shall apply

$$CA_{i1} = 0.45PN_i + 0.26ES_i + 0.18PI_i + 0.08LA_i + 0.02FE_i^1 + 0.01DF_i^2$$

Where,

CA<sub>i1</sub> is revenue allocation of the i<sup>th</sup> County; PN<sub>i</sub> is Population Factor (Population of i<sup>th</sup> County/total population); ES<sub>i</sub> is Basic Equal Share Factor (Total Equal share/47); PI<sub>i</sub> is Poverty Gap (Poverty Resources of i<sup>th</sup> County/total poverty Resources); LA<sub>i</sub> Land Area Factor (Land Area (Sq. Kms.) of i<sup>th</sup> County/Total Land area); FE<sub>i</sub> is Fiscal Effort Factor (County’s own revenue increment/2009 population of the i<sup>th</sup> County); and DF<sub>i</sub> is Development Factor=

$$\frac{1}{3} \left( \frac{E_i * N_i}{\sum (E_i * N_i)} + \frac{W_i * N_i}{\sum (W_i * N_i)} + \left( \frac{URN_i}{\sum URN_i} \right) \right)$$

Where E<sub>i</sub> is proportion of household with access to electricity of the i<sup>th</sup> County

W<sub>i</sub> is proportion of household without access to improved water of the i<sup>th</sup> County

URN<sub>i</sub> is Un-paved road network of class D, E, F, G, H, J, K, M, N & P of the i<sup>th</sup> County.

**b) Equitable share over and above Kshs. 270 billion**

The following formula shall apply

$$CA_{i2} = 0.16 * \text{Population Index}_i + 0.19 * \text{Health Index}_i + 0.11 * \text{Agriculture Index}_i + 0.05 * \text{Urban Index}_i + 0.14 * \text{Poverty Index}_i + 0.08 * \text{Land Area Index}_i + 0.01 * \text{Fiscal Effort}_i + 0.06 * \text{Roads Index}_i + 0.20 * \text{Basic Share Index}_i^3$$

Where,

| Parameter       | Indicator of Expenditure Need  |
|-----------------|--|
| Health services | Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%) and three years average in-patient days in levels 4 and 5 hospitals (20%) |

<sup>3</sup> The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

|                       |  |
|-----------------------|--|
|                       | $\text{Facility gap factor}_i = \frac{\text{Facility gap funding in county } i}{\sum_{i=1}^{47} \text{facility gap funding in county } i}$ $\text{Primary health care factor}_i = \frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ $\text{In – patient days factor}_i = \frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$ |
| Agriculture services  | $\text{Agriculture Index}_i = 0.005 * \text{Minimum Share index} + 0.095 * \frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$  |
| Other county services | $\text{Population index}_i = \frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$  |
| Minimum share         | $\text{Basic share index}$ $= 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$  |

|               |   |
|---------------|---|
| Minimum share | $\text{Basic share index}$ $= 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$ |
| Land          | $\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_{i=1}^{47} \text{Land area in county } i}$  |
| Roads         | $\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$  |
| Poverty level | $\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$  |
| Urban service | $\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$   |
| Fiscal effort | $\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$  |

The basis used is as shown

| No. | Parameter     | Weight    |
|-----|---------------|-----------|
| 1   | Population    | 16%       |
| 2   | Health        | 19%       |
| 3   | Agriculture   | 11%       |
| 4   | Urban         | 5%        |
| 5   | Roads         | 6%        |
| 6   | Poverty       | 14%       |
| 7   | Land          | 8% capped |
| 8   | Basic Share   | 20%       |
| 9   | Fiscal Effort | 1%        |

|    |                 |    |
|----|-----------------|----|
| 10 | Fiscal Prudence | 0% |
|----|-----------------|----|

b) **Total Equitable share of a County**

The following formula shall apply

$$TES_i = CA_{i1} + CA_{i2}$$

Whereas;

$TES_i$  = Total Equitable share of County<sub>i</sub>

$CA_{i1}$  = Equitable share not exceeding Kshs. 270 billion

$CA_{i2}$  = Equitable share over and above Kshs. 270 billion

**SIMULATION FOR ILLUSTRATION ONLY**

**Simulation using equitable share of Kshs. 316.5 billion for FY 2020/2021 –**

| No | County            | Actual Allocations 2019/20 | Equitable share of Kshs. 270 billion using 2nd generation formula | Application of Remaining Kshs. 46.5 billion using Sen. Linturi Amendment | New Allocation Ksh 316,500) | Net Change between FY19/20 Allocation & Proposed FY 2020/21 Allocation |
|----|-------------------|----------------------------|---|--|-----------------------------|--|
| 1  | Mandera           | 10,222.95                  | 8,721.00  | 1,256.69   | 9,977.69                    | (245.26)   |
| 2  | Kwale             | 7,785.90                   | 6,642.00  | 966.00   | 7,608.00                    | (177.90)   |
| 3  | Wajir             | 8,545.50                   | 7,290.00  | 1,079.88   | 8,369.88                    | (175.62)   |
| 4  | Marsabit          | 6,773.10                   | 5,778.00  | 838.16   | 6,616.16                    | (156.94)   |
| 5  | Kilifi            | 10,444.50                  | 8,910.00  | 1,381.08   | 10,291.08                   | (153.42)   |
| 6  | Mombasa           | 7,057.95                   | 6,021.00  | 901.77   | 6,922.77                    | (135.18)   |
| 7  | Narok             | 8,039.10                   | 6,858.00  | 1,050.68   | 7,908.68                    | (130.42)   |
| 8  | Makueni           | 7,406.10                   | 6,318.00  | 980.91   | 7,298.91                    | (107.19)   |
| 9  | Nyamira           | 4,810.80                   | 4,104.00  | 608.86   | 4,712.86                    | (97.94)  |
| 10 | Tana-River        | 5,855.25                   | 4,995.00  | 780.53   | 5,775.53                    | (79.72)  |
| 11 | Tharaka-Nithi     | 3,924.60                   | 3,348.00  | 500.42   | 3,848.42                    | (76.18)  |
| 12 | Garissa           | 7,026.30                   | 5,994.00  | 957.15   | 6,951.15                    | (75.15)  |
| 13 | Vihiga            | 4,652.55                   | 3,969.00  | 615.47   | 4,584.47                    | (68.08)  |
| 14 | Isiolo            | 4,241.10                   | 3,618.00  | 581.37   | 4,199.37                    | (41.73)  |
| 15 | Homa-Bay          | 6,741.45                   | 5,751.00  | 961.31   | 6,712.31                    | (29.14)  |
| 16 | Kisii             | 7,785.90                   | 6,642.00  | 1,119.16   | 7,761.16                    | (24.74)  |
| 17 | Taita-Taveta      | 4,241.10                   | 3,618.00  | 606.96   | 4,224.96                    | (16.14)  |
| 18 | Murang'a          | 6,298.35                   | 5,373.00  | 909.37   | 6,282.37                    | (15.98)  |
| 19 | Samburu           | 4,620.90                   | 3,942.00  | 675.42   | 4,617.42                    | (3.48)   |
|    | <b>Total Loss</b> | <b>126,473.40</b>          | <b>107,892.00</b>   | <b>16,771.20</b>   | <b>124,663.20</b>           | <b>(1,810.20)</b>  |
| 1  | Kitui             | 8,830.35                   | 7,533.00  | 1,303.12   | 8,836.12                    | 5.77   |
| 2  | Nyandarua         | 4,874.10                   | 4,158.00  | 722.01   | 4,880.01                    | 5.91   |
| 3  | Nyeri             | 5,412.15                   | 4,617.00  | 801.39   | 5,418.39                    | 6.24   |
| 4  | Turkana           | 10,539.45                  | 8,991.00  | 1,557.89   | 10,548.89                   | 9.44   |
| 5  | Lamu              | 2,595.30                   | 2,214.00  | 398.51   | 2,612.51                    | 17.21  |
| 6  | Elgeyo-Marakwet   | 3,861.30                   | 3,294.00  | 586.50   | 3,880.50                    | 19.20  |
| 7  | Kisumu            | 6,836.40                   | 5,832.00  | 1,031.70   | 6,863.70                    | 27.30  |
| 8  | Meru              | 8,039.10                   | 6,858.00  | 1,209.33   | 8,067.33                    | 28.23  |
| 9  | Migori            | 6,773.10                   | 5,778.00  | 1,026.69   | 6,804.69                    | 31.59  |
| 10 | Embu              | 4,304.40                   | 3,672.00  | 672.60   | 4,344.60                    | 40.20  |
| 11 | Siaya             | 5,791.95                   | 4,941.00  | 893.94   | 5,834.94                    | 42.99  |
| 12 | Busia             | 6,013.50                   | 5,130.00  | 928.49   | 6,058.49                    | 44.99  |
| 13 | Kericho           | 5,380.50                   | 4,590.00  | 836.15   | 5,426.15                    | 45.65  |
| 14 | Machakos          | 7,754.25                   | 6,615.00  | 1,188.13   | 7,803.13                    | 48.88  |
| 15 | Kakamega          | 10,412.85                  | 8,883.00  | 1,598.86   | 10,481.86                   | 69.01  |
| 16 | Bomet             | 5,507.10                   | 4,698.00  | 878.79   | 5,576.79                    | 69.69  |
| 17 | Bungoma           | 8,893.65                   | 7,587.00  | 1,379.02   | 8,966.02                    | 72.37  |
| 18 | Laikipia          | 4,177.80                   | 3,564.00  | 689.37   | 4,253.37                    | 75.57  |
| 19 | Kirinyaga         | 4,241.10                   | 3,618.00  | 702.66   | 4,320.66                    | 79.56  |
| 20 | Baringo           | 5,095.65                   | 4,347.00  | 831.86   | 5,178.86                    | 83.21  |
| 21 | West Pokot        | 5,000.70                   | 4,266.00  | 818.24   | 5,084.24                    | 83.54  |
| 22 | Kajiado           | 6,424.95                   | 5,481.00  | 1,031.13   | 6,512.13                    | 87.18  |
| 23 | Trans-Nzoia       | 5,760.30                   | 4,914.00  | 940.48   | 5,854.48                    | 94.18  |
| 24 | Nairobi City      | 15,919.95                  | 13,581.00   | 2,459.53   | 16,040.53                   | 120.58   |
| 25 | Uasin-Gishu       | 6,330.00                   | 5,400.00  | 1,072.56   | 6,472.56                    | 142.56   |
| 26 | Nakuru            | 10,476.15                  | 8,937.00  | 1,688.21   | 10,625.21                   | 149.06   |
| 27 | Nandi             | 5,348.85                   | 4,563.00  | 935.14   | 5,498.14                    | 149.29   |
| 28 | Kiambu            | 9,431.70                   | 8,046.00  | 1,546.50   | 9,592.50                    | 160.80   |
|    | <b>Total</b>      | <b>190,026.60</b>          | <b>162,108.00</b>   | <b>29,728.80</b>   | <b>191,836.80</b>           | <b>1,810.20</b>  |

