

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 30th July, 2014

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

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

COMMUNICATION FROM THE CHAIR

ACTIVITIES TO MARK THE PARLIAMENT WEEK

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, further to the communication on the Parliament Week at the sitting of Wednesday, 16th July, 2014, I have the following communication to make.

As hon. Senators are aware, the Parliament Week commenced with a media breakfast which was successfully held on 17th July, 2014 in Parliament. The media breakfast brought together the leadership of Parliament and various representatives of the media industry and provided a forum for deliberation on matters of concern to Parliament and the media. A series of media appearances by Members of Parliament on various television and radio stations have also commenced and will run throughout this week.

On Monday, 28th July, 2014, a public debate was held at the University of Nairobi (UoN). The theme of the debate was: “*Separation of Powers under the Constitution of Kenya 2010, a Case for the Eleventh Parliament.*” The public debate was attended by the leadership of Parliament including the Speaker of the National Assembly, the Deputy Speaker of the Senate, commissioners of the Parliamentary Service Commission and other hon. Members of Parliament. Distinguished university professors led by the Vice Chancellor of the UoN, Prof. George Magoha, the student fraternity and the general public attended and actively participated in the debate.

Hon. Senators, as part of the activities lined up for the Parliament Week, the much awaited sporting activities pitting the two houses of Parliament against each other are scheduled for tomorrow, Thursday, 31st July, 2014, at the Nyayo Stadium commencing 7.00 a.m. The sporting activities will include a football match between Members of the National Assembly and Senators, a netball match between Members of the National Assembly and Senators and a tug of war between the two houses. In order to facilitate attendance by the hon. Senators and staff of the Senate, all committees are requested to defer any committee meetings scheduled for tomorrow, Thursday, 31st July, 2014 at any time before noon tomorrow.

Hon. Senators are requested to note that the Open Day will be held on 1st August, 2014 at Parliament’s public parking space opposite Sheria House which is presently the

parking space availed to Senators. To facilitate pitching of tents in this area, the visitors parking will be unavailable for parking tomorrow, Thursday, 31st July, 2014 and on Friday, 1st August, 2014. Alternative arrangements have been made for parking at the COMESA Grounds of the KICC. Any inconvenience is highly regretted. Thank you.

Next Order!

PAPER LAID

REPORT ON THE COUNTY ALLOCATION OF REVENUE BILL, 2014.

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Thursday, 17th July, 2014.

The Report on the County Allocation of Revenue Bill, 2014.

(Sen. Billow laid the document on the Table)

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I would like us to, first, deal with the statements that are listed on the Order Paper. There are two statements, one is by Sen. Kennedy Mong'are. Chairperson, Committee on Agriculture, Sen. Murungi, are you ready to give the statement?

PRICING AND MARKETING OF KENYAN TEA

Sen. Murungi: Mr. Deputy Speaker, Sir, I would like to declare an interest in this matter. I am a small-scale tea farmer in Meru County. Therefore, I have an interest in this question. But having said that, I do not have any interest over and above other tea farmers in the country. This statement is of great importance especially because of the media reports that have appeared alleging irregularities and manipulation of tea prices at the Mombasa Tea Auction.

It is true we have received a statement from the Cabinet Secretary for Agriculture. Upon carefully perusing the statement, I am not satisfied with it. It is necessary for me to go back to the Cabinet Secretary, preferably, may be, have a sitting with the Kenya Tea Development Agency (KTDA), so that I can bring to the Senate a full and comprehensive answer on this matter. I do not want to give a half baked response.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o.

Sen. Okong'o: Mr. Deputy Speaker, Sir. This statement that I sought is of national importance. With the background and experience of the Chairperson, I request that we indulge him with the earliest date available. He has raised very pertinent issues. I agree with him as an interested party that we should get sufficient information.

The Deputy Speaker (Sen. Kembi-Gitura): So, you agree with him?

Sen. Okong'o: I agree with him, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Murungi): Sen. Murungi, you said you are going to seek more information from the Ministry and the KTDA? Would it not be easier

to invite the Cabinet Secretary, so that the whole Committee becomes part of the deliberations, so that we come up with a clear answer on this issue? Like Sen. Okong'o has said, this is a matter that interests a lot of Kenyans.

Sen. Murungi: Mr. Deputy Speaker, Sir, I will follow your wise counsel and invite both the Cabinet Secretary, the KTDA and the managers of the Mombasa Tea Auction (MTA), that is the Kenya Tea Traders Association (KTTA), to appear before our Committee so that we can probe them when they are together. That way, we can get a better report which we can bring to the House.

The Deputy Speaker (Sen. Kembi-Gitura): I hope you can do that during the recess so that we get an answer during the first week after we come back.

Sen. Murungi: Most obliged, Mr. Deputy Speaker, Sir.

(Statement deferred)

The Deputy Speaker (Sen. Kembi-Gitura): The next statement was sought by Sen. Munyes from the Chairperson of the Committee on National Security and Foreign Relations. Chairperson, are you ready to give a statement?

Sen. (Prof.) Lesan: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Order. You must make sure that your card is there and that you have done everything that you are supposed to do. I can see your name here asking for the Floor, but your microphone is not coming on.

Sen. (Prof.) Lesan, what is your point of order.

Sen. (Prof.) Lesan: Mr. Deputy Speaker, Sir, two weeks ago, I sought a statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries. I notice that another question on the industry was also asked. I would like to request that my request be consolidated by the Chairperson as he gives the answer to the statement asked by my colleague from the tea growing area like myself. I notice there are some similarities in some areas that I probably need some clarification. I am only requesting that when he answers the question from Sen. Okong'o, parts of my question can be dealt with as well.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, that sounds quite logical, if you have that question in the Committee already.

Sen. Murungi: Mr. Deputy Speaker, Sir, I do not have that statement but I think it is a logical way to proceed. Indeed, I would like when we invite those three players, to invite all Senators from tea growing areas to attend. We can even go to Shimba Hall where we used to sit. Any Member with an issue with them can raise it so that we reduce the traffic of questions coming to the plenary.

The Deputy Speaker (Sen. Kembi-Gitura): For the record, the statement sought by Sen. (Prof.) Lesan shall be incorporated in the answer that will be given on the question sought by Sen. Okong'o. I hope you will be able to give Senators sufficient notice to attend the open committee meeting to discuss the issue with the relevant government officers.

Sen. Murungi: Mr. Deputy Speaker, Sir, in view of the busy recess that we are going to have, I would request that we try to have that meeting in the first week of September.

The Deputy Speaker (Sen. Kembi-Gitura): Very well. So be it. It is better to wait so that we can have a proper and final answer than to have a haphazard answer. It is so ordered. Chairperson, Committee on National Security and Foreign Relations! Sen. Wetangula, I can see you are requesting to have the Floor.

IMPENDING MASSACRE IN TURKANA COUNTY

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the next statement relates to a solicitation by the distinguished Senator for Turkana County, Sen. Munyes. The follow up interventions and clarifications are likely to be narrowed to Turkana County although some may touch on other counties with similar challenges. Sen. Munyes is out of the country. I wish to request that the Chairperson holds the deliverance of the statement until he is back.

Secondly, the urgency of this matter was such that it was meant to be dealt with the same day it was requested or a day after. We are trying to lock the stable doors after the horses have bolted because there was an attack that was being feared would happen a day after. May you indulge Sen. Munyes, so that the statement is given when he is here.

The Deputy Speaker (Sen. Kembi-Gitura): Basically what you are saying, Sen. Wetangula, is that this matter has been overtaken by events. Although we know that statements are the property of the House when they are sought, but the practice has been not to give statements when the person who has sought the statement is not in the House. I was going to ask that the statement be deferred. But from what you have said, it appears that the urgency is lost, the matter has been overtaken by events.

The Senate Minority Leader (Sen. Wetangula): Not quite, Mr. Deputy Speaker, Sir. Maybe one limb of the statement is overtaken by events because the Senator informed the House that there was an impending attack. In fact, an attack did happen. The Speaker had directed the Chairperson of the Committee to communicate with the security agencies to forestall that attack. The attack having happened does not necessarily mean the insecurity threats in Turkana County have gone away.

The Deputy Speaker (Sen. Kembi-Gitura): I am aware of the fact, Sen. Wetangula. I was in the House. The only thing is that from what you have said and seeing that Sen. Munyes is not here, we are going to defer the statement. I see that Sen. (Prof.) Lonyangapuo has sought the Floor.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I want to mention that it is good that we are responsible in the way we present issues in this House and we do not predict things which do not exist because that thing never took place and it should never be raised, unless you know the people who are coming to attack. I want to mention that it is not good to raise things which do not make sense.

The Deputy Speaker (Sen. Kembi-Gitura): I am not quite sure I understand your point of order.

Sen. (Prof.) Lonyangapuo: My point of order, Mr. Deputy Speaker, Sir, is that we need to be responsible in this House.

The Deputy Speaker (Sen. Kembi-Gitura): Who?

Sen. (Prof.) Lonyangapuo: Senators! We should not talk of things which do not exist because if we do, it is like we are perpetuating---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, the only thing is that a statement was sought. The Chairperson of the Committee acted very expeditiously and he had an interim statement issued. I do not know whether you are aware, but a subsequent meeting was held by the Committee on National Security and Foreign Relations. This matter was again deliberated on. I can say that because I am Member of the Committee. I do not know whether it is right to say that somebody sought a statement about an issue that was non-existent. The best thing, in my view, would be to await the statement that will be issued when Sen. Munyes is here. We can then interrogate that statement because it is a matter to do with national security. Therefore, it is an important issue. I request you to be forbearing until the request that has been made is given an answer when Sen. Munyes is here. I can see that the Chairperson of the Committee wants to say something.

Sen. Adan: Mr. Deputy Speaker, Sir, I have the statement. As you clearly said, we had mentioned security agencies last week concerning the same issue. Further to that, the Inspector-General and all Members of Parliament from Turkana County and the Senator himself were in Turkana on Saturday. Clearly, that means that a lot has been done. However, since I was given the statement and the Senator is not around, it is important that we issue the statement when he is here so that we see whether the issues he raised were taken care of or not.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Senator. I encourage you, when you seek a statement and you know – for instance, that Sen. Murungi will invite the relevant players in the tea industry and you have interest, you ensure that you attend the deliberations of the Committee. At that moment, you can also interrogate your matter.

(Sen. Wetangula consulted loudly)

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I was murmuring but since you heard me, I can say it loudly. When such meetings are called, it is the duty of the Clerk's Office to notify all Senators. We never get to know what is going on.

The Deputy Speaker (Sen. Kembi-Gitura): You are pre-empting me. That is an important issue. It is not an indictment but is something that needs to be done. All of you know about our website. I encourage the Clerk's Office to ensure that the Committee meetings are published in the website or in such other form so that Senators know and are at liberty to attend. These are invariably public committee meetings unless otherwise directed.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. It is the practice of this House that when questions are raised or statements are demanded, the draft of the statement is approved by the Speaker before it is put on the Order Paper. Is Sen. (Prof.) Lonyangapuo in order to say that some statements raised on the Floor of this House do not make sense? Is that not bad repute to the Chair?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Machage, that matter is water under the bridge now. We dealt with it and moved on. I have made my remarks on it. We

have agreed that the statement will be read. What Sen. (Prof.) Lonyangapuo said was not exactly correct. The HANSARD will bear me out. Let us move to the next order.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, I rise under Standing Order No.45.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Khalwale. We are still in statements.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I heard you calling out for the next order and that is why I panicked.