(Sen. Kibiru on 28.7.2020)

(Resumption of debate interrupted on 11.8.2020)

The Speaker (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.



**Sen. Mutula Kilonzo Jnr.:** The reason I retrieved this magazine is because the Speaker then, hon. Ole Kaparo, allowed Sen. Orendo to move an adjournment of a budget reading which was being read by the then Minister for Finance hon. Mudavadi. It was not procedural that a budget could be adjourned, but in this magazine Sen. Orendo was heard in silence. What was he asking? He was saying that we could not have a budget unless we had constitutional reform.

Although he did not succeed on that day on the adjournment, this country has changed and we have a new Constitution. We will not proceed today unless we have those three Senators!

*(Applause)*

If we have to sit on this Table, we will do so. I am in this Senate because on person who was a Member of this Senate, Sen. Mutula Kilonzo, my dad, was found dead on his bed. If it is not Sen. Malalah or Sen. (Dr.) Lelegwe, it is going to be you or me.

*(Applause)*

Former President Moi - may his soul rest in peace- as the President of the Republic of Kenya, allowed Sen. Orendo to tell him to his face that he was misleading the country. We must tell President Uhuru Kenyatta that we will not allow this sort of thing to happen in Kenya in 2020.

*(Applause)*

Mr. Speaker, Sir, we are calling upon you to adjourn this House. Tell the IG of Police that we need the Senators here, unless they have committed treason, which is not bailable.

Those Senators should be here to conduct their business. As a young man, I represented Sen. Khaniri when he was an Assistant Minister. He was released on his personal cognizance as an Assistant Minister.

Even if there was an offence committed, those gentlemen can come here and we will represent them in court. If my friend and a person who calls me 'my son', Sen. Orendo who is here with Sen. Poghio who allowed this Special Sitting is going to allow this sort of thing to continue, there is no reason for being a legislature. We shall call ourselves Members of County Assemblies (MCAs).

Mr. Speaker, Sir, it is extremely upsetting that Senators have to hide. People have to switch off their phones, so that they are not traced by the police. When did this become a police state? When the Senator for Nairobi City County, Sen. Sakaja, raised a concern here, I know Sen. Kang'ata had an issue about what happened to him.

However, this is exactly what we were saying; that when one Member of this House is in trouble, it does not matter what agenda it is. It does not matter who is winning. What matters is that we are together in this House to do the business of this country; nobody is doing his personal business here.

Mr. Speaker, Sir, I second this Motion that we adjourn this business until we get confirmation. Who knows while we are conducting this business, what is happening to

Sen. (Dr.) Lelegwe. He could be found in Ngong Forest. They could inject him with something, and kill him slowly.

I have seen the pain of death and smelt it. I have seen what happens when somebody gives you poison; you bleed so much like my father did. May it not happen to another person because we are not conducting personal business.

Mr. Speaker, Sir, I second.

*(Question, that debate be now adjourned, proposed)*

**The Speaker** (Hon. Lusaka): Sen. Khaniri, proceed.

**Sen. Khaniri:** Mr. Speaker, Sir, I stand to support this Motion in the strongest terms possible. We cannot sit here and continue with debate on the formula for revenue allocation when three of our colleagues are under arrest, and we do not know why. It is not a coincidence that all the three are Members of ‘Team Kenya,’ and I hope you understand what I mean by “Team Kenya”.

What is happening in Kenya today is unfortunate, sad and most absurd. We must condemn this in the strongest terms possible. What we are witnessing is what used to happen years ago, when some of us were younger. I remember---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Outa? You are not on microphone.

**Sen. Outa:** Mr. Speaker, Sir, thank you for giving me this opportunity. Given that we are all here as the Senate of the Republic of Kenya, is the Senator in order to call some Senators “Team Kenya”?

**Sen. Khaniri:** Mr. Speaker, Sir, you will agree with me that, that is frivolous and not a point of order. However, it is for you and not me to rule. That is a frivolous point of order. The hon. Senator knows exactly what I am talking about, but I will leave it to you to rule whether or not it is a point of order.

**The Speaker** (Hon. Lusaka): Maybe you need to use terminologies that are familiar to all Members.

**Sen. Khaniri:** Mr. Speaker, Sir, “Team Kenya” is a team of Senators who have come together to ensure that there is equity in distribution of resources or the funds that go to the counties. They are the Senators who are opposing strongly the formula that has been brought forth by the Committee on Finance and Budget, if he did not know.

I was saying that what we are witnessing today is what used to happen many years ago. I remind the Government of the day that there are Kenyans who fought with their blood and sweat to ensure that there is democratic space in this country and there is freedom of expression.

My senior here, the Senator for Siaya County, Sen. Orenge, was among those Kenyans. I am sure it will pain those Kenyans who fought with the blood and sweat to ensure that we enjoy the liberties that we enjoy at the moment to see what is happening.

My friend, Sen. Orenge, I hope you will stand with us to ensure that we adjourn this House until our colleagues are produced here to participate in the debate. As Senators, we must stand with our colleagues, Sen. Malalah, Sen. (Dr.) Lelegwe, and Sen. (Dr.) Langat because today it is them, and tomorrow, it may be you.

Mr. Speaker, Sir, I tell the Government of the day that no amount of intimidation will make some of us to change our stand on this matter. In fact, what they are doing is

making our resolve even stronger. I wish they used a better way to convince some of us. We are not going to relent. We will remain firm to ensure that there is equity in this country. We demand for the release of the three Senators who have been arrested.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, thank you.

**The Speaker** (Hon. Lusaka): I see there is a lot of interest. Let us spend five minutes each.

Sen. Sakaja, proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, I beg to support this Motion of Adjournment. A few weeks ago when I raised concerns about my own security, I think Members did not take it seriously, especially the leadership.

This morning, I have seen the same vehicle that I said had been trailing me. It is the Isuzu D-max parked outside Sen. (Dr.) Langat's house. It is the same vehicle and officers.

I do not know why today they did not look for me. Maybe it is because I preempted it in the last Sitting. However, this is extremely serious. Before we adjourned last time, I had said that indeed Article 1 provides that the sovereignty of this country and the people is expressed directly or through their representatives.

Mr. Speaker, Sir, the work we do in this House is so sacrosanct in our constitutional makeup that we cannot allow Parliament to be desecrated. This is one of those occasions where I would expect Sen. Poghiso and Sen. Orengo, no matter how you look at this matter before us, to say that for the sake of what the Senate is or what Parliament is; no matter which side of the coin you are looking at this debate, we must uphold and defend this institution.

I know that wherever Sen. Malalah, Sen. (Dr.) Lang'at and Sen. (Dr.) Lelegwe are, the intention of the arrest is clear. It is obvious for everybody. If you ask even the Members who are supporting the amendments we brought, I told them that throughout this weekend, what I was working on and we were working on was a unanimous vote of the Senate. Indeed, we could agree on this matter.

Mr. Speaker, Sir, I have sat, looked in the eye and faced my tormentors. I have looked at them in the eye and they have realized that we are splitting hairs about nothing, and that indeed we are going to agree. Of course, some unsavoury statements made by one of our colleagues scuttled the process during the weekend.

However, we cannot lose our country. We cannot allow people to live in fear. I stopped switching off my phone. It is on, and I told them: wherever you are, come and get me. There is nothing as bad as a leader who is a coward. I said: come and get me wherever you are. Let me face the law or whatever it is. However, the sovereignty of the 4.3 million Nairobians, who elected me in this House by a million votes, is more important than my own convenience.

Mr. Speaker, Sir, I urge Senators here; that no matter how you voted and look at this matter, we must stand united. Sen. Kang'ata, you are the Whip of the Majority; it is the entire majority. Sen. Poghiso, you are the Leader of Majority, and it is the entire majority. Sen. Orengo, you are the Senate Minority Leader. Mr. Speaker, Sir, you are the Speaker of this entire House. I know we have said things over the weekend, but I will not repeat them through this microphone. All of us are yours.

Mr. Speaker, Sir, the Standing Order says: “Until a future occasion”, I urge you that this Morning Sitting be adjourned until those Members are produced in this House. From the authority of your Chair, you can even summon the Inspector General (IG) to appear before us, now and explain to us-- Why would the police officers go to Sen. Malalah’s house at 3.00 a.m. Is he a witch? Is he a wizard? Is he a night runner? He is a Senator of Kakamega County. Why would the police officers go to Sen. (Dr.) Langat’s house at midnight in Nyayo Estate, Embakasi Constituency? They have even arrested some of the young people I know from there because they went to protest that injustice. Right now, 10 of them are in a cell in Embakasi. Those are young people I know.

Mr. Speaker, Sir, I want to urge colleagues not look at this through the prism of politics. Before this happened, we said very well that this is not about 2022 politics. It is not about whom you support for the Presidency. I support President Uhuru Kenyatta. Those who are doing this, I choose to believe are not doing it with his instructions. President Uhuru Kenyatta, I know you are listening to me. Instruct your officers---

*(Sen. Sakaja’s microphone went off)*

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko, kindly proceed.

**Sen. Sakaja:** I was on my last sentence---

**The Speaker** (Hon. Lusaka): Order, Senator! Which one?

**Sen. Sakaja:** Mr. Speaker, Sir, the sentence I was finishing was just an appeal to His Excellency the President not to allow overzealous officers to taint his legacy. His legacy is not of clamping down on democracy. He is a democrat.

I thank you.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I came this morning to attend a Special Sitting. I came thinking that we would do justice to this formula that has preoccupied the minds of Senators and the minds of Kenyans. It has many anxieties.

Mr. Speaker, Sir, yesterday, I spent a lot of my time praying at home. Praying that we will find a solution today to this issue. As urgent as it is, it has many pitfalls, challenges and difficulties.

I have enormous sympathy for any colleagues in difficulty because I have been through such difficulties. I am a product of liberation of this country. I have not written my story yet because there is a distance to travel. I hope I will continue travelling that distance.

Many years ago when I was in the university, I fought for the return of Student Organization of Nairobi University (SONU). Those young Senators who are here like Sen. Murkomen may not have been there, but SONU had been banned. I was among the people who were fighting for it, so that it would represent us at the university. Eventually, I became a student leader.

Mr. Speaker, Sir, a lot of things happened over the weekend. However, when I was looking at our social media page; our *WhatsApp*, I noticed that there was tension. Many Members, including a Member I respect, called me feckless. Meaning that I was a person who was unreliable and a person who could not stand on his own.

Mr. Speaker, Sir, I have sympathy for those of us who are in difficulty because I do not know what should happen today. The reason I am stating that is because my learned friend, Sen. Mutula Kilonzo Jnr., has indicated that your predecessor, Hon.

Ekwee Ethuro, ordered that police officers leave the precincts of Parliament. I do not know and I will be guided by those who will be speaking, whether you are seized of authority to order IG, if indeed it is true that he has locked a few Senators or he is acting on that, to stop doing so. This is because those may be orders that are away from the precincts of Parliament.

If I look at the context in which Hon. Ekwee Ethuro, your predecessor, ordered the removal of those issues, I think it is within the precincts of Parliament where you exercise unlimited authority only limited by the Constitution. However, as we continue debating, I do not know what order you will be able to issue or---

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

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, what is your point of order?

Give him the microphone.

**Sen. Cheruiyot:** Thank you. Mr. Speaker, Sir. I hate to interrupt my good friend and colleague, Sen. (Dr.) Ochillo-Ayacko. I wish to inform him that those officers that the former Speaker, Hon. Ekwee Ethuro, ordered out of the precincts of Parliament had cordoned off this House from the roundabout just before the gate entering the National Assembly and the roundabout before Intercontinental Hotel. It was not within or inside of Parliament, just for his information.

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

**Sen. (Prof.) Kindiki:** Mr. Speaker, Sir, just to add on that, because Sen. (Dr.) Ochillo-Ayacko is asking what powers will the Speaker of the Senate have outside the precincts of Parliament, the Parliamentary Powers and Privileges Act says.

“No member may be arrested while proceeding or getting out of Parliament or a committee of parliament”.

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, I hope my time had been frozen, so that I will be able to make my point.

Mr. Speaker, Sir, this is a very emotive issue. This is an issue that we must debate soberly and not sensationalize it. My understanding of the context within which your predecessor made his determination was that it was amounting to an occurrence within the precincts of Parliament, or within proximity to the precincts of Parliament.

Mr. Speaker, Sir, having said that, I have also listened to remarks here that are pointing an accusing finger to the President. Probably there would have been remarks after I have sat down pointing accusing fingers at many other entities that may not be the subject matter of the request for adjournment or the sharing of---

**Sen. Madzayo:** Jambo la nidhamu, Bw. Spika.

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

**Sen. Madzayo:** Asante, Bw. Spika. Je, ni sawa kwa ndugu yetu, Sen. (Dr.) Ochillo-Ayacko, kudai kuwa Seneta yeyote amemtaja Rais wa Jamhuri ya Kenya kwa ubaya wowote? Hakuna Seneta hata mmoja ambaye amemtaja Rais kwa njia mbaya bali Seneta wanamsihi Mhe. Rais ahahakishe kuwa utawala wake hautapakwa tope na polisi ambao wanadaiwa kuwatia mbaroni Masenta watatu ambao ni Sen. Malalah, Sen. (Dr.) Lelegwe na Sen. (Dr.) Langat. Je, ni haki kuwashika Maseneta watatu usiku wa kuamkia Mswada kama huu wa ugavi wa pesa za kaunti? Ukweli ni kwamba hakuna mtu ametukana Mhe. Rais. Je, ni haki Sen. (Dr.) Ochillo-Ayacko kusema kwamba kuna Seneta ambaye amemtukana Mhe. Rais? Mimi sikusikia hayo madai yake.

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, I notice that all these so-called points of orders are just alternative facts from the facts that I am presenting here.

Mr. Speaker, Sir, I speak with a lot of humility and understanding on what is alleged to be happening to my colleagues. I am not seized of the facts. I came here to debate a Motion on the formula then these facts or allegations are presented here. As we debate this very emotive issue, it is important that we also do not mislead ourselves because I am not seized of the facts. As I was talking to one of my unnamed colleagues here, I got information that a few of our colleagues, because this issue has become very divisive---

*(Sen. (Dr.) Ochillo-Ayacko spoke off record)*

**The Speaker** (Hon. Lusaka): You are off the microphone. Your time is up. Sen. Murkomen, proceed.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. On 4<sup>th</sup> January, 1642 King Charles entered the House of Commons supported by 400 armed men in an attempt to seize five Members who were accused of treason. The Speaker, who was presiding in the House of Commons was one Sir William Lenthall. When King Charles asked Speaker Lenthall where the five Members were, this was his response: "I have neither eye to see nor tongue to speak in this place, but as this House is pleased to direct me."

Mr. Speaker, Sir, history records that Speaker Lenthall became the first Speaker in England to declare his allegiance to the liberty of Parliament instead of the King. Parliament is at crossroads; it has nothing to do with the money or the formula for revenue allocation. The Motion raised by Sen. Cherargei is bigger and larger than the basis for allocation of revenue. I must say on the Floor of this House that I am the first person to defend the right of my brother and friend, Sen. Cherargei, to prosecute his agenda which is opposite to the one I prosecute in this House. He has a constitutional right, the same to Sen. Kihika and Sen. Orengo.