The Deputy Speaker (Sen. Kembi-Gitura): Maybe I did. I know that there are people who have statements to seek.

DISQUALIFICATION OF MS. GLADYS CHEPKECHEI
TARUS FROM POLICE RECRUITMENT

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek to a statement from the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations. The statement relates to the disqualification of Ms. Gladys Chepkechei Tarus from the recent recruitment to the National Police Service Commission and other previous recruitments by the Kenya Defence Forces and the Kenya Wildlife Services (KWS).

In the statement, the Chairperson of the Committee should do the following:-

1. Explain the grounds under which Ms. Tarus was dismissed from the Kenya Defence Forces Training camp in 2010 even after being recruited and being given a number and a commendation at Moi Barracks.

2. State why the Kenya Defence Forces failed to take her back during the subsequent recruitment even after promising to do so.

3. Give details of the case that was cited by the KWS during the 2011 recruitment exercise as pending before the Kenya Defence Forces and state the reason why she could not be recruited by the KWS.

4. Table the medical results taken during the recent recruitment of police officers and state why she was deemed medically unfit because medical examinations show otherwise. There were allegations that she was pregnant.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, I have your statement with me. I have approved it. So, please, read it the way it is. Do not add what is not in the statement.

Sen. Kittony: I just wanted to know something more.

The Deputy Speaker (Sen. Kembi-Gitura): No, read the statement the way it is.

Sen. Kittony: Could he explain the measures that the Kenya Police Service Commission is taking to ensure that Ms. Tarus and other persons who may have been unfairly disqualified are considered in the current recruitment of the Kenya Police Service?

Owing to the urgency of this matter, I am in pain, as a mother, as I present this statement. I would like the answer very soon. I would like to lay on the Table a newspaper cutting.

The Deputy Speaker (Sen. Kembi-Gitura): You cannot. You have sought a statement. You cannot do that. You should be patient. When the answer comes, you can then table whatever you have to lay on the Table. You can even go to the Committee as I

have directed and table the evidence that you have so that you come up with a good report.

Sen. Adan: Thank you, Mr. Deputy Speaker, Sir. We will respond to this request the first week once we resume from recess. We cannot have it next week because we will be going on recess either tomorrow or today. We cannot give you an answer tomorrow.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, is that satisfactory to you?

Sen. Kittony: Mr. Deputy Speaker, Sir, I expressed the urgency of this matter. I think we have sufficient time between now and tomorrow afternoon.

The Deputy Speaker (Sen. Kembi-Gitura): Not if you want a good answer and not if you want a good statement. Even if the Chairperson was to walk to the Cabinet Secretary's Office and found him in, getting a comprehensive answer to your question would be very difficult. So, this depends on if you want to get a comprehensive answer or an interim answer.

Sen. Kittony: Mr. Deputy Speaker, Sir, I can assist them.

The Deputy Speaker (Sen. Kembi-Gitura): How?

Sen. Kittony: I have enough information.

The Deputy Speaker (Sen. Kembi-Gitura): Then why are you asking the question? That statement, Sen. Kittony, will be given on the first Thursday after we resume from recess.

Sen. Kittony: Thank you, Mr. Deputy Speaker, Sir. Much obliged.

COMPENSATION FOR IDPS IN NYAMIRA COUNTY

Sen. Okong'o: Thank you, Mr. Deputy Speaker, Sir. I rise under Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Labour and Social Welfare regarding the status of compensation for internally displaced persons in Nyamira County as a result of the 2007/2008 post-election violence.

In the statement, I would like the Chairperson to address the following issues:

(i) Is the Chairperson aware that various persons from Nyamira County including businessmen, farmers and workers were displaced as a result of the violence, and if so, if he can list the IDPs?

(ii) Is the Chairperson also aware that a Parliamentary Select Committee on Internally Displaced Persons appointed in 2012 recommended an *ex-gratia* payment of Kshs10,000 as well as Kshs25,000 for loss of property and homes to all IDPs?

(iii) Could the Chairperson confirm that out of the 6,000 households affected by the violence in Kisii and Nyamira counties, only a few received *ex gratia* payment and none received compensation for loss of properties and homes?

Pursuant to the provisions of Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012, what action has the coordination committee taken to ensure registration of IDPs including those in Nyamira County and ensure that protection and assistance is accorded to them by the funds set up by Section 15 of the said Act?

The Deputy Speaker (Sen. Kembi-Gitura): Where is the Chairperson of the Committee? Senate Majority Leader, it appears as if the Chairperson is not here. Would

you like to tell us when the statement will be issued? I am asking you as the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, given the likelihood of recess, we can give it the first Tuesday upon resumption of business.

The Deputy Speaker (Sen. Kembi-Gitura): Let us make it the first Thursday after we resume from recess.

Sen. Mong'are, is that okay?

Sen. Obure, do you want to intervene on that matter so that the Senate Majority Leader can say something?

Sen. Obure: Mr. Deputy Speaker, Sir, as the Senate Majority Leader undertakes to provide an answer, I would like, through you, to inform you that we, in Kisii County share similar concerns. Could he also address the same concerns in respect to Kisii County?

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to ride on Sen. Mong'are?

Sen. Obure: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): That, to me sounds reasonable. Senate Majority Leader, if the issues are the same, you should have a broad-spectrum answer on this so that you satisfy anybody who wishes to raise an issue on IDPs and their compensation.

Sen. Abdirahman: Mr. Deputy Speaker, Sir, you made a ruling before I made my comments. I have a problem with the way our chairpersons from various committees are setting bad precedence saying that we are going on recess. Many at times, we are accused of laxity in this House. I doubt whether we need to accept mere answers that we will deal with the matters after the recess. This may be in bad light.

The Deputy Speaker (Sen. Kembi-Gitura): Why would it be in bad light and yet we have a calendar that has been approved by the House?

Sen. Abdirahman: Mr. Deputy Speaker, Sir, the urgency of the questions differs from one to the other issue depending on the merit. The one on security was pushed forward. If we continue to push it forward because people want to buy time, that will not be a good thing for this House. Those are my thoughts but I stand to be corrected.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator, but let us look at it this way. Sen. Fatuma Dullo, the Vice Chairperson of that Committee, has said she has a statement ready. So, the statement by Sen. Munyes could have been answered today if he was present; but he is not present. So, when you blame the Chairpersons of Committees, we need to look at it from both sides.

The other thing I would like to say is that unlike in the past, we have a calendar; we know when we are going on recess – unless things change – and when we are coming back. So, I think it will be futile to say that it be answered next week or the week after when you know clearly we shall not be here unless the Speaker decides to call the House to receive certain specific information. So, I think it is also good to be fair to the House so that we stand by what is right.

Sen. Kanainza, did you have something to say?

OF POLICE OFFICERS

Sen. Kanainza: Thank you, Mr. Deputy Speaker, Sir. I had sought a Statement from the Standing Committee on National Security and Foreign Relations concerning the irregularities in the recruitment of police officers, and I have just seen the Chairperson walking out.

(Sen. Adan entered the Chamber)

Oh, you are back!

The Deputy Speaker (Sen. Kembi-Gitura): When was your statement supposed to be given, Sen. Kanainza?

Sen. Kanainza: Today, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Chairperson, do you have the answer?

Sen. Adan: Yes, Mr. Deputy Speaker, Sir. But I think Sen. Kanainza made a mistake because I just walked out and came back. I knew that I was supposed to give this statement; so, it is important to countercheck before you rush into making statements.

Mr. Deputy Speaker, Sir, this Statement was given to me when I was just coming to the House. I have not interrogated it, neither have I given a copy to Sen. Kanainza just to look at it in order to raise issue with where she is not satisfied. But nevertheless, I will go through it, we can discuss it and I will answer questions where I will be able to answer them.

I think the ruling made by you, Mr. Deputy Speaker, Sir, was that the statement should be issued today. But I am hearing some murmurs from Senators that we can have the statement given tomorrow. So, maybe you can give us directions on this issue.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kanainza?

Sen. Kanainza: Mr. Deputy Speaker, Sir, you gave a ruling last week on Wednesday that the Chairperson of the Committee was supposed to give a response to it today. Before I came to the Chambers, I talked to her and she had no copy of the report. That means that when she walked out, she had gone to pick it. I needed the copy in advance and because this is a matter that is affecting the young people of this nation – and I strongly represent them in the Senate – looking at this process, we really need to know the steps that the Government has taken---

The Deputy Speaker (Sen. Kembi-Gitura): Do you have a copy of the statement?

Sen. Kanainza: Mr. Deputy Speaker, Sir, I have a copy of the statement, but the response is what I do not have.

The Deputy Speaker (Sen. Kembi-Gitura): No, do you have a copy of the statement you sought?

Sen. Kanainza: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): Just a minute, Senator. But do you have the answer?

Sen. Kanainza: I do not have the answer---

The Deputy Speaker (Sen. Kembi-Gitura): But I thought the Chairperson said that she got the statement as she was walking in and she confessed that she had not given

you a copy? She also said that she had not interrogated the statement and that she would like to interrogate it so that she gives you an answer that she can take responsibility for. Are you willing to take the answer tomorrow or are you okay to get a statement without having an answer availed to you so that you interrogate the statement? Are you okay to interrogate the statement without the benefit of having read it?

Sen. Kanainza: Mr. Deputy Speaker, Sir, that shows the incompetence of this Committee!

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Yes, Sen. Okong'o Omogeni?

Sen. Okong'o Mong'are; I apologize to you. Please, do not raise issue now.

Sen. Okong'o: Mr. Deputy Speaker, Sir, is the Vice Chairperson of the Committee on National Security and Foreign Relations in order to tell us that she was just given a statement to walk with it to the Senate if they are really serious? Is she in order to walk in with a paper that she does not understand and purport to say that she is speaking on behalf of that Committee?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I would like to request the Vice Chairperson to probably consider directing that we be given copies of that statement in advance because there were statistics there. We would like to see whether those statistics tie with what is on the ground so that we intelligently interrogate the Vice Chairperson.

The Deputy Speaker (Sen. Kembi-Gitura): So, you and I are really saying the same thing.

Sen. (Dr.) Khalwale: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): That is exactly what the Chairperson has said.

Sen. Kanainza, the Vice Chairperson has sought to give you the statement tomorrow, number one, so that she can interrogate it and be satisfied, and two, so that she can give you a copy so that you can read it and interrogate it before you come tomorrow to get the statement. So, that is the position.

Yes, Sen. Obure?

Sen. Obure: Thank you, Mr. Deputy Speaker, Sir. Last week when the matter was raised, the Chair, indeed, did direct that the statement in response be brought to this Committee today. I would like to know why the statement was handed over to the Vice Chairperson as she walked into the Senate, when this should have been done much earlier?

The Deputy Speaker (Sen. Kembi-Gitura): Vice Chairperson?

Sen. Adan: Thank you, Mr. Deputy Speaker, Sir. With all due respect to my colleagues and more so to Sen. Kanainza, I think as the Vice Chairperson of this Committee, I tried my best to have this statement given today. This statement was requested on Thursday and we had only Friday. Again, yesterday was a public holiday and according to me, I have tried my best. I called the Principal Secretary (PS) and even the Cabinet Secretary (CS) severally. Honestly, I do not manufacture or, rather, do the statement myself. But I have tried to have the statement with me. Even when I was in the

lounge with her, I told her that I do not have it and I immediately called the PS so that the statement is brought to me. The allegation she has made, that I walked out and brought in the statement, is very wrong. She needs to withdraw that allegation because when I came into the House, I had the statement. I just walked out to see somebody. So, clearly, I have the statement with me. It might be satisfactory or not.