This morning, however, that is not what we are facing as a Senate. We are facing an assault on the constitutional order of this Republic. The integrity and independence of Parliament is on trial. It is your choice this morning on whether you will be subservient to the authorities that want to undermine the powers and the constitutional authority of this House or you will be like Speaker William Lenthall who ruled that the integrity of the House must be protected.

Let me confess something that I have always confessed to Sen. Orengo, which he knows and can go on record. Some of us studied law and admired politics because of people like Sen. Orengo. I have told him this over and over again. I have no doubt in my mind that if Sen. Orengo is told to choose between a forced process that puts our friends in danger and the question of protecting the integrity of this House, then the choice is obvious.

Mr. Speaker, Sir, I did not sleep last night. Sen. Cheruiyot, other Members of the National Assembly and I camped outside the House of Sen. (Dr.) Lang'at. The media reports are there that Sen. (Dr.) Lang'at's House is being surrounded by over 20 police officers. At 3.00 a.m., Sen. Malalah called me and I updated this immediately on my *Twitter* account. Sen. Malalah's House is being surrounded by four Directorate of Criminal Investigations (DCI) vehicles and over 20 police officers. Sen. (Dr.) Lelegwe was arrested on his way to this Chamber on Riverside.

I am shocked that Sen. (Dr.) Ochillo-Ayacko would even contemplate to say that he has no facts when those are three close Senators. One of them is the Deputy Minority Leader in this House. Can he call and confirm that these facts are untrue?

**Sen. (Dr.) Ochillo-Ayacko:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko, what is your intervention?

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, you have heard my friend, Sen. Murkomen, mention my name. The facts of a person's arrest must be in police record, the Occurrence Book (OB).

*(Loud Consultations)*

Mr. Speaker, Sir, can I be heard?

**The Speaker** (Hon. Lusaka): Order, Senators! You may not agree with what he is saying, but give him an opportunity to say it.

**Sen. (Dr.) Ochillo-Ayacko:** I did not mean to interrupt Sen. Murkomen, but the fact is that he mentioned my name. I left my house and came here. I have no information or OB information and I know there could be truth or untruth. Is it in order for Sen. Murkomen to blame me for not knowing when I have no facts? I am a person of facts alone.

**Sen. Murkomen:** Mr. Speaker, Sir, I would like to ask my friend, Sen. (Dr.) Ochillo-Ayacko, to go and look for a mirror behind your seat at the bathroom and see himself, if he is still the SONU crusader for liberty he spoke about.

*(Applause)*

Secondly, we are hon. Senators in this House who do not lie. We cannot move a Motion on the basis of lies or mislead the House. These facts were brought before the Speaker; they are known and incontrovertible. Let us not belittle this debate, but contextualize it for what it is; it is about an assault on parliamentary democracy and freedoms of this House.

Let me conclude by saying that the Senate is not being asked to adjourn so that you can assist one side or the other on the question of the basis of allocation of revenue. In fact, I have refused, as a matter of fact, to prosecute my position on the question of voting for resources because it is not superior to those on the other side. It is a question of when you vote; either side which has the numbers can pass.

Mr. Speaker, Sir, it is a pity to arrest three Senators and make it impossible for them to come and make their decision, to subvert the sovereign rights of the people of Kenya under Article one of the Constitution that was donated to Sen. Malalah, Sen. (Dr.) Lang'at and Sen. (Dr.) Lelegwe to exercise on the Floor of this House. For any colleague in this House to support that process, it will be the worst day in the Republic of Kenya. I call upon my colleagues to look at themselves and the situation we are going through this morning.

Sen. Orenge told me on the Floor of this House with Sen. Sang and Sen. Cheruiyot who is sitting here, that revolution eats its own children, that this Government would be worse to us than them in the Opposition then. Sen. Orenge now sits in a more

privileged position than me and has the ear of the President and the Government. I want to look at Sen. Orengo in the face and tell him: “It has devoured me; it will come for you!”

Mr. Speaker, Sir, it is the time for Sen. Orengo to remember his words to me. The revolution he talked about in this Chamber devoured me and threw me to the back bench. Our rights have been violated. It is Sen. Orengo’s turn to say “no” to the subversion of those rights now that he sits in a position of power.

I thank you, Mr. Speaker, Sir.

*(Applause)*

**The Speaker** (Hon. Lusaka): Before I allow Sen. Orengo to speak, what is your point of order, Sen. Olekina?

*(Sen. M. Kajwang sat on an undesignated seat)*

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. I have a lot of respect for my brother, Sen. Kajwang’, but I would like to remind him that COVID-19 is real. I would like to request him to look for a seat elsewhere. “*Mikiyaki nanu Corona pi*”

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. Kajwang, kindly observe the COVID-19 guidelines.

What is your point of order, Sen. Nyamunga?

**Sen. Nyamunga:** On a point of order, Mr. Speaker, Sir. I know it is within your discretion, but I request you to give us time to give our comments before you allow the leadership of the House because whatever they say may influence what we have to say.

**The Speaker** (Hon. Lusaka): Is that okay with the leaders?

**Hon. Senators:** Yes!

**The Speaker** (Hon. Lusaka): That is agreeable.

Kindly proceed, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I stand to support this Motion. A few days ago, I tweeted that the Senate of the Republic of Kenya is under siege and we are at crossroads. I challenge the leadership of this House starting with the Senate Majority Leader, Sen. Poghisio and the Senate Minority Leader, Sen. Orengo, to fight for the right of this House.

Mr. Speaker, Sir, as the Speaker of the Senate, you are in a tough position today because this House is on trial. You are the mediator and arbitrator of this House. You have a big role to play. We cannot allow the democracy that this country has fought for to be clawed back. Kenyans fought for a liberal Constitution which contains a Bill of Rights. We cannot turn Kenya into a police state.

I followed what was happening in Sen. (Dr.) Langat’s house last night that led to the disturbance of the whole estate. Many of my constituents live in the estate that Sen. (Dr.) Langat resides in and I can tell you that the whole estate was woken up last night. The police were there in huge numbers as though they were arresting a terrorist. Sen.



(Dr.) Langat is the distinguished Senator for Bomet County. He should not be treated as a criminal.

Sen. Malalah went on Twitter last night to make a distress call when his house was cordoned off by police officers. Sen. (Dr.) Lelegwe, the Senator for Samburu County, was also arrested on his way to the Senate this morning. All these arrests are happening because of the agenda that is before the House today. This is intimidation of the Senate. Article 217 of the Constitution is clear that the Senate of the Republic of Kenya is the only institution that is mandated to discuss sharable revenue among counties. This House is being intimidated to vote a certain way by denying a certain camp numbers but I can tell you that it will not work. The Senate should not succumb to the machination of a state that uses police officers to intimidate Parliament.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Hon. Senators, kindly consult in low tones.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, Parliament is an equal organ of Government to the Executive. We shall not be intimidated. I beg to support the Motion that unless our colleagues are produced and the Inspector General (IG) of Police appears before a Committee of the Whole House, this House should not debate the issue of revenue allocation. We do not want revenue or anything! We want freedom! The three arms of Government function independently. The Executive has its job to do and so does Parliament and the Judiciary. If we continue with this trend, we are going to go back to the Moi era. We used to say that former President Moi was a dictator but I can say that he was not. We have problems here. Police officers should not be used to intimidate Senators. This is not a matter to take sides because it affects all of us. Let us protect the dignity of the Senate.

Mr. Speaker, Sir, I beg to support this Motion to adjourn the Senate.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, I would like to go on record as supporting this Motion for adjournment. This is a sad day in the history of the Senate. It is not by coincidence that we have woken up to a day when three of our colleagues are being arrested on a day that we were meant to have a very important debate. I would like Sen. Ochillo-Ayacko to listen to me because I heard him raise doubts as to whether the three Senators have been arrested.

Yesterday, I received a distress call from Sen. Lelegwe who informed me that officers from the Directorate of Criminal Investigation (DCI) had been sent from Samburu to arrest him. I spoke to the lead DCI officer, a Mr. Ongeru, who I know hails from Keumbu. We agreed that I was going to present Sen. Lelegwe at the DCI headquarters today at noon. I would like my colleagues to listen to me especially Sen. (Dr.) Ochillo-Ayacko who I know may have ambitions to be a Governor, Attorney-General or a Cabinet-Secretary in the future. If you let what is happening to our colleagues today pass, your day will also come.

*(Applause)*

I was not a Member of this House when. My colleague, Sen. Orengo, warned Sen. Murkomen and Sen. Sang about how a revolution eats its own children. I remember in that debate, Sen. Orengo addressed Sen. Mugo as *Nyaugenya* and asked her to give Members of the Majority side education on how revolutions eat their own children. What Sen. Orengo warned has come to pass. Today, it is Sen. Murkomen and his ilk who are on the receiving end. Sen. (Dr.) Ochillo-Ayacko, my brother, whether you will be a governor, an Attorney-General or a Cabinet Secretary, remember that this Government will come after you one day.

*(Applause)*

Sen. (Dr.) Ochillo-Ayako, I urge you to seize this opportunity and be on the right side of history. We were both students at the University of Nairobi. You were a student leader ahead of me. I succeeded you in student leadership, so you know what we stood for as student leaders at the University of Nairobi. I have just spoken to Sen. (Dr.) Lelegwe who has informed me that he has been sandwiched by police officers who have blindfolded him; that he cannot even tell me where he is being taken to. These are very unusual times. I would like us to adjourn this debate. I appeal to all the lawyers in this House to go and search for our colleagues and demand that they be brought to this House.

*(Applause)*

Mr. Speaker, Sir, I would like to state that I do not fear a Government that takes bodies. I only fear God who can take my soul. I am here to state that I will fight for justice and the rule of law. I will fight to defend the Constitution of the Republic of Kenya as the son of Gekara Omogeni and Milka Nyamukami. I am a son of Nyamira. There are great sons of Nyamira who have been ahead of me. The late Hon. George Anyona used to be in this Parliament and fought for justice. I hail from the clan where the late Hon. Obwocha came from. One time, in 1992, he spoke before the President and told him that he only respects the Constitution of the Republic of Kenya.

Whether the Government likes it or not, I have been sent here by the people of Nyamira to defend my duty under Article 217 of the Constitution.

*(Applause)*

If I am alive, my soul, my blood and all my organs will fight to defend the Constitution of Kenya. I am a Senior Counsel in this House. I will go to all courts, whether they take Sen. (Dr.) Lelegwe to Mandera, Samburu or Lodwar. Wherever he will be taken, I will be there as his advocate. We want justice.

Mr. Speaker, Sir, we are talking on a day when Kshs43 billion has been stolen from money meant for the COVID-19, yet police officers are in the houses of Senators to subvert their constitutional right of coming here to do what they were elected to do.

When the police officers went for the Chief Justice of this Republic, I called my colleague, Sen. Orengo, to appear with me at the Criminal Investigation Department (CID) offices on Kiambu Road, not for any other course, but to defend the course of justice and the rule of law. I want to affirm---

**The Speaker** (Hon. Lusaka): Sen. Omogeni, your time is up.

**Sen. Kang'ata:** Mr. Speaker, Sir, I rise to support the Motion on adjournment.

*(Applause)*

Mr. Speaker, Sir, I agree that every parliamentarian is entitled to his freedom of choice. I strongly believe that the Government cannot arrest any Member of Parliament or Senator on the basis of his work as a parliamentarian. Therefore, I urge our colleagues that once we break, we take time to discuss this issue objectively, so that we settle it, once and for all.

I support the adjournment 100 per cent for the following reasons. I have seen a situation where we have gone to the direct opposite of what made us to take certain positions. Those who did not want resources to be taken away from them are now taking the position of wanting resources to be taken away from them. Those who were originally on the opposite side, have now shifted to the other side. We are no longer debating the county revenue sharing formula at all. We are now in the realm of politics.

Mr. Speaker, Sir, the reason I support this adjournment is that it is true that we need to think about our colleagues. I support that. Secondly, I also urge my colleagues to become sober during the interim period and ask ourselves how come we have now changed positions. How come we are no longer looking at issues objectively? We are now looking at things from a political point of view.

Hon. Senators, once we take this break, which I support, let us be objective and remember our first principle.

**The Speaker** (Hon. Lusaka): Order!

Sen. Kihika.

*(Loud consultations)*

No lady has spoken. There should be at least a lady. Order, Senators!

**Sen. Kihika:** Thank you, Mr. Speaker, Sir. I also rise to support this Motion.

*(Applause)*

I believe that there are better ways to achieve whatever end that is intended. When we adjourn, we need you to come back and inform this House the whereabouts of our colleagues. Injustice anywhere is a threat to justice everywhere. Martin Luther King Jnr. said when he sent a letter from the Birmingham Jail:

“We are caught in an inescapable network of mutuality, tied in a single garment of destiny, and whatever affects one directly affects all indirectly.”

Mr. Speaker, Sir, I believe that it is important that our colleagues' whereabouts are established, so that if they have been really forcibly taken away, that is problematic, as we cannot vote under threats or intimidation. It is important that the House adjourn, so that we get that solid information and then be able to proceed from there.

I support the Motion to adjourn.

**The Speaker** (Hon. Lusaka): Hon. Senators, I want to seek your indulgence because I can see that there is so much interest in this matter and we generally seem to be saying more or less the same thing.

I want to call the two Senate leaders to say something, then after that---

*(Loud consultations)*

Order, Members! This is so that we are able to take a vote.

Sen. Linturi, I will give you three minutes each.

**Sen. Linturi:** Mr. Speaker, Sir, I rise to support this Motion. I want to take my time in emphasizing the role and independence of Parliament. When people turned up to vote for us in the last general election, essentially that meant they ceded authority and power to us to exercise it on their behalf. Where we are unable to, then the people can exercise that authority by themselves.

When you look---

*(Sen. Kang'ata stood up in his place)*

**The Speaker** (Hon. Lusaka): Order, Sen. Kang'ata! Honestly, this is not a market place.

**Sen. Linturi:** Mr. Speaker, Sir, when you look at the manner in which our Constitution is arranged, Parliament comes before the national Executive and the Judiciary. My understanding is that what we talk about here are matters that concern our people and affect them directly. Since we have that authority, we must be in a position to speak on behalf of the people.

What Sen. (Dr.) Lelegwe, Sen. Malalah and all of us are supposed to come here to do is to make a decision on behalf of their people. Therefore, when they are arrested on their way to Parliament, it tells Kenyans that, as a people, they have no authority and no voice.

Mr. Speaker, Sir, let the Government that is listening to us today know that there are no situations that are permanent. Let them know that they cannot subvert justice. Let them know that the positions that they hold are supposed to be exercised for the good of the people of this Republic. It is not an opportunity for them to harass the people they are supposed to be defending.

There will come a time when those people that are doing what they are doing today will be in the opposite side. There is a saying in Meru that goes as follows: "When you are digging pits, dig small ones and long ones, because you never know which ones you will fall into." Therefore, even as the police are abusing authority given to them, they should kindly know that they are working against the will of their brothers and sisters.

Parliament must be left to make decisions for this country and on behalf of the people of Kenya. It is painful to have a Government that does not see or does not have the feeling of the people.

**The Speaker** (Hon. Lusaka): Your time is up.

**Sen. M. Kajwang':** Mr. Speaker, Sir, I rise to support this adjournment Motion.

The safety, security and welfare of a Senator is not negotiable. This House has been told that there are three Senators who could be in trouble with the law or who could have been detained for various reasons.

The more we sit here and debate and make long speeches, if indeed it is true that their safety, security and freedom is at stake, the more we stay here to debate, the more their security, freedom, health and safety will be at stake.

This is not a subject that should invite long speeches. This should not be a subject that should form a contest between “Team Kenya” and Kenyans. This is not something that we are supposed to spend the whole day discussing.

I want to beg that we bring this matter to a close and allow you, Mr. Speaker, Sir, as the guarantor of the security, freedom and privileges to go and establish the whereabouts and safety of our Members and come back at 2.30 p.m. You will tell us whether they are safe. If so, we will continue with the business.

We understand that these are unprecedented times. We are on a Special Sitting with a prescribed agenda and we are required to confine ourselves to that agenda. If the safety and welfare of any Senator is threatened, then we can depart from the Standing Orders. We can allow ourselves some little time to allow you, Mr. Speaker, Sir, to guarantee the safety and security of those Members.

Mr. Speaker, Sir, I want to beg that this matter that has kept Kenyans glued to the Senate for the last eight or nine sittings; that today is the day that we must conclude it. Today is the day that we must account for all the Senators and conclude this matter.

Mr. Speaker, Sir, I cannot assume that any Senator who is not here is not here because he has been detained. There are Senators who might be absent by choice. So, by 2.30 p.m., let us confirm that the Senators who are absent are absent by choice or they are absent because they have been detained so that we can agree on how to resolve this matter.

I support.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity.

I would like this House to know that as this side of the divide and as Members of this nation and leaders of this country, we have been steady in our stand. The way we were then, we are to this day. The way we have been resilient then, we are still resilient today. The way we were democrats then, we are still democrats today.