So, with all due respect, I request my colleagues to be patient and also to understand the position we are in, as Chairpersons of Committees, because we are trying to get these statements from the relevant departments.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kanainza, did the Chairperson tell you in the lounge that she did not have an answer?

Sen. Kanainza: Mr. Deputy Speaker, Sir, she told me that she does not have the answer.

The Deputy Speaker (Sen. Kembi-Gitura): Then why did you call her incompetent when you had that knowledge?

Sen. Kanainza: It is because she did not have the answer. She told me that she had just called the PS in the morning.

The Deputy Speaker (Sen. Kembi-Gitura): I would like you to withdraw the statement and apologize.

Sen. Kanainza: Mr. Deputy Speaker, Sir, I withdraw and apologize.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. The importance of the statement sought by Sen. Kanainza on this issue cannot be underscored. It is so important and it is likely to be diluted with time. We know that the Committee on National Security and Foreign Relations, more often than not, is busy elsewhere and does not appear to answer some questions in the House. Would I, therefore, be in order to request that you order that the Chairperson of the Committee must be in the House tomorrow to give this reply? I am afraid that if the Chairperson of the Committee is not in the House, then one month from now will make the statement to be of not much importance.

The Deputy Speaker (Sen. Kembi-Gitura): But, Sen. (Dr.) Machage, you are anticipating, because we must start from the beginning. The Vice Chairperson herself requested that she be allowed to answer the question tomorrow afternoon. So, since I believe she is an honorable Member like you and all of us are, I am sure she or somebody else in the Committee will be here tomorrow afternoon to answer the question.

Sen. Obure, are you still seeking the Floor?

Sen. Obure: Mr. Deputy Speaker, Sir, I think our Committee on National Security and Foreign Relations needs help because I know they are trying very hard. In fact, you heard the Vice Chairperson say that she has called the PS severally. I do not know whether we have to be that hopeless. I was going to suggest that if the Senate Majority Leader – *kiongozi wa watu wengi* – and the Chairperson could come to the assistance of our Committee so that we can get prompt responses to issues of concern pertaining to matters of security and so on, and so forth.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. I think that will bring us to the close of that matter. Senate Majority Leader, you have heard that, at times, your

intervention could be sought to expedite some of these issues. That is the request by Sen. Obure. I am sure you are going to look at it.

So, Vice Chairperson of the Committee, you will give this statement tomorrow at 2.30 p.m. Please, ensure that Sen. Kanainza has a copy of the statement in good time.

Sen. Adan: I am much obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

Sen. (Dr.) Khalwale): All of us!

The Deputy Speaker (Sen. Kembi-Gitura): Not all of you; Sen. Kanainza is the one who sought the statement. Once she gets the copy she can distribute it. I am certain that you can also get a copy from the Clerk's Office if you wish, but I am not going to order that it is distributed to Senators but you can get a copy if you wish.

(A Senator spoke off record)

I remember that and I allowed you to ride on it. You are going to get an answer tomorrow.

Sen. Kanainza, Are you still seeking the Floor? I hope it is on something else now.

Sen. Kanainza: Mr. Deputy Speaker, Sir, it is on the same issue.

The Deputy Speaker (Sen. Kembi-Gitura): What is it, now?

Sen. Kanainza: Mr. Deputy Speaker, Sir, I just want it to be so clear that the Vice Chairperson of this Committee must give the answer to this statement because all Kenyans are watching.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Kanainza! Order! How many times do we have to go through the same thing? How much can you overemphasize the issue? I said the statement will be issued tomorrow after 2.30 p.m.; what else can I do?

Sen. Kanainza: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): No, no, no; not on the same issue, Sen. Kanainza! What kind of order do you want me to give?

Sen. Kanainza: Mr. Deputy Speaker, Sir, I just wanted you to be clear that tomorrow, the Vice Chairperson shall answer the statement---

The Deputy Speaker (Sen. Kembi-Gitura): But I said so already!

Sen. Kanainza: She should hear it from you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kanainza, you need to have some faith, okay? The question you have asked is of importance to everybody and I am sure that when the statement is given tomorrow, there will be interest. So, you need to have some faith.

Yes, Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Did you see that Sen. Daisy Kanainza, while asking that question over and over again, she was almost shedding tears?

(Laughter)

What is it that is really paining her like that?

The Deputy Speaker (Sen. Kembi-Gitura): I cannot see that far!

(Laughter)

(Statement deferred)

Are there any other statements to be sought or to be given? Is that the end of statements?

Sen. (Dr.) Khalwale, is it concerning something else?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): On your point of order or on something else? That is why I am asking you to wait.

(Some Senators spoke off record)

I know you have requested for a point of order, and I told you to wait until we finished the statements. That is why I am asking you to wait.

COMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM NYANDARUA
COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a short communication to make before we move to the next point of order by Sen. (Dr.) Khalwale.

Hon. Senators, I wish to acknowledge the presence of a delegation visiting us today. Allow me to introduce to you a delegation of Members of the County Assembly of Nyandarua who are seated at the Speaker's Gallery. As I proceed to introduce the Members, I request that when an hon. Member is called, he or she should stand up and be acknowledged in the normal tradition of Parliament.

They are:-

Hon. Edinald Wambugu

Hon. Micheal Kirumba

Hon. Dorcas Kihara; and,

Hon. Rahab Wanjihia

They are accompanied by:-

Ms. Purity Kamouci, Clerk of the County Assembly,

Mr. Stephen Muriethi, Deputy Clerk

Miss Elizabeth Muthui, Table Clerk

Mr. John Kahinya, Clerk Assistant

Mr. Peter Karanu, Clerk Assistant; and,

Mr. Stanley Kimemia, Clerk Assistant

On behalf of the Senate and on my own behalf, I extend a warm welcome to you and wish you a happy and fruitful visit that will translate into better services to the people of Nyandarua County and the country at large.

Thank you.

RESCHEDULING OF TRAVEL ARRANGEMENTS FOR WORKSHOP

Hon. Senators, I have another short communication to make. As you recall, the Chair gave a communication early this month inviting all Senators to a workshop between Senators and Governors. The indication then was that the travel to the venue would be today, 30th July, 2014. However, there were subsequent developments that forced the workshop to be rescheduled to tomorrow so that Senators travel at the rise of the House on Thursday, 31st July, 2014. I am reliably informed that Senators have been appraised on the minor changes. This is, therefore, to remind you of the workshop and to once again appeal to you to confirm participation if you have not done so already.

Thank you.

POINTS OF ORDER

RESERVATION OF PARKING SPACE FOR PARLIAMENT WEEK

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. Sorry to raise this point of order, but before we proceed, I need something clarified here. We just received a memo to all Senators to the effect that on 31st July and 1st August, our parking space here will be used by some visitors to Parliament and that we should be parking at the COMESA grounds. Should it not be the other way round, that the guests should park at the COMESA grounds and Senators use their normal parking?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Anyang'-Nyong'o, it is just that you came late to the Chamber because I had issued a communication from the Chair on that point. It is not the visitors who will park at your car park. We have the Parliament Week and the exhibition shall be at the car park. So, between now and tomorrow, they will be pitching tents there and I gave it in my communication and that is the reason. We are not trying to dispossess you of your parking lots or giving other people priority. It is just a continuation of the Parliament Week.

Sen. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, then the memo should be withdrawn because it is poor communication.

The Deputy Speaker (Sen. Kembi-Gitura): I have not seen it, but I gave a communication on the Floor of the House.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, if you saw it, you will definitely understand what I am talking about.

The Deputy Speaker (Sen. Kembi-Gitura): What does it say, Sen. Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, could I just read it so that we understand it? It reads:-

“The Senate parking space formerly public parking is scheduled to be used for the Parliament Week Open Day on Friday 1st August. The Set up will start on the morning of Thursday 31st. The parking will therefore be unavailable for parking by Senators on Thursday 31st,”

Tomorrow we are in Session.

The Deputy Speaker (Sen. Kembi-Gitura): I want to know where we have said that we are giving the parking to visitors.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Deputy Speaker Sir, it states:-

“Alternative parking arrangements have been made for parking at the COMESA Grounds at the Kenyatta International Conference Centre”.

The sense I got, I did not see any mention of tents and so on; I saw the mention of being unavailable. So, my interpretation of unavailability is because there were visitors.

(Laughter)

It is not very clear!

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Anyang’-Nyong’o, I understand where you are coming from, but as I said, it is only because you were not here when I gave the communication from the Chair. It is the Parliament Week and that space will be used to pitch tents for exhibition on Friday.

I think that clears the matter.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Now that we have that communication and that Friday is a very important day for Parliament to engage the members of public through an exhibition, and considering that the Senate is having its first year of existence, is it in order for us to proceed for the meeting in Mombasa and how does one---

The Deputy Speaker (Sen. Kembi-Gitura): Order! You heard me; I gave two Statements and I have informed you that the Parliament Week is in session. That one you are aware of. I have given you another short communication telling you about the meeting with Governors in Mombasa and I have asked you to indicate your participation. So, both of them are running concurrently. If you wish to remain in Nairobi for the exhibition, you are welcome to do so. If you wish to go to Mombasa for the meeting, again, you are welcome to do so. It is a matter of choice, really, because what can we do? Both are important events.

PERMISSION TO RAISE MATTER OF NATIONAL IMPORTANCE

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I want to thank you for allowing me to raise this matter of great national importance. I am rising under Standing Order No.45 (2) (b), and you are not a Committee Chair, I just want to take that as an entry point to request that, ---

The Deputy Speaker (Sen. Kembi-Gitura): You are rising under what Standing Order?

Sen. (Dr.) Khalwale: I am rising under Standing Order No.45 (2) (b) and because you are not a Committee Chair, I am just rising them as an entry point so that the Chair can give some directives on this national matter.

The House will recall that on 7th May, 2013 and on 14th of the same month and on the 22nd of the same month---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, if you are proceeding under Standing Order No.45 (2) (b), it states:-

“A Senator may request for Statement from the Committee Chairperson relating to matters that are the mandate of the Committee and the Speaker---“

I want to refer you to Standing Order No.45 (3), if you could read it please.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, it reads:-

“A Senator who wishes to seek leave to raise a matter under these paragraphs shall before 1.00 p.m., on the day the Statement is sought hand to the Speaker a written notification of the matter”.

The Deputy Speaker (Sen. Kembi-Gitura): Have you handed in a written request?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, if I can explain--.

The Deputy Speaker (Sen. Kembi-Gitura): No, no, no. It is actually easy because you either have given a written request or you have not. If you have not, then you must give me a window through which to allow you rise under Standing Order No.45 (2) (b).

Sen. (Dr.) Khalwale: Which is exactly why I am requesting that you---

The Deputy Speaker (Sen. Kembi-Gitura): Shall we do it right? Have you handed in a written request?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would like you to listen to me for a second.

The Deputy Speaker (Sen. Kembi-Gitura): I will listen to you Sen. (Dr.) Khalwale. You have the Floor but I want you to answer my question first; have you handed into the Speaker's office a written request?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I have not written because I am not requesting for a Statement from a Committee Chair.

The Deputy Speaker (Sen. Kembi-Gitura): Then you cannot be proceeding under 45 (2) (b). If you are proceeding under 45 (2) (b), then you must satisfy 45 (3). So, you must now tell me how you are proceeding.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, it has been a challenge to me because I tried to approach you under Standing Order No.82 or 45 (2) (b) and---

The Deputy Speaker (Sen. Kembi-Gitura): How did you approach me?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I meant, I have tried to stand on Standing Order No.45 (2) or 82.

The Deputy Speaker (Sen. Kembi-Gitura): You see, this is a House of rules and we must respect them. You have stood in your place and said that you are proceeding under Standing Order No.45 (2) (b) and because I do not want us to engage unnecessarily, I am asking you whether you have satisfied Standing Order No.45 (3).

Sen. (Dr.) Khalwale: I have not.

The Deputy Speaker (Sen. Kembi-Gitura): Then the matter lapses.

Sen. (Dr.) Khalwale: I have a reason, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): No, there cannot be a reason. That is why I said that unless now you are giving me a window, because Standing Order No.45 (3) says clearly that:-

“Before 1.00 p.m., on the day on which the Statement is proposed to be made, hand to the Speaker a written notification of the matter, but the Speaker may refuse to allow the request unless satisfied that the matter may be properly discussed in the Senate”.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, with all due respect, I have considered approaching you under Standing Order No.82 or 45 (2) (b) or Standing Order No.1. I thought having discussed with you this matter in advance, and since you are not a Chair of a Committee, I could only refer to that because the Standing Orders do not provide how I would deal with the matter I want to deal with by requesting that the Chair gives a direction.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, on an issue like this one, you indicated to me that you wanted to raise an issue and that it would come by way of a point of order. You did not tell me under what Standing Order you were going to raise it. Am I right?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): So, if you want to proceed – I told you I would give you the Floor – on a point of order, like I have allowed points of order for the last one hour, I will allow you, but that must be within the law that guides us and that is the Standing Orders. So, you are either proceeding under 45 (2) (b), Standing Order No.82 or Standing Order No.1. Then you must remember that Standing Order No.1 only applies where there is no specific provision. So, really it is up to you, but you have the Floor.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I want to thank you for your understanding. This is an important national issue of---

The Deputy Speaker (Sen. Kembi-Gitura): Which one?

Sen. (Dr.) Khalwale: Of the referendum.

Mr. Deputy Speaker, Sir, it is now in the public domain---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, let me make myself clear. I want to be very clear. I will not allow you to go to the substance of your Point of Order or to say anything that would be substantive unless and until you satisfy me that procedurally you are correct. So, before you go into any substance, convince me first that you are procedurally correct. In that case, I see the most practical avenue open to me is Standing Order No.82. But that is procedural. That just says that every Senator deciding to speak shall address the request to the Speaker, like you have requested me. But the fact that you request to speak does not mean that I will allow you to speak. Let us put it into context.

If, for instance, you rise and tell me that you want to seek a Statement from the Chairperson of the Committee on Education, I would like to see the approved Statement by the Speaker. Although you have sought to speak, it is not automatic that you will be allowed to speak. This is because if you are seeking something that is not within my mandate to allow you to speak on, I will not allow you to speak. So, Standing Order 82 cannot apply, because it is procedural. It means that you cannot just rise and speak. The Speaker has to allow you to speak. That is what it says. The fact that you have sought the Floor does not mean that I will allow you to speak. It is the discretion of the Speaker to allow you to speak or not, in other words, to see you or not. Therefore, Standing Order 82 does not apply.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, in view of the discussion that I held with you, I request that since Standing Orders 82 and 45 (2) (b) do not permit, you use Standing Order No.1 to allow me to proceed.

The Deputy Speaker (Sen. Kembi-Gitura): Standing Order No.1 (1) says, and I will read it for your benefit and everybody else:-

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

Now, would you say that what you want is not provided for? All you needed to do, under Standing Order 45 (2) (3), was to hand in a request and it would not be in my place to refuse you to speak or say what you want to say. What I will not do is to allow you to do something which is against our own procedure. But Standing Order No.1 only gives you a window, where there is no specific provision. Standing Order No.1 (2) says:-

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

Now, what you want to do is provided for under Standing Order 45 (3). Why should I use Standing Order No.1?

Sen. Murkomen, what is your point of order?

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. With all due respect to Sen. Khalwale, today we are supposed to preside over a very important legislation that will make our counties to start using their money and operate; the County Allocation of Revenue Bill. Considering that the Senator for Kakamega is still fishing for the relevant Standing Order, which negotiation would have happened in your office, is it in order for me to request that we move to that very important legislation and then the consultation between you and the Senator for Kakamega can go on, as you educate him about the Standing Orders?

The Deputy Speaker (Sen. Kembi-Gitura): I would like you to withdraw that statement. We are not having consultation. I am reading the law to him. Although this is a House of rules, it is also a House of fairness. So, Sen. Khalwale will be heard and then we shall proceed with the Order Paper. I want him also to be satisfied with what I am telling him; that it is correct.

Sen. Khalwale, I have already indicated to you now that it is true that you spoke to me about this issue on phone but that cannot be construed to satisfy Standing Order 45 (3). So, I cannot allow you to raise this position. I am afraid and sorry about it.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, now that you have made that directive, I cannot challenge you. But I would like you to understand me and kindly, please, allow me to request Sen. Murkomen to have a bit of respect for his colleagues. When he says “Sen. Khalwale is still fishing for the Standing Order,” I want him to kindly respect me because I know the Standing Orders.

I did not give you that written request because I assumed that you are not a Chair of a Committee and, therefore, I could not write to you as provided for in Standing Order 45 (3). The second reason I then attempted to take you to Standing Order No.1 was because of Standing Order No.1 (2), which points not only to the Constitution, but also usages and traditions of this Parliament. You and I have been in this House and know that

whenever we want to ask for a direction from the Chair, our tradition has been that that you request the Chair to give guidance. This tradition that we have used for many years is the reason I approached you under Standing Order No.1 (2). So, I would like you to think about it, because this is a small matter of procedure.

The Deputy Speaker (Sen. Kembi-Gitura): No. I will not think about it anymore. My mind is very clear, because if you want to proceed under Standing Order 45 (2) (b) it says:-

“A Senator may request for a statement from a Committee chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the statement to be made or direct that the statement be issued on the same day.”

So, let me assume that you want to seek a Statement from the Chairperson of the Committee on Devolved Government. You will still have to do it through the Speaker. You cannot do it directly to the Chairperson. That is why you have to proceed under Standing Order No. 45 (3). So, either way I regret that you are caught up because how are you going to deal with it? From whom are you seeking a Statement? It is your right to do so and today we have had so many Statements issued or deferred. But if you want to do so, then you must comply with Standing Order 45 (3). I think that it is as easy as that, with a lot of respect and regrets for you, because it is not in my place to refuse any Senator from raising an issue that they would like to raise. But you also know that I am not going to break our own law to allow a Statement to be sought.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would also like you to convince me on Standing Order No.1 (2) that speaks to the traditions and---

The Deputy Speaker (Sen. Kembi-Gitura): Let us not engage.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, you know that this is being done. It has even been done in this Senate. In fact, on 7th May, when the Speaker (Hon. Ethuro) spoke on the issue of Division of Revenue Bill, I had approached him in exactly the same way that I have done to you.

The Deputy Speaker (Sen. Kembi-Gitura): I am sitting here today and my reading of the law is exactly what I have said.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I will hand in a written request for tomorrow.

The Deputy Speaker (Sen. Kembi-Gitura): As long as you follow the law, you have the Floor, but as long as you do not, you will not have the Floor. So, if you follow Standing Order 45 (3), it is your right. It will be your right tomorrow if you follow the procedure.

Sen. Machage, do you still want the Floor?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. My concern was partially executed by Sen. Murkomen, although he used words that might not have been very good to Sen. Khalwale. My concern was the prolonged exchange between Sen. Khalwale and the Chair, despite several rulings and repeated rulings that were made by the Chair. I would like to bring to your notice Standing Order No. 110 (j). I think it should not be a precedent that once you have made several rulings, a Member should persist. Really, it is not proper.

The Deputy Speaker (Sen. Kembi-Gitura): Standing Order No. 110 (j) is about failure to disclose pecuniary interest. But I allowed Sen. Khalwale to engage because I

wanted him to be satisfied about what I was saying. I am happy that he is satisfied with what I have said.

Next Order!

BILL

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.9 OF 2014)

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, with your indulgence, I had requested the Chair of the Committee on Finance, Commerce and Budget to move the Bill, if that is in order.

The Deputy Speaker (Sen. Kembi-Gitura): It is.

Sen. Billow Kerrow, proceed.

Sen. Billow: Mr. Deputy Speaker, Sir, the Report of the Committee on this Bill was tabled earlier and Members can get copies from the Clerks.

Mr. Speaker, Sir, I beg to move that the County Allocation of Revenue Bill (Senate Bill No.9 of 2014) be now read a Second Time.

The County Allocation of Revenue Bill is a very important Bill that allocates the national revenue horizontally amongst the counties. The Bill was published in April, 2014 and is being read the Second Time pursuant to the Division of Revenue Bill which both Houses have concluded and is with the President for assent and hopefully, it will be signed today.

Mr. Deputy Speaker, Sir, I want to very briefly take the Members through the published Bill. The essence of this Bill, as I said, is to allocate the equitable share of revenue and the conditional allocations amongst the counties. Pursuant to the provisions of the law, we obtained representations from the public---

Sen. Murungi: On a point of order, Mr. Deputy Speaker, Sir. The Report on this Bill has just been tabled a few minutes ago and the Senators do not have the copies. Is it possible for the Clerk to distribute the copies to us, so that we can follow the proceedings?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow Kerrow, what do you say about that?

Sen. Billow: Mr. Deputy Speaker, Sir, the Report of the Committee will be helpful to the Members who want to look at what the Committee has deliberated. But it does not really stop the Members from giving their input on the Bill, based on the ruling that the Speaker gave last week. Unfortunately the time is short, but I think the Clerks can make copies for the Members as they contribute.

Mr. Deputy Speaker, Sir, the Bill provides for the equitable allocation of the county governments' share of revenue. This is the second time that we are discussing the County Allocation of Revenue Bill. We have the experience of one year since the county governments came into being. We know what has happened in the last one year in terms of the way resources have been allocated---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Kiraitu, you will get photocopies as we proceed, because of the urgency of the matter. I want to seek your indulgence.

Continue, Senator.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. In the past one year, we have had an opportunity to see how the county governments operate and funds have been transferred literally on monthly basis from the Treasury to the county governments. We have also seen the reports on how these funds are being utilized. So, I think that we have a pretty good experience of what is happening now in the counties. So, this Bill, in essence, really looks at what needs to go out to individual counties.

Mr. Deputy Speaker, Sir, the one thing that I would like to mention from the outset is that the criteria or formula that is used for allocation of revenue is the one that was developed by the Commission on Revenue Allocation before the Senate came into being. The formula looks at a number of criteria including population, poverty, area and so forth. That formula which has been developed by the Commission for Revenue Allocation (CRA) is coming up for review this year. I want to remind hon. Senators that in the next financial year, we are required to have a new formula. The CRA has already started the process of collecting views with regard to change of the formula for distribution of revenue among counties.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]

Mr. Temporary Speaker, Sir, this Bill proposes a total shareable revenue of Kshs226 billion. There will be an amendment that the Committee proposes of Kshs660 million, so that the total comes to Kshs226.66 billion. If we look at the provisions of the Constitution based on the last audited accounts of 2009/2010 Financial Year, this amount represents 43 per cent of the Kshs529.3 billion of 2009/2010 Financial Year. Under Article 203, the Constitution requires the threshold of 15 per cent which has been met in the Division of Revenue Bill. Therefore, the equitable share that we propose, subject to the amendments that I have mentioned, will be Kshs226.66 billion.