It should be clear to this House that incitement, drama and callousness will never take this country anywhere. We stood for the rights of Kenyans then and we will stand for the same today. We cannot sit here when we hear stories because we do not want to rely on stories.

Mr. Speaker, Sir, kindly adjourn this House so that we can find the facts and come back to this House knowing the truth about all the things that we are hearing. People have spoken and we have seen their true colours. We have seen the way people behave in this House and we are not going to carry it beyond this. We need to go to the real cause of why we should be here; that is the revenue allocation.

Mr. Speaker, Sir, what we are treating ourselves to right now are other issues that we did not need to bring to this House. Kindly adjourn so that we find out facts about our colleagues and let us move forward to important matters to this nation.

**Sen. Ndwiga:** Mr. Speaker, Sir, I want to support this Motion.

In supporting it, when I first heard that Members of this House have been arrested to bar them from coming to perform their duties, it made me very sad.

Those of us who remember the long gone days, the days before the Constitution of Kenya 2010, there were times when we had to ferry Members of Parliament in the boots of our cars. Today you are asking me as a Senator in the Republic of Kenya to come here and debate normally when the integrity of this House is being injured; that is not possible and we must not allow that.

I vote for the Government and everybody knows that. What is happening today is so untidy. It is so dirty and we cannot allow it to go on. We must defend the integrity of this House. All of us have been elected or nominated to come to this House to do specific things which include defending the welfare and the just Government of the people of this Republic.

I want to support the other Members that we adjourn, find out where the other Members are, and let them be brought here to this House so that we see them as we debate. Decisions of debate in this House are made through a vote, I said that last week. Whichever way the vote goes, let us respect that.

Mr. Speaker, Sir, if we have to persuade Members to vote whichever way, let us do so through debate and not through intimidation. Kindly, adjourn this debate if need be so that we do the necessary.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I support the Motion to adjourn this House to establish the whereabouts of our colleagues.

In adjourning this debate, I am making a specific request to the Speaker that he makes an order to the Inspector General of Police to produce Sen. Malalah, Sen. (Dr.) Langat and Sen. (Dr.) Lelegwe in this House today. I make that plea because you are our leader. The three Senators who have been held incommunicado are your Senators. The safety of them and indeed all of us is your business.

Where I come from, when you beat a child, we say that they cry looking at the face of the father. These Senators are looking at you. It cannot be by coincidence that the three Senators who have been held incommunicado belong to a certain persuasion on the matter of division of revenue among the 47 counties. It cannot be a coincidence.

What is happening today, I will say it as it is, is an archaic attempt to rig the vote before it is taken. It has been said many times that revolutions eat their children. The situation that we are facing today is that we have a Government that is not just eating its children, but a Government that has not seen any child that it does not want to eat. This must be stopped.

Mr. Speaker, Sir, you must say “no” and give directions on the Floor of this House; that we conclude debate on the matter of sharing of revenue among the 47 counties; we take the vote. Whichever way it goes; we will live with it.

Mr. Speaker, Sir, the idea that some Senators can be prevented from coming here to express their views is untenable. They have become prisoners of conscience because they have taken a decision on how they want to vote and the people they want to associate with. Therefore, they must be given a chance to express their views. They must enjoy that freedom.

Mr. Speaker, Sir, with those remarks, I support.

**Sen. Madzayo:** Asante, Bw. Spika. Ninaunga mkono Hoja ya kuhairisha shughuli za Bunge mpaka Meseneta watatu walioshikwa na askari usiku wa kuamkia leo waachiliwe huru. Hivi sasa wametiwa ndani na wanalindwa na askari.

Bw. Spika, wewe kisheria una mamlaka ya kumwamuru Mkuu wa Polisi---

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Let us consult in low tones.

**Sen. Madzayo:** Wewe una mamlaka kisheria ya kumuuliza Mkuu wa Polisi, Bw. Mutyambai awachilie huru Masenata hawa watatu na kuwaleta hapa ili tuweze kuwaona kwa macho yetu. Hivi sasa hatuwezi kujua wako wapi. Tuna imani ya kwamba wamezuiliwa katika vituo mbalimbali vya polisi.

**The Senate Majority Leader** (Sen. Poghishio): On a point of order, Mr. Speaker, Sir.

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

**The Senate Majority Leader** (Sen. Poghishio): Mr. Speaker, Sir, it is not my intention to interrupt my good friend, but many Senators are speaking without their masks on. You have always ruled that we speak with our masks on.

**The Speaker** (Hon. Lusaka): Hon. Senator, please put on your mask. Let us not remove our masks when we are talking.

**Sen. Madzayo:** Bw. Spika, sisi kule Pwani tuna historia ya viongozi kupotea. Kama vile Sen. Mutula Kilonzo Jnr. alivyosema Mzee Mutula Kilonzo alikuwa Seneta hapa na akapoteza maisha yake. Hatuwezi kujua aliyapoteza maisha yake kwa njia gani.

Marehemu Ronald Ngala aliyekufa ajali barabarani na hatujui alikufa kwa sababu gani. Pia marehemu Karisa Maitha hatuwezi kujua alikufa kwa sababu gani akiwa ng'ambo. Hivi sasa Seneta watatu wameshikwa na hatuwezi kujua kama watapatikana Ngong' Forest au mahali kwingine. Tunataka wewe umesimama kidete na kumuuliza Bw. Mutyambai awalete hapa ili tuwaone.

Sisi sote tukiwa hapa tuko chini yako na wewe ni ngao yetu. Ni lazima uweze kuteta na sauti yako isikike. Hapa tuna mtaafu Mkuu wa Sheria, Sen. Amos Wako. Alikuwa Mkuu wa Sheria katika Jamhuri ya Kenya kwa kipindi cha miaka 20. Sioni kama tutapata mkuu wa sheria mwingine ambaye atahudumu kwa muda mrefu kama Sen. Wako. Tulikuwa naye katika Seneti iliyopita. Ameniambia ni kweli kabisa Mstaafu Spika Ekwe Ethuro alisimama kidete na akasema kwamba hangeruhusu Seneta wowote kutishwa na askari.

**The Speaker** (Hon. Lusaka): Your time is up!

Hon. Senators, like I did say, there is a lot of interest and we really need to make progress so that we are able to get a way forward. So, I seek your indulgence that I call the Leaders of Majority and Minority then we take a vote.

*(Loud consultations)*

Order, Senators! We have to make progress.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I want to, first, start by saying this on the 1<sup>st</sup> January, 1642, in England, King Charles I, entered Parliament with armed soldiers and demanded from the Speaker that five Members of

Parliament be handed over to him. He was in a company of 80 armed men. The Speaker reacted by saying, "I have neither eyes to see nor a tongue to speak."

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us consult in low tones so that we listen to Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): What I am saying is very critical.

**The Speaker** (Hon. Lusaka): Order, Senators! Whip?

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, what I am saying is really important and you have heard a lot of people citing my name here. Again, today I want to speak from my heart. The last time I spoke from my heart, but I think some of my views were not taken into consideration.

I want to begin by talking about an incident which is about the authority and integrity of Parliament. I was saying that on the 1<sup>st</sup> January, 1642, the King of England, King Charles I, did not just arrest Members of Parliament, but he entered the Floor of Parliament through the door and demanded of the Speaker to surrender five Members of Parliament. That speaks to your position today.

The Speaker said he neither had eyes to see nor a tongue to speak. The men the King demanded were five Members of Parliament. They were all men at that time. The Speaker said, "I do not see them because I do not have eyes to see".

Mr. Speaker, Sir, because of the action of that particular Speaker in England in the year 1642, the question of privilege in Parliament became a tradition. In fact, as the King left Parliament, Members of Parliament were shouting, "privilege, privilege".

I have heard Members of Parliament referring to the question of privilege. This is an important concept. I just want us to think for a moment because here in this House, Sen. Outa, the Senator of Kisumu was arrested in Kisumu. He was charged with an offence which went on for three years on account of a matter that was before this House. Nobody really talked about it. He continued to go to court and we did not stand by him.

Sen. Cherargei, the Senator of Nandi County was arrested in circumstances, which I am convinced and, in fact, I wanted to go to Nandi to appear for him. It was not an arrest because he really had not committed an offence. If there was an offence, he would have been prosecuted and acquitted or convicted.

I want us, please, as a matter of record; let us stand with each other all the time.

*(Applause)*

There are other times that some leaders are arrested, for example, Sen. Ledama who was arrested here and taken to the police station within the precincts of Parliament. In fact, I wonder why there is a police station in the precincts of Parliament whose duty, most of the time, they are dealing with Members of Parliament.

Sen. Mutula Kilonzo Jnr., I think that you do remember how many times we have gone to that station when Members have been called to give statements at that Police Station. I think that police station should be relocated.