Mr. Temporary Speaker, Sir, we have conditional allocation which is provided in the Second Schedule. There is a conditional allocation of Kshs13,898,673. This conditional allocation has been allocated to county governments from loans and grants received from development partners. A sum of Kshs733.6 million will be disbursed directly to the county governments to supplement financing for county health facilities. The balance of Kshs13.2 billion will not be transferred to county governments because of the existing financial agreement with development partners. However, the amount will be budgeted for and managed by the national Government. That is the way it has been structured. So, a sum of Kshs13.2 billion out of that Kshs13.8 billion is actually money that will be managed and disbursed by the national Government. This is a conditional allocation because it will go to the county governments' utilization.

Mr. Temporary Speaker, Sir, our Committee will be proposing an additional conditional allocation of Kshs1.87 billion for Level 5 Hospitals. Therefore, conditional allocation will increase by this amount. The Committee received presentations from the

CRA, Treasury, Council of Governors and so on. We also received presentations from Busia. This was due to the variance in equitable shareable amount due to Bungoma and Busia counties. This is because the initial population figures included in the population data for Teso North and Teso South as part of Bungoma had to be adjusted based on advice from the Kenya Bureau of Statistics. That adjustment has been brought in. The same adjustment was also made for Bomet County just as we did last year for Kericho County.

Mr. Temporary Speaker, Sir, I want to mention that counties face a challenge in the sense that this Bill should have been passed before 30th June to allow counties do their budgets. However, as I speak now, counties have already done their budgets based on what they thought is going to come from the Division of Revenue and Division of Allocation Bill. However, the counties will not draw this money because this is the Bill that will legitimize, legalize and/or give authority to the Controller of Budget to allow the authorization of withdrawal from the Consolidated Fund. Under Section 134 of the Public Finance Management Act, counties are allowed to spend a half of the amount subject to approval by the county assemblies. They will also be allowed to spend half of the Appropriation Bill. If we get this Bill finalized by next week, it will be very important because the counties will be able to access their money. I know this matter has already been raised in court and a direction issued that counties be allowed to access a half of the money. The Controller of Budget is obliged to release the money under that section of the law.

Mr. Temporary Speaker, Sir, it is important to note that after we pass this Bill, one of the things that needs to be done is, Treasury needs to submit a schedule for transfer of money to the House. We requested them to do so, by tomorrow before this House adjourns. This will give guidance on how Treasury will be disbursing the funds. The law is that they must disburse it on a monthly basis to the counties. Hopefully, we will be tabling that schedule for the transfer of money tomorrow.

Mr. Temporary Speaker, Sir, this County Allocation of Revenue Bill does not include local revenue that is generated by county governments. However, in their budget, the county governments are required to include the revenue that they will collect from their own sources within the county. It is important to appreciate that for some of the counties which have substantial amount of resources, the figures that will be here will not necessarily represent the entire revenue that those counties will be having access to.

I also want to mention that there are concerns about how this money will be spent when it goes down to the county governments. One of the most important concerns is how the revenue that will be allocated to county governments will be shared between the county assemblies and the county executive. We have seen instances where some county assemblies have demanded as much as half or a third of that money. If a county gets Kshs4 billion we have instances where county assemblies are asking for Kshs1 billion. The way the law has been structured is that whatever money goes to the county governments, it is up to county government which comprises of both the executive and the assembly to decide how they will utilize it.

However, because of concerns regarding how money is being spend and the pressure between the county assemblies and the county government, our Committee together with the CRA, the Transition Authority (TA) and the Controller of Budget are coming up with recommendations that will, probably, be reflected in amendments to the

law that will give some ceilings on how much should actually be available to the county assemblies and how much will be available to the county executive. If you look at the way the national Government works, there are ceilings for different sectors on expenditure. You cannot allocate money just the way you want. There are very good recommendations already submitted to the county governments by the CRA which set ceilings based on the structure that is there now. Our Committee strongly recommends that the county governments be guided by those ceilings that have been provided for by the CRA and the Controller of Budget.

Mr. Temporary Speaker, Sir, under Article 216 of the Constitution, we need to come up with recommendations regarding financial management for county governments. Based on that, they have been able to come up with recommendations. We have asked the Controller of Budget to make sure that is complied with. As I speak, some county assemblies have already gone to court on that matter to challenge the ceilings recommended by the CRA. It is in the intention of this Committee to come up with appropriate amendments to the law so that those ceilings can give proper guidance to avoid the challenges we have seen. We have been reading in the media, we have also seen reports by the Controller of Budget and the reports of the Auditor-General and so on. There is quite bit of concern regarding efficiency of utilization of resources. There are concerns about wastage, inefficiencies and misappropriation of funds.

In particular, although we are concerned about county executives and the county assemblies, it is very important to appreciate that the responsibility for oversight rests on the shoulders of the county assemblies. To the extent that there are concerns about the way money is being utilized by the county governments, the first line of responsibility is on the county assemblies. They are supposed to provide oversight because they are required to approve all policies and all programmes on the way the funds are utilized by county governments.

Mr. Temporary Speaker, Sir, in recent weeks, there have been concerns by Kenyans across the country that county assemblies themselves, rather than provide oversight over county governments, they have themselves become the concern because of the demands they have been making. They want money for travel. A lot of concern has been expressed over allowances paid to them, money for entertainment and so on. One thing we know in the Constitution and the Public Finance Management Act, the county assembly is not mandated to carry out any executive function. They are not mandated to carry out any development projects. The function of carrying out development projects is the sole responsibility of the county executive. So, we expect the county assemblies to get their resources to allow them to carry out their legislative, representative and oversight functions, nothing less and nothing more.

The law does not contemplate power sharing between the county assemblies and the county executive. I think Senators need to take note of this. In some counties, for example, county assemblies have demanded to be given money for development projects and they have been given. We have county assemblies that have actually been given money for wards. One is given Kshs10 million for a ward to do a project and bring a report. This is illegal. Many of these things are going to be flagged in the reports by the Auditor General. We understand the pressures the governors and the county executive are facing. If a county executive for finance does not approve that kind of funding or does not give them funding, then he is faced with impeachment. If the governor does not give

money for development projects, then he faces impeachment. Whatever it is, we want to advise the county government, particularly the county executive; the governor and his team, that it would be illegal to do so. They will take responsibility. If money allocated to a county government has been misappropriated, someone will be responsible. The county executive will be responsible because they are the ones who are in charge of the money. They are the custodians. The county executive and the governor cannot release money because of the various pressures they face.

Mr. Temporary Speaker, Sir, it is important, therefore, to caution the county assemblies to restrict themselves to their responsibilities and not engage themselves in activities that are within the mandate of the county executive. In that regard, we shall be coming up with some proposals to amend the law to make it clear that the money they are getting will be enough for their work, salaries, allowances, and so forth, but not for development projects.

Lastly, Mr. Temporary Speaker, Sir, I want to mention something that is the concern of many Kenyans. This is about the prudent use of funds. Openness and accountability is one of the critical principles that are provided for. The second most important principle is the prudent use of resources given to our counties. That is subject to our interpretation here. What is prudent use? We are reading about many things in the reports by the Controller of Budget and the ones by the Auditor-General regarding the way resources are being used. We are concerned that this is likely to delay devolution to the extent that Kenyans start feeling that the money that was given out for devolution is being used to line the pockets of others. They will start feeling as if the money is going into projects which do not benefit people and activities that do not add value. Kenyans will start asking tomorrow about the benefits of devolution. Already, some people have started asking; one year down the road, what have we seen in the counties? What can they touch as tangible development projects which they can say; yes, this was done by the county government?

Mr. Temporary Speaker, Sir, I know that the mandate of the county governments includes service delivery. Of course, they have to provide drugs in hospitals and pay workers. We know that there are improvements in many counties. Hospitals have drugs. Dispensaries and health centres have nurses. Water is available because boreholes have been drilled. There are activities in many counties, but Kenyans still think that the money could be spent better. Various Committees of this House have the responsibility to ensure money allocated here, which is substantial, is spent prudently after which we should hold the county governments to account.

Section 30 of the County Governments Act is very clear that the County Governor is responsible for the use and management of resources within his county. The buck stops with them. I want to urge Members to study the Reports by the Controller and Auditor-General and to take them seriously. If county governments are misusing money, not accounting for money or are using it imprudently, we have to demand action. That is very important.

I want to conclude by saying that there will be some amendments that our committee will be bringing to raise the figure to Kshs226.66 billion. The Kshs600 billion is an additional amount. We will also bring an amendment for the Kshs1.87 billion Level 5 Hospital conditional allocations.

Mr. Temporary Speaker, Sir, there is a requirement in law, this financial year; the Treasury has requested for implementation of programme based budgets by county governments. We have recommended an amendment to the Public Finance Management Act (PFMA) so that the requirement for implementation of programme based budgets for county governments takes effect from 2015/2016 Financial Year. We will bring that amendment so that it is practical to implement that.

I want to urge Senators to support this Bill so that we pass it. By tomorrow, we should be concluding it so that county governments can have access to finance.

I beg to move and ask Sen. (Dr.) Khalwale to second the Bill.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I rise to second the County Allocation of Revenue Bill.

I am also a Member of this Committee. Most of the issues that have been raised by the Chairperson are issues that we agreed on with almost 100 per cent majority. Therefore, I will not be repeating them. However, I will raise three points. The first point is to debunk the claim by some people at the National Treasury and the elite politicians from the Jubilee Government, that this amount is equivalent to 43 per cent. It is not. This amount is equivalent to 23 per cent and not 43 per cent. It is important for the country to move along with us. That claim should not be allowed to persist.

Mr. Temporary Speaker, Sir, the second point I would like to make is that looking at most counties and listening to the reports of the Controller of Budget and reading those of the Auditor-General, it appears as if many county governments are confusing the operations of the county governments with those of the CDF. There are many cases where governors drive around in the counties dishing out Kshs5 million or even Kshs10 million to High schools and technical institutions as if this is CDF money. We expect that county governments have strategic plans which indicate exactly what they want to fund. If they want to carry out a project, for instance, of Kshs100 million and the money is not available, they can phase the project in two financial years.

If some governors think that they are presiding over the CDF, then they should do the honourable thing which is waiting to run for the position of a Member of Parliament. It is the only way they can continue dishing out cheques as they are doing. I want to condemn a practice that has taken place in Kakamega County; the county I represent. The Governor has given out Kshs600 million as Ward Development Fund (WDF). Each Member of County Assembly (MCA) is moving around the ward with Kshs10 million saying that they want to put up a dispensary, a toilet for a certain kindergarten and that kind of nonsense.

Mr. Temporary Speaker, Sir, we would like this to be very clear so that all MCAs can hear. There is nothing like the WDF. I want to be amongst the few Senators who are prepared to take the political risk of telling Members of the National Assembly that the CDF is unconstitutional. All monies that are supposed to go to the grassroots level under this Constitution are supposed to go to the Office of the Governor. Therefore, if we want to continue having a CDF like Fund in this country, then that money should go to the Governor. The Governor should then put up structures in each sub county for purposes of expending the money. Members of Parliament, Senators and MCAs included have no role in implementation of the projects of the Executive. Our responsibility is purely to oversight.