*(Applause)*



It should be relocated because the presence of a police station here is inconsistent with the duties and work of Parliament. There was a time when a division of the army was here occupying the corridor going to the National Assembly.

As I speak here, I am one of the people who have been arrested from the precincts of Parliament; not once but twice. Indeed, when I was arrested, Members of Parliament fought very hard to make sure that I was not taken to any police station.

There are Members of Parliament who have hidden within this Parliament. That is when I knew that there are rooms within this Parliament that the police do not even know about. We hid Hon. George Nyanja within the precincts of this Parliament for about a week and the police could not trace him. I am sure you remember that Hon. Martin Shikuku and Hon. Seroney were taken from the belly of this House, they were not arrested outside.

What is good for the goose is good for the gander. Today, it is the three Senators who are in trouble, but tomorrow it might be Sen. Orengo. I did not exclude myself when I said that a revolution eats its own people. I know that the time will come. I also know how to deal with it. I have prepared myself. I know what I need to do when I am taken to a police station or cell. I was once arrested during *Saba Saba*, was taken to Kodiaga Prison and I was snoring within two hours. The prisoners were offended by that and I was taken outside, which was good for me because I got some sunshine.

Mr. Speaker, Sir, I will, however, not agree to an open-ended adjournment because it shows that we are powerless. It is like we have no power or authority. What Hon. Ethuro did was that there was an adjournment until the police officers withdrew from the precincts of Parliament and then we came back.

Mr. Speaker, Sir, I plead with you to use the authority of this House to ask the Cabinet Secretary for Interior and Coordination of National Government, the Principal Secretary, the Inspector-General of Police, the Attorney-General and the Directorate of Criminal Investigations (DCI) to appear before the Committee on National Security, Defence and Foreign Relations in the next one hour.

*(Applause)*

That is now exercising authority, we cannot just be lamenting. The Committee on National Security, Defence and Foreign Relations should report to us at 2.30 p.m. Of course, if there is no report to give because somebody has not turned up, we will know what to do.

In saying that, I would like to plead with Members, that as we deal with this problem, there is the special agenda for this special sitting. Now that this is happening, let us go back into our conscience, as Senators. We have 47 elected and 20 specially elected Senators which makes us 67 Senators exercising sovereign authority of the people of Kenya on resource sharing. Let us talk and reason together in this interlude. We should come up with a solution. A win-win solution means that somebody wins and somebody loses. A give and take means that somebody must give and somebody takes. As you take, you must also give for us to resolve the elephant in the room.

As for the Senators who have been arrested, if we you were in a court of law you would probably say: "I will give a ruling tomorrow." Please do not give a ruling tomorrow, give that ruling now.

**Hon. Senators:** Now!

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, the court would probably give the police 14 days for a mention or for somebody to appear. However, we suggest that the Committee on National Security, Defence and Foreign Relations sits in the next one hour. Sen. Haji is here. They should convene as we walk out. They will report their deliberations to us. Those who are interested in this matter will come in as friends of the Committee to get to the bottom of this matter.

With that request, I support the Motion.

**The Speaker** (Hon. Lusaka): I am told that Sen. Olekina has some special interest that he wants to express. Please keep it brief.

**Sen. Olekina:** Mr. Speaker, Sir, I will do it in three minutes. Steve Biko was arrested on 18<sup>th</sup> August, 1977 when he was leaving a political rally. He said some very powerful words that: "I am going to be me as I am, and you can beat me, jail me or even kill me, but I am not going to be what you want me to be." Those are very powerful words and they today remind me of the young men; Sen. (Dr.) Lelegwe, Sen. Malalah and my neighbour, who is currently in police custody, Sen. (Dr.) Langat. As we sit here, Sen. (Dr.) Langat has already surrendered himself to the police. Those Senators were elected to represent the interests of their people and instead of allowing wisdom or the power to convince, we are intimidated.

It is sad. We stand with our colleagues. I appeal to the residents of Bomet, Samburu and Kakamega counties to stand with their leaders. Today, being one of those days when I become very emotive, I tweeted something that I totally believe in. I said that we are going back to the era of Moi. It was my hope that my colleague, Sen. Moi, would be here for me to tell him that we are young and we should not go back to that era. People who have fought very hard---

**Sen. (Dr.) Mwaura:** On a point of order, Mr. Speaker, Sir.

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

**Sen. (Dr.) Mwaura:** Thank you, Mr. Speaker, Sir. The order of this House is that the Senate Majority Leader is the only one who can respond after the Senate Minority Leader has spoken. You said---

*(Sen. Olekina remained up standing)*

**The Speaker** (Hon. Lusaka): Take your seat, Sen. Olekina.

**Sen. (Dr.) Mwaura:** Mr. Speaker, Sir, you said that there was something of special interest that Sen. Olekina was supposed to canvass on the Floor of the House and that is the reason you allowed him to speak against the procedure. From his prosecution, he is speaking like any other Senator. Is he in order to speak in between the Senate Minority Leader and the Senate Majority Leader yet many of us respected your ruling in as much as we would have also wanted to contribute?

**The Speaker** (Hon. Lusaka): Order, Sen. (Dr.) Mwaura. That is my discretion as the Speaker. I have allowed him to speak.

Please proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I want to put it in context that I have a lot of respect for my father, Sen. Orengo, who has been a reformer. However, he will

turn into an errand boy of a dictator if he stands today to support what this Government is doing. These are very emotive and personal things.

As I end, I will once again quote Steve Biko who said that, “the most potent weapon of the oppressor is the mind of the oppressed.” Let us not sit here as honorable, distinguished Members and see our colleagues suffer. Sen. (Dr.) Lelegwe, Sen. (Dr.) Langat and Sen. Malalah are our brothers. It does not matter whether we agree with them or not. We normally disagree here. If I do not defend them, I will not have a face when I go back to my County.

**Sen. Murkomen:** On a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of information, Sen. Murkomen? You can speak from there.

**Sen. Murkomen:** Mr. Speaker, Sir, I would like to inform Sen. Olekina that Sen. (Dr.) Langat has just been arrested in his House in Embakasi, Nyayo Estate in the presence of his lawyer, Mr. Nelson Havi, who is also the President of the Law Society of Kenya (LSK). He is being brought to Nairobi Area Police Station. Some of us can visit Sen. (Dr.) Langat in the interlude period as we wait for Sen. Malalah who may be brought. Sen. (Dr.) Lelegwe is being taken to Samburu. We only hope that he will not be blindfolded and thrown into a forest.

Mr. Speaker, Sir, I just wanted to inform him.

**The Speaker** (Hon. Lusaka): Sen. Olekina, please conclude.

**Sen. Olekina:** Thank you Sen. Murkomen for informing me.

Mr. Speaker, Sir, I appreciate you for giving me this opportunity. This is the time for Sen. Poghisio and Sen. Orenge to show leadership in this House. I beg them to look back and show leadership, revenue formula aside.

**The Speaker** (Hon. Lusaka): Let us have Sen. Omanga and then the Senate Majority Leader. I am considering gender.

*(Loud consultations)*

**Sen. Omanga:** Mr. Speaker, Sir, please protect me from male Members who are making noise and am not able to---

**The Speaker** (Hon. Lusaka): Hon. Senators, consult in low tones.

**Sen. Omanga:** Mr. Speaker, Sir, I rise to support this Motion by Sen. Cherargei that we adjourn the House.

It is a sad day for Kenya today. This is not the spirit of the 2010 Constitution that Kenyans voted for nor the spirit of my Jubilee Government, which I voted for four times.

As a mother and wife, I do not want to imagine what the wives and children of the three Senators are going through. Those Senators are relatively young. I want to imagine they have young children. You can imagine having over 40 DCI officers brandishing guns outside your house at 2.00 a.m. What kind of trauma and stigma will their children go through?

Donations by Jack Ma were stolen at the Jomo Kenyatta International Airport (JKIA), but no one has been arrested up to date. We have the court ruling on the Ruaraka Land Saga, but we have not seen anyone arrested.

We cannot breathe because the fraudsters are now coming to Parliament. If they can treat Members of Parliament like this, what about the poor Kenyans with no voice? We should shun that.

Mr. Speaker, Sir, today, you have to come out strongly and stand with your Members in this House. We cannot continue with business as usual until the three Senators appear in this House.

I thank you and support.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I join my colleagues in supporting the Motion of Adjournment. However, I urge colleagues to be using their opportunities to canvass what they want as MPs. However, they should use language which is acceptable in Parliament.

This morning, we have overused language which is not parliamentary because we have heard many words. I think you can convince all of us to use civil language.

This is about numbers on the vote. If Members wanted to help the three Senators, we would have made the process shorter, so that we go to the rescue of our fellow colleagues. Wanting to talk until the end of time is also indicative that some of us just want to do politics.