If you ask some Members who belong to the Committee on County Public Accounts and Investments; they will tell you that if you are a smart Senator, then you should not wade into that thing called attempting to implement the funds of the devolved Government. This is a very deep sea which requires a very sharp fish to swim. With some of the things we are seeing from the reports of the Auditor-General, we will be lucky if some of our governors do not end up on jail. It is that serious. I want to call upon the President and his Deputy to realise that there is one area where we, in the Opposition, cannot contradict them. If they wake up in the morning and say they want devolution, we, in the Opposition, will also say we want devolution. We cannot oppose that.

Therefore, the corruption that is currently going on in the county governments is something that the Ethics and Anti Corruption Commission (EACC) and the Office of the Director of Public Prosecution and the Office of the Controller of Budget and the Criminal Investigations Departments will stand up with this Senate to make sure that the corruption in Nairobi does not end up in Turkana, Kwale and Kakamega counties. It should not end up anywhere, including Kiambu County.

The last point is an appeal to the leaders of this country, Senators, Governors, Members of the National Assembly, MCAs and the public in general, that it is about time we accepted that after carrying a consumer mentality for 50 years, we have not developed Kenya at the pace it is required. In fact, owing to this consumer mentality, the national Government cannot save more than 15 per cent. Of all the monies that we realise, we cannot save more than 15 per cent.

We thank God that now we are starting to have easy money from gas and oil that is in Turkana and other areas. We have to create a paradigm shift in our mental thinking so that we move into a production mentality. It is only a nation that drives its thinking on producing that grows its economy and speeds up development. The reason we are completely tied up in this consumer mentality is that the leadership of the country; some of us included, hog the glory of standing before the public and telling them that you have constructed for them a road of 30 kilometres. Why would you want to take credit for a road of 30 kilometres or 300 kilometres? That is the responsibility of the Government. That is not your money. That is taxpayer's money. So, even as you go there; if you are the Governor or the President, and tell people that you have constructed for people a road, you will be cheating yourself. The taxpayer expects that road to be fixed using the taxes that they pay. This can only happen if we move away from the consumer mentality.

Mr. Temporary Speaker, Sir, with those many remarks, I second that the County Allocation of Revenue Bill, 2014, be read a Second Time.

(Question proposed)

Sen. (Eng.) Muriuki: Thank you Mr. Temporary Speaker, Sir. I rise to support this Bill. However, my support is with a fairly heavy heart because we have been called to divide money. Looking back at the Division of Revenue Bill that we passed sometime back, there was an indication that some negotiation had taken place. The debate that took place in the Senate did not go down well. The end result is that last year's Division of Revenue Bill. In last year's Division of Revenue Bill, the amount of money that was proposed to go to counties was Kshs210 billion. When the Senate sat in its relevant

Committees, it identified counties which would not run their affairs with the resulting amount if we were to pass the Kshs210 billion.

That is how the Senate ended up identifying a total of Kshs28 billion over and above the Kshs210 billion. More important is that there were many counties which did not have a shortfall because they had no facilities to run. They had no hospitals or markets to run. They had no water services to run. A case in point is the county I represent of Nyandarua. We did not have a shortfall because we do not even have a Level 4 Hospital never mind a Level 5 Hospital. We did not have a municipality with a water supply company.

The end result was that the year ended with the Kshs3.15 billion that my county got without any new thing being built in the county. We do not have any new health facility or even markets. We do not have even headquarters. This is because the amount of money we are dividing is very little.

This year, we were expecting that the situation would be revised so that the amount going to the counties is Kshs260 billion or above. I am aware that there was a move to increase the amount to Kshs279 billion which did not work. However, all of this was because in good faith, the Senate thought that a pre-negotiation had taken place before. A county like Nyandarua which has not developed at all, has managed to run its affairs. They are paying their salaries, running their vehicles and may have murramed a few roads here and there. However, really nothing substantive has been done which was the essence of devolution. If we continue at this rate, the counties which were ahead before devolution will continue being ahead; and the counties which were behind will continue trailing behind. My proposal on the way forward on this is as follows.

First of all, the Governors should refrain from accepting to do any pre-negotiation with anybody because there is no way an amount can be proposed by the Government to the Senate and the Senate reduces it. The Senate can only increase it, but it cannot reduce it. So, for Governors to sit with whoever they were sitting with and agree to negotiate a small amount is a disaster. It is not themselves who are now suffering; it is the people of the counties, which they are heading, who suffer. As the Secorder of the Bill said, the responsibility of implementation is with the Governors. However, if they do not get enough resources, year in, year out, five years down the line, those countries will be the same as they were before devolution. It is our responsibility as the Senate to ensure that they get enough resources so that devolution can be a success story in this country.

Mr. Temporary Speaker, Sir, this year has gone and we have to accept it. However, my proposal is that we must start now engaging the CRA and the national Executive in a pre-negotiation process bearing in mind that we have not actually achieved what devolution was all about as far as physical development was concerned.

Mr. Deputy Speaker, Sir, that is all I have to say. I wish to support this Bill on the basis that if we do not pass it, then the counties will not get even that little, and it is not fair as of now.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Wako: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. It is important because it is now, for the first time, that the procedure as outlined in our Constitution has been followed as relates to the Division of Revenue Bill and the County Allocation of Revenue Bill. I think that is very good and that we are moving forward in these matters. Of course, there are

some administrative financial issues that the Chairperson of the Committee on Finance, Commerce and Budget has referred us to and I think appropriate amendments will be in order.

Mr. Temporary Speaker, Sir, I support this Bill because of two main statements that have been made. One, I wish to thank the Committee on Finance, Commerce and Budget for having considered carefully the prayer by Busia County, who have really been taken very badly in the County Allocation of Revenue Bill. What happened is that two constituencies – Teso North and Teso South – were counted as if they were part of Bungoma County and not Busia County. This mistake originated earlier on under the Kenya National Bureau of Statistics (KNBS) by putting those two constituencies as if they were in Bungoma. The mistake is not in the number; the mistake is not that some people were wrongly placed and so on; the mistake is just that they were put in the wrong county rather than in the correct county.

Mr. Temporary Speaker, Sir, when we raised this issue during the last financial year, we were told that it will be corrected. Indeed, as the report says, the CRA actually obtained the certification from the KNBS that, that was a mistake which has to be corrected. Having arrived at that, the CRA then, in turn now, said that we must now correct the figures that have been published. If you read the Report of the Committee on Finance, Commerce and Budget, which I have just had a look at, at the bottom of page 4, they admit that:-

“In its sitting of 12th June, 2014, they received this complaint; they were shown the letter from the CRA dated 23rd that pointed out the variance of equitable amount due to Bungoma and Busia Districts as a result of the variation of the 2009 population figures.”

Mr. Temporary Speaker, Sir, the initial population figures had included population data for Teso North and Teso South and these are two constituencies whose population is almost 30 per cent or one third of the entire population of Busia County. They then proceeded to say:-

“The equitable share of revenue for Bungoma and Busia, which had initially been allocated Kshs7.3 billion and Kshs4 billion respectively should now be corrected to read Kshs6.6 billion and Kshs4.7 billion.”

Mr. Temporary Speaker, Sir, if you go further to page 8, they again dealt with this problem very nicely and I really want to commend them for that. It was almost a unanimous decision. They say:-

“Unless these figures are corrected, then Busia County this year stands to lose Kshs673,970,871 in revenues. ”

Mr. Deputy Speaker, Sir, in other words, this amount which is really supposed to service, particularly the people of north and south Teso, is now, under the current figures, being given to Busia County, who have in law unjustly enriched themselves by that amount.

Mr. Temporary Speaker, Sir, the whole purpose of devolution is to ensure that there is equitable development throughout the country. You keep on telling us that. In order for there to be an equitable distribution, there must be an equitable distribution based on, amongst others, but the most important factor of population. The resolution that the national Assembly agreed on the basis of the allocation correctly took into account the fact that the population forms the major component of that. In fact, they said that the

parameter and weights to be taken into account in assessing this, 45 per cent will be given to population and then the land area, 8 per cent. Of course, when you also talk about the land area, Busia also became affected because the area where Teso North and Teso South are situated was now counted as if that area belongs to Bungoma County. So, I was also affected. So, again, this is 80 per cent, which is now more than 50 per cent, which forms the basis of allocation.

If these figures are approved the way they are without amendment, Busia County stands to be marginalized. It stands not to benefit from what is rightfully theirs. The whole purpose, of course, as we know on this question of the finances is to make sure that the county governments are able to perform their functions as allocated to them. Now, if one third of the population and almost one third of the area has been counted in another county, how will the county government perform the functions allocated to those people? It is really a great unfairness.

Mr. Temporary Speaker, Sir, I support this Bill, particularly when they go further to say on page 8 that “the Committee will propose appropriate amendments to the First Schedule of the Bill to correct anomalies in the allocation of revenues to the counties.” That is, of course, Busia County, Bungoma County, Bomet County and another county. I support those amendments totally. Just to be on the safe side, I will also be putting in similar amendments so that we make sure that this House votes on those amendments. I will be very happy if my fellow colleagues supported the amendments to the County Allocation of Revenue Bill so that Busia County gets its rightful share.

Mr. Temporary Speaker, Sir, that is as far as the current financial year is concerned. But then there is that amount of Kshs566,612,679 which was given to the County of Busia in the last financial year. As you are aware, in the last financial year, the disputes we had with regard to the Division of Revenue Bill, we had to go to court and so on, and so forth. This point was not properly debated here, but it is money that rightfully belongs to the people of Busia County. On that one, we shall be discussing with the appropriate leadership to see how that amount of money can be refunded to Busia County. I hope that the national Government can also support us on that because the mistake is not of the Busia County people; it is a mistake which lies elsewhere. That is what I had to say on Busia County.

Mr. Temporary Speaker, Sir, the other reason I am supporting this particular Bill is the fact that to my mind, the basis of allocation and calculation of the amount that is due to the national Government and the amount that is due to the county governments has not been fair to the county governments. If you know the formula that even the CRA has used, it is to use what they call the historical method. If so much was used in the past to make roads, they add five per cent. That is it. For the county governments to get their proper share, there must be a proper costing of functions as outlined in the Constitution to be performed by the county governments. We must have that. That whole formula is now going to be looked into with effect from the next financial year, so that the method of sharing the national cake and the county cake is revised. We want to see the county governments actually get what is rightfully due to them under the Constitution so that they can do their work in their counties.

Mr. Temporary Speaker, Sir, I also support what my colleague Sen. (Dr.) Khalwale has said. I am glad that we are now moving forward on this whole issue of implementing the Constitution. I am saying so because whereas the Governors were

reluctant to appear before the Committees of this House, and in particular the new Committee on County Accounts Investments Committee, they are now beginning to appear and we are having very constructive dialogue with them. I think they now realize that we are not all that hyenas; that we are only trying to do our job to ensure that the money that is allocated to them is properly spent in the way that the Constitution demands in a transparent and accountable manner. I am glad that we are moving forward on this and I am happy about that.

With those few remarks, I beg to support.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. First of all, allocation of revenue is a very important process. The Senate plays a final role. We are like in the summit of the structure of the entities that play a role in allocation of revenue.

There is something very critical in this country that we rarely put into consideration. When you are dealing with matters of allocation of revenue and you are sharing with various entities in the country and various lower levels of Government, the most critical and most important institution is the institution called the National Bureau of Statistics (NBS). That institution has not received the necessary attention from economists, scholars, legislators and Senators like us because that entity already predetermines what a county government can get. It already predetermines what poverty index we have in the country to what extent a particular place is poor and the population of a particular area.

We share money using a formula or a census that was taken ten years ago. In ten years, a population of a particular county would have changed because more people might have left Siaya County or Elgeyo-Marakwet County to come to Nairobi. More people might have left Nairobi to go and look for better investment opportunities in Isiolo County. More people might have left Migori County or some people might leave Homa Bay County to Migori County. Yet you are wasting about ten years assuming that the population is still the same. Therefore, the money continues being allocated to a particular county using a stale statistical figure that had been reached ten years earlier.

Mr. Temporary Speaker, Sir, if we want to ensure that our counties get what they deserve, our attention must move from the discussions about only the figures to the source of those figures which is the NBS. One way of settling the issue of NBS is for this country to move from analogue registration of persons to a digital registration of persons where you can capture data automatically. You can tell which county has more children born than the other. You can tell the information that you have about deaths, births and economic strength of a particular county way early than to wait until after ten years when you do an analogue census. We, as a House - I would be one of the Senators that would love for the sake devolution, to push for the reform of the NBS. It should even concern this House; what is the composition of the NBS, who is the Chief Executive Officer (CEO) and who are the people who are dictating what data is being collected? If we are not concerned about the NBs, you will come later to key in the information and your county will automatically get certain allocations that would have otherwise been corrected if we focused on that issue.

Mr. Temporary Speaker, Sir, the second issue is with regard to the use of these resources that are being allocated to the counties. We must first appreciate that although many people assume that we, as a House, just supported a figure that existed, the

proposal of the Finance and Budget Committee of the National Assembly was that Kshs217 billion should go to the counties. It is through the intervention of the leadership of this House that that figure was moved up. At some stage when the negotiations were taking place, I want to confess that I, as the Chair of Devolution, Sen. Billow as the Chair of the Finance, Commerce and Budget Committee and the Senate Majority Leader among others, had a chance to sit with the Executive and consult and say that this Senate thinks that the money must be increased. It is only after the consultations that we came down to Kshs226 billion. That role is important. However, I would like to say that in the next financial year, and supporting what Eng. Muriuki said, the consultations must be formalized and through all entities so that the figure that is arrived will be a negotiated figure where the Finance and Budget Committee of the National Assembly, the necessary committees of the Council of Governors and the national Government entities will sit together to agree on the figure, so that we avoid a situation of pull and push.

Mr. Temporary Speaker, Sir, sometimes when we say that we need to sit and talk about costing, people think that we need to just cost the functions of county governments. That is not the point. We also need to know how much money should remain at the centre to take care of education. How much money should remain at the centre to take care of security and all those functions that are remaining at the national level? That should have a bearing on how county governments can deliver on their functions. Therefore we, as a House, have a responsibility under Article 96 of the Constitution to ensure that oversight is achieved.

The County Accounts Committee has a huge role and I sit as a Member of that Committee, Sen. (Dr.) Khalwale being our Chair. For the few Governors, we have heard, the stories that come from county governments, coming from the Auditor-General's report are scaring. They are scaring because today we even listened to one county where payments are made to a contractor before the contractor can receive a certificate of completion of his job. We have seen situations where single sourcing of contractors is done. If you do the research, you realize that the people who are given the work in the counties are the same contractors getting the same job, for example, in Elgeyo-Markwet, Uasin Gishu, Nandi, Migori and many other counties.

We must push for transparency and accountability. That transparency can be achieved through the County Accounts Committee which I sit in, but also individual Senators exercising vigilance in the counties and pointing out issues that are glaringly obvious. In fact, from the Committee we have realized that it looks like the Members of the County Assemblies have no capacity to ask the questions that we ask. There were certain basic questions that we posed today to one of the counties; simple questions, and you are told that Kshs61 million was returned to the national Government and when you go to the records of the national Government they say that it is only Kshs6 million that was returned. A lot of money is lost back and forth where individuals are blaming this person and the other person.

Our County Accounts Committee should be able to call the equivalent committees of the counties and we look for ways of building capacity. That is the function of the national Government, including the Senate, because the Constitution envisaged that we would build the capacity of the counties when it comes to accountability. The stories of procurement in the counties would scare you. They would scare you because you will realize that the centralization of procurement in the counties has led to a situation where

it is only those that are in the county headquarters who have devolved themselves from the national headquarters which is Nairobi to go to the county headquarters and engage in rent seeking. These are the ones that are getting all the contracts.

What will happen to our women, youth and the marginalized communities in the counties? These counties must make sure that those people are feeling that they are part and parcel of the county. What about the use of this money? If you go to the various counties, you will realize that there is serious marginalization. It is only a week ago that my Committee tabled a report from the question of Sen. (Prof.) Lonyangapuo, after listening to the Equality Commission, the CIC and the Council of Governors and the various reports from the counties. We realized that employment in the counties is skewed; people are employing their relatives. There is a lot of nepotism and a lot of marginalization of the indigenous communities.

In fact, the Ogiek were hoping that through devolution they would have a greater say in the county governance of Narok and Nakuru counties. If you asked them today, they are the most disenfranchised because the dominant communities in the counties are employing their relatives and tribes. The marginalized groups in the various counties across the country are not getting a chance of representation. In our next round during the recess, during our Devolution Committee county visits, these are some of the questions we want the counties to answer to us directly and tell us, for example, of the communities they have, how many people are employed who are youth and the marginalized communities? How many contracts have been given to the marginalized communities and groups so that we can ensure equity in the county?

Mr. Temporary Speaker, Sir, when it comes to development, most of the counties are not prioritizing long term development, for example, roads, attracting investors and building factories. The counties have what I can call “the cattle dip mentality” where everybody wants to give a cattle dip to every village so that they can account that they have at least given something small. At the end of the day, you will realize that one year has passed and the county has not changed. The projects the county government is doing are smaller than even those that were done by county councils. The county governments must accept to be educated so that they can focus on long term investments, plan for the county for the next 20 years, even at the same time as they fight for quick fixes or the quick wins for the purpose of showing that devolution is working in the counties.

Mr. Temporary Speaker, Sir, we must ensure that next year when we are revising this formula, it must be revised to capture issues of population and equity. There are many areas that are marginalized, but the population is less. My argument is that we need to increase the amount of money that is equitably shared across the counties to about 50 per cent. In other words, the other 50 per cent can be applied to the issues of marginalized groups, increase in population and so forth. By so doing, everybody across the country can get a share of the 50 per cent of the resources being allocated to the counties.

Finally, Mr. Temporary Speaker, Sir, we, as a people, must hold hands together as a House to do what Sen. (Dr.) Khalwale was saying. Although we are the ones who do not hold money; we do not have any particular allocation of money that we dispense, that should give us the advantage that we will vigorously pursue matters of accountability knowing that the Kenyan people are expecting us to account for how best we held the county governments accountable. We should not fear because that is a very difficult task. The other day, I went to one county and I heard the Governor humiliating the Senator; by

just saying, “I brought to you this road, I have done this agricultural project, what has the Senator done?” That is not the mentality we should be having in this country. We must have a mentality that ensures that---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Musila, I can see your intervention.

Sen. Musila: I beg your pardon, Mr. Temporary Speaker, Sir. I pressed the wrong button, when I meant to speak.

The Temporary Speaker (Sen. (Dr.) Machage): Okay. Do not repeat that again. Proceed.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I would be shocked if anyone intervened on such a very serious submission, especially if it is the Chairman of the Wiper Party, which wipes all corruption across the counties.

The Temporary Speaker (Sen. (Dr.) Machage): Order! You are now inviting interventions.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I was concluding. It is on a light note.

Sen. Musila: On a point of order, Mr. Temporary Speaker, Sir. I remember earlier on Sen. (Dr.) Khalwale stood on a point of order and asked the distinguished Senator to respect the other Senators. I do not think the statement that he has just made is in good spirit. Would I be in order to ask the distinguished Senator to be more respectful to other Senators, because we all need to be respected and to respect each other?

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That was the second polite request today. I hope that you have heard.

Sen. Murkomen: Mr. Temporary Speaker, Sir, the last time that I sat with the Chairman of Wiper Party, he told me: “Our party is Wiper because it wipes all corruption everywhere.” In my submission, I was saying that the Senate must fight corruption. Indeed, it was a compliment that we have a greater role as a House to fight for greater accountability and ensuring that Sen. Musila helps my friend, Governor Malombe to deliver. This is because giving people Kshs4 billion is not an easy thing. There is a great temptation in managing that amount of money. In the same manner, even in Elgeyo-Marakwet County, I have to play a key role of assisting my friend and classmate, Governor Tolgos, to walk the narrow path in terms of managing the resources in the county. This is because the Bible says that we are all bound to fall into temptations. Therefore, I have said that in good faith. If I offended the Chairman and our Commissioner, then I apologize.

Mr. Temporary Speaker, Sir, I believe that this Bill will make our counties do better. Come next year, we will increase the amount of resources to be devolved to our counties to more than Kshs226 billion. But our counties must give us a reason to increase the resources to go to the counties by using that money well.

Mr. Temporary Speaker, Sir, with all those many remarks and without fishing any further information, I beg to support.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I rise under Standing Order No. 98 (1) to request that the Mover be now called upon to reply for the following reasons.

I know that there is a lot of interest to contribute to this very important Bill. But, also, it is very important to note that we are behind schedule, because even for the

Division of Revenue Bill, it is only today that it was assented to by the President. We are keeping counties waiting. My view is that since we will have the Third Reading which we can comfortably do tomorrow and have a bit of debate, we should take advantage of the numbers around these premises. Inside this Chamber, we are not enough, but I have looked around and we have enough Senators who can vote this afternoon, so that we are able to proceed with the Third Reading as soon as possible.

Mr. Temporary Speaker, Sir, for those reasons, I beg that the Mover be now called to reply.

*(The Temporary Speaker (Sen. (Dr.) Machage)
consulted the Clerk-at-the-Table)*

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! I am digesting what has been said.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. The County Allocation of Revenue Bill is a critical Bill. This is a Bill where if possible every Senator should be given an opportunity to ventilate in respect of his county. Otherwise, what will you be defending if you do not speak on how much money goes to your county? I beg that you rule the Senator out of order because we want to debate, even if it means voting at midnight. The best that you can do is to request for an extension of the Sitting.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That decision is to my own discretion as the Chair. But I call upon you to look at Standing Order 98, where I will peg my decision when that time comes.

The concern of the Senate Majority Leader is also quite in order, especially so because of the impatience of the Members of this House. That is the concern and the importance of passing this Bill for the purposes of facilitating counties, of which you represent their interests. So, as you make that decision of wanting to talk and repeat issues, remember that you are also missing a representation that you are supposed to do here, and protection of those very counties that you do not want to pass their finances.

My decision is that we will have two Senators from my left and two Senators from my right and then I will put the Question whether or not to call the Mover to reply.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I will attempt to be quick. I rise to support the Bill.

Mr. Temporary Speaker, Sir, in supporting the Bill, I am a little disappointed because I know that, we, as the Senate, would have done better than Kshs226.66 billion that is on this Bill if we had clearly followed the Budget circle. Secondly, I think that Article 203(3) requires that this amount that we are now passing of Kshs226.66 billion is supposed to be out of the most recent audited accounts. If we do not mention this, we will have failed in our duty under Article 96 to protect counties. It is the business of this Senate to request or possibly order the National Assembly to complete the audits, so that we then can pass the Budget based on current figures.