Sometimes we need to be sincere with ourselves. No one wants to see another Senator suffering and we do not support that. We will try everything to make sure that our Members are not arrested anyhow.

As the Majority Leader, I am very concerned about the Members who were arrested. You and I can work on that. However, I think the opportunities given for us to speak would be better used if we canvassed properly and agreed not to insult or call the Government all sorts of names. We know that we will go to work with the same Government. For both sides of the House, this is basically what I would like to leave the House with.

As for the opportunity we now have to adjourn, within the few hours that are ahead of us, we should get the details of what has happened to these three colleagues. We should know what the charges are and where they are being held. I know we have heard about one now. We need to know that it is not related to their work in Parliament. It must be clear that it is not because of this or that reason that would prevent them from coming to this House. That is why we have colleagues who are lawyers, who can go and assist those who can be assisted.

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

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

**Sen. Cheruiyot:** Mr. Speaker Sir, I hate to interrupt the Senate Majority Leader, Sen. Poghisio, because he is a leader in this House. Every time he speaks, it is expected of us to listen to him. We can only reciprocate that respect if he serves it in the same portion to colleague Senators. I find the remarks that he is making an insult to our intelligence, as a Senate.

When Sen. Sen. Cherargei spoke to seek this adjournment, he was clear in his remarks, that until our colleagues are produced and allowed to transact business in this House, the House should adjourn.

*(Applause)*

You can, however, see the cheeky nature of the remarks of the Majority Leader saying that all we need to do is just to find out if the arrests have nothing to do--- Who in this country does not know that the reason these three Senators are not here is because of how they were going to vote?

*(Applause)*

The Senate Majority Leader should, therefore, respect our intelligence and perform his duty dutifully. He should also remember that I was with Sen. (Dr.) Lang'at---

**The Speaker** (Hon. Lusaka): Order! We agreed that your point of order shall be brief.

**Sen. Cheruiyot:** I was with Sen. (Dr.) Lang'at until 5.00 a.m. I do not want to reveal the things that the Senate Majority Leader was telling him - where he should go and what he should do. Out of respect as a brother, I cannot say it.

**Hon. Senators:** Say it!

**Sen. Cheruiyot:** Therefore, I find it wrong for him to try and insinuate that we are just going on an exercise to find out how they are. That is not what we want to do. Until the three Senators are here, no business goes on!

**The Speaker** (Hon. Lusaka): There is another point of order from Sen. (Prof.) Kindiki.

**The Senate Majority Leader** (Sen. (Prof.) Poghisio): Let me respond to the other one.

**The Speaker** (Hon. Lusaka): You will respond to both of them at a go.

**Sen. (Prof.) Kindiki:** Thank you, Mr. Speaker Sir. The Senator for Kericho County has made a very serious allegation against the Senate Majority Leader. Am I in order to request you to direct him to tell us what the Senate Majority Leader said about the three Senators who are now facing threats, arrests and intimidation?

**Sen. Murkomen:** Mr. Speaker, Sir, the---

**The Speaker** (Hon. Lusaka): Let the Majority Leader respond first.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker Sir, this looks like clearly a choreographed thing that Sen. Cheruiyot wants to talk about. He can reveal what he wants to because I did not sleep as I engaged Sen. (Dr.) Lang'at at night because I wanted him to be free. This is because he also looked for me. The best way for him was to be safe.

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

**The Senate Majority Leader** (Sen. Poghisio): Please let me finish my remarks.

**The Speaker** (Hon. Lusaka): Order, Members. Let the Senate Majority Leader finish what he is saying.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker Sir, we have agreed on this matter.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members. We need to make progress and get a way forward. Let him conclude and then I give directions.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, we have all faced arrests; as Members of Parliament with privileges. However, today, I want to conclude this way.

*(Loud consultations)*

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

**Sen. Madzayo:** Asante Bw. Spika, kwa heshima. Ikiwa wewe kama Spika unaweza kutuheshimu na yule Kiongozi wa Waliowengi hawezi kutuheshimu ni lazima aendelee, hii ni ukosefu wa heshima.

Sen. Cheruiyot amesema maneno ya kutisha hapa. Ikiwa ndugu yetu, Sen. (Dr.) Langat ametishwa, ni lazima apewe nafasi aseme vile ambavyo ametishwa ama ameambiwa. Tunangoja uamuzi wako.

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

**Sen. Murkomen:** Mr. Speaker, Sir, it is not only Sen. Cheruiyot who is privy to the conversation of the Senate Majority Leader with Sen. (Dr.) Langat. I am also privy to that conversation and in possession of documented evidence of his conversation with Sen. (Dr.) Langat.

We are not discussing the Senate Majority Leader now. What we are discussing is a situation that involves our three colleagues. I do not think Sen. Cheruiyot was saying that, so that we bring a Motion to discuss the Senate Majority Leader.

What we are interested in is the Senate Majority Leader to demonstrate leadership by demonstrating that he is pained at heart when the Senator for Bomet, Sen. Malalah and Sen. (Dr.) Lelegwe, two of whom come from the Majority side--- Can the Senate Majority Leader absorb, demonstrate and reflect the image of a leader who feels the pain of his colleagues that are going through trouble and not to pussyfoot around this issue?

**The Speaker** (Hon. Lusaka): Okay, keep it short. What is your point of order, Sen. Wamatangi?

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. You have made a decision. In allowing the Senate Majority Leader to respond, you did so, so that what the Motion sought first is to ensure that this House, with all the directions and the proposals that have been given, we get to find out precisely what has happened to Members of this House. That now is the mood of the House. That is what we must do within the next one hour as agreed.

If you allow that other matters be introduced--- All of us are clear in our minds that parliamentary democracy is underpinned in the words of Voltaire; that I may not agree with what you say, but I will defend to death your right to say it.

**The Speaker** (Hon. Lusaka): What is your point of order?

**Sen. Wamatangi:** Mr. Speaker, Sir, that is clear to all of us. If we do not allow the Senate Majority Leader to finish what he is saying then we embark on what we have to do, as you have directed, then all of us will come up with other points of order. We have other issues we can also raise.

**The Speaker** (Hon. Lusaka): That is not a point of order. Conclude.

**Sen. Wamatangi:** Mr. Speaker, Sir, I am in possession of short messages also to other people. We are saying, let us not bring extraneous matters. Let us get the Senate Majority Leader to close and get to the point.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, conclude.

**The Senate Majority Leader** (Sen. Poghio): Mr. Speaker, Sir, thank you. In relation to the so-called information that people are privy to, it is good if all the information that we are all privy to can be put here at the table for everyone to see. This is because everybody has communicated and there is enough information for everyone to share.

This idea of trying to intimidate other speakers and trying to use this kind of intimidation--- What kind of mind games would I be playing with Sen. Cheruiyot? What intelligence am I playing with?

We are all colleagues. The qualification of being here is just to be elected and you come here. I would like to caution my young friend over getting over zealous. I do not think anybody would love the other Senators more than all of us. We are all concerned. We want the same concern to be overall in this House. Let us go with one mind. Let us go to this recess knowing that all we want is that our people and Members are not intimidated.

As I said, there is freedom to speak. However, I also said as I cautioned Members, that we speak a language that convinces others. Do not harass anybody and look like some people have more rights than others.

Therefore, Mr. Speaker, Sir, let us adjourn, take time, come back at 2.30 p.m. and continue with our duty. We have a very important duty to do of passing the Third Basis for Revenue Allocation formula among county governments. Therefore, we need to get this sorted out.

It is important that you have a responsibility as the Speaker; there is much that a Speaker can do within his or her powers. There is also much that I can do within my powers to make sure that we do not get people arrested anyhow. However, let us also agree that we come back and proceed with our business.

With those remarks, Mr. Speaker, Sir, I support.

I thank you.

**The Speaker** (Hon. Lusaka): Order, Members. I have listened to all of you. You have raised very serious concerns about our colleagues who are not here. I want to agree that I am a servant of this House; the whole House.

*(Applause)*

I am a servant of the Senate of the Republic of Kenya. When one of us is mistreated or is in the circumstances that our colleagues find themselves in, we must stand together as a team. Therefore, I am directing the Chairperson of the Committee on National Security, Defence and Foreign Relations to convene immediately after this and get all concerned parties to give us information on the whereabouts of the three Senators, and report back at 2.30 p.m. on the progress of where our colleagues are.

*(Applause)*

Hon. Senators, I now put the question, which is that the debate be now adjourned.

*(Question, that debate be now adjourned,*

*put and agreed to)*

*(Debate on the Motion was adjourned)*

**ADJOURNMENT**

**The Speaker** (Hon. Lusaka): Hon. Senators, the House stands adjourned until today, Monday, 17<sup>th</sup> August, 2020, at 2.30 p.m.

The Senate rose at 11.58 a.m.