What we are doing now is what they call *fait accompli* of the National Assembly. This is because the Budget that has been approved is the one of 2009/2010 Financial Year. That is why we amended the Schedule in our Committee. The figure of 43 per cent appears to embellish this sum of Kshs226.66 billion. However, we are forgetting that while the national Government says that all functions have been devolved, they have retained up to over 57 per cent of national revenue in the budget. So, there is very little to celebrate, as a Senate, when we are passing this, even though I agree with it.

Mr. Temporary Speaker, Sir, thirdly, we have not found a formula of costing functions. I want to suggest that in the next Budget circle, we find a formula of costing these functions. You are right to say that we ought to give this money to counties. There are some counties where 70 per cent of this amount will go to recurrent expenditure. This is not helping counties. We are not making progress. We have almost devolved what I call mismanagement of national resources to our counties. So, I am suggesting that we go back to the formula that the Senate is using. I dare say that out of all the functions that the Kenyan people gave us, this should be the most important function if not the only function that we should work day in, day out, to ensure that the county governments receive enough funds. I say so, because the country is watching us carefully, whether or not we are going to protect devolution. Protecting devolution is not following the Constitution of this country by devolving functions. This is because the Kenyan people have said, under Article 187 of the Constitution, that unless the resources follow the functions, those functions have not been devolved.

Mr. Temporary Speaker, Sir, the question of Level 5 Hospitals must be resolved by this Senate at some point, because we have included in this Report a schedule of 11 hospitals that will get a conditional grant of Kshs1.87 billion. As we pass this Bill, we are aware that this amount is hardly enough to cater for those hospitals. So, even if we sit until midnight, we should pinch ourselves because we have not done ourselves and this country a service. In fact, we have left the counties to their own devices which I think we ought to take responsibility for. I, as the Senator for Makueni, must say that I feel very sad.

Mr. Temporary Speaker, Sir, when the International Monetary Fund (IMF) Director, the good lady, Christine Lagarde, was here, one of the things that she said, and I want to repeat it on record, is that if devolution must work, there must be something called fiscal devolution. We must insist that we participate in the budget circle, so that then we do not have the figures that came to us. All of a sudden, we are looking behind our backs and wondering how the National Assembly arrived at those figures. This is because in the spirit of the new dispensation the Budget of the Republic of Kenya is no longer *siri kali*. It is not a secret. We should know how these figures are being arrived at, so that we can then participate in a Shilling by Shilling and not deal with global figures which look very entertaining. As a matter of fact, we have been given records by the Controller of Budget of counties whose development budget for the last financial year was at 18 per cent. It is a shame.

Mr. Temporary Speaker, Sir, as I wind up, I want to say that it is not enough to pass budgets here – very nice looking figures – if we cannot insist on the provisions of Article 207 on financial prudence. At some point, we must start reading the riot act, if we have to. Again, we must because we are going to sit here, vote and pass this Bill but we do not know how the money we voted for last year was spent. The audits are not here and

the reports are not here. Similarly, we are going to vote for this Bill very late in the day in the same manner and in the same vein and yet it looks like we are dipping money into what the Bible says, a “bottomless pit”. It is sad that, in fact, we should be confronted with figures like we are doing here.

I suggest that immediately we pass this Bill, the Committee on Finance, Commerce and Budget together with the leadership of this Senate embarks on a method where we would engage organizations like the CRA that has been given this mandate, so that they do not give us beautiful documents where they want to amend the horizontal allocation as my good friend Sen. Murkomen is talking about. We must participate in this one by one from now henceforth, so that the 43 per cent we have put in our schedule should not look like nice flower we are giving to counties. The 43 per cent that we are giving to counties should be 43 per cent of devolved money and not necessarily payment of wages. That brings me to my last point.

Mr. Temporary Speaker, Sir, it is also sad that as we pass this Budget, we are going to get reports from the Controller of Budget to say “sorry, the Senate of the Republic of Kenya, the money that you passed, 70 per cent went to recurrent expenditure, 10 per cent to waste and another 10 per cent to development.” We should not go there. As I said, I think we would have failed in our duties as Senators of this Republic.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Elachi: Mr. Temporary Speaker, Sir, I also rise to support this Bill. First of all, I want to thank both the National Assembly and the Senate. We have moved a step further despite the challenges. We have gone through mediation which is something positive. We hope and believe that come next year we want to see both Houses moving through this without going through mediation. As we look at the County Allocation Bill, we need to know that we are going to have challenges with the 11 referral hospitals considering that we have not yet solved the problem. We must ask ourselves whether health is a devolved function. If it is so, it is time this Senate tells the Government that money should follow the function.

We know that some counties will have serious deficits. For example, Nyeri County will have serious challenges because they are not satisfied with what the referral hospital has been allocated. As we move on the Committee on Finance, Commerce and Budget and the Senate, as a whole, should call upon the 11 counties with these referral hospitals and see how to engage Treasury to ensure that Kenyans get services.

Mr. Temporary Speaker, Sir, I hope and believe that the county governments have now set their foundations. We gave them last year to build the foundations. This is the second year now. We hope come next year, we shall have clear costing of every function they handle. By so doing, we shall be in a position to assist each county considering its unique challenges. The Council of Governors have been putting things in a blanket form, the Senate should realise that different counties have their own challenges.

Mr. Temporary Speaker, Sir, I want to thank the Committee on Finance, Commerce and Budget for the work they have done since January. We should now change our timetable on County Allocation Bill so that we can give time to the county assemblies to come up with the budgets that are clear instead of going back and revise their budgets due to the challenges we have made them go through. As we give these resources, it is important for the county governments to be very clear in what they want to do. It is important for them to be very clear on how they use their resources. The

county assemblies have themselves to blame because very soon, some of them will be surcharged for the misuse of public funds.

Therefore, most of them will have to face the law. I would wish that they would listen to their county finance executives and appreciate that they have a role in assisting county governments to move on. The budget committees in the county assemblies must guide the assembly to understand that money received from the Government must be used properly. The law is very clear about how money should be utilized. When time comes for the Controller of Budget and the Auditor General to rein in on them we should not politicize the issue or run to the courts. We should let them follow their process. I am sure they will agree on what to do, for example, if there is any money to be returned. It should be done so, just like any Member of Parliament does.

Mr. Temporary Speaker, Sir, lastly, it would be fair for Senators to make follow ups. If we are protectors of county governments, then we should take up that role and ensure we know what the county governments need in terms of allocations.

With those few remarks, I beg to support.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I also rise to support this Bill. I am really impressed that this time procedures of the Constitution are being followed without undue pressure and unnecessary contradictions from the National Assembly.

As I rise to support this Bill, I want to draw the attention of the county governments to Article 204(6) regarding the Equalization Fund. It has escaped many of them that this is a fund that lapses after 20 years from the date of the promulgation of the Constitution. We, as a Senate, would like to see programmes and projects that have been supported directly by this funding in the counties. We do not want them just to be clustered. This was a specific fund given to counties to equalize, especially for those counties that are deemed to have suffered economic injustices from the Government. These are counties that were deemed to be lagging behind in certain programmes. I think they should be specific and present exactly which programmes they have undertaken using this fund.

Mr. Temporary Speaker, Sir, I also want to add my voice on the issue concerning the KNBS. The NBS is actually the bedrock of all policies that pertain to revenue allocation. I support that we need to give it adequate funding and facilitation so that the NBS is able to update its data and to present annually updated data which presents us with an updated----

(Loud consultations)

Mr. Temporary Speaker, Sir, please save me.

The Temporary Speaker (Sen. (Dr. Machage): Order, Sen. (Dr.) Khalwale and Sen. Murkomen!

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir.

The NBS presents this nation with data that informs every policy that whichever way helps us make a decision on how revenue is supposed to be allocated. If we are using data from this bureau that are four or five years old, then some counties might be suffering the injustice of not receiving what they qualify for.

Mr. Temporary Speaker, Sir, before I conclude, we should insist to the national Government to find a way of updating the audited accounts. In this case, we are giving

the county governments revenue allocation based on the 2009/2010 audited accounts. For some reason, we must think and Act out of the box so that the next time we are considering the revenue allocation, we should be given updated accounts. I think this nation has got the facility and the structures and the ability to break that circle by updating our accounts even if it means allocating those in charge more funds so that they can work over time, employ more people so that by next year we have audited current accounts.

Mr. Temporary Speaker, Sir, it is also critical to consider one of the critical determining factors when we are considering revenue allocation. While I support that we should start from a uniform platform of every county receiving a substantial amount across the board, I want to state that population must be given priority. Every service taken to the county is for the purpose of serving the people working, residing and living there. Therefore, population cannot be understated. When I was coming here, I heard some strange comments concerning some allocations with specific reference to Nairobi County which has received 5 per cent of the allocation. This amounts to Kshs11,306,858,928 and what is referred to as conditional grants of Kshs1,605,339,854. Ordinarily to somebody, it might look like a very big allocation. However, I want everybody to look at the special consideration that counties like Nairobi need and ought to be considered for. A county like Nairobi is bearing the biggest burden of our migration patterns from every area of this nation. They come from all parts of this country. Taking us back to the NBS, we are then able to know that a county like Nairobi within just a period of six months is dealing with how many new entrants, especially towards the end of the year when every part of this nation produces school leavers who think and believe that they have to migrate to Nairobi for greener pastures. Looking at these statistics against what Nairobi is receiving honestly, it is a very low amount and we need to reconsider it.

Mr. Temporary Speaker, Sir, having said that, I still want to remind all counties, Nairobi County included, that we want to see more transparency in the way they give out contracts. We want to see civic education conducted to the people living in the counties about the contracts and so on. The civic education should trickle down to the constituencies, wards and cells, so that everybody is brought to speed on what contracts are about to advertised and how else they should create a department that educates and facilitates those who are wishing to enter business engagements with that particular county. This will enable everybody to compete effectively rather than holding critical information and only putting it in the papers when it is one week or two weeks to the deadline.

Mr. Temporary Speaker, Sir, I want to make specific reference to Nairobi County, we want to know which debts they are paying, who they are paying and how old the debts are. This is so that we know that nobody is being overtaken in the process of debt payment. It does not make sense if a debt that is six or two years old is being paid when there are debts which are 20 or 15 years old. Some people waited for their debts to be paid until they died out of stress and their children are still following up the same debts. This same scenario is obtaining and relevant in all other counties. We want to see more transparency.

Finally, as I conclude, all Governors should know that we are dealing with a more elite society---

(Sen. Karaba put in his request)

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Karaba?

Sen. Karaba: Mr. Temporary Speaker, Sir, I was just trying to draw your attention. I was checking whether the signal is reaching you. It has reached you.

(Laughter)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Karaba! Next time you do so, I will throw you out of the House!

Proceed, Sen. Ongoro.

Sen. Ongoro: Mr. Temporary Speaker, Sir, this is a digital House. With all due respect, Sen. Karaba should realise that he has to know how to use these gadgets effectively without undue interruption.

I was just concluding my remarks that governors should know that the society that we are living in right now, none of them will escape any mismanagement of public funds whether it takes two, five or 20 years. Somehow every governor will be called upon to account and specific reference will be made to the decisions they made, the procedures they followed and everything they undertook while they were governors.

With those remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, remember that I am very observant on your requests. This is not a House of games or jokes. It is a serious House. Do not play with the gadgets.

Sen. Murungi: Mr. Temporary Speaker, Sir, first, like others have said, I want to support this Bill, but with a heavy heart. Our role as Senators is to mobilize resources for our counties. I must say that the resources we are now allocating to the counties are grossly inadequate. Even the Kshs226 billion that we are now allocating to counties is just a drop in the ocean. I agree with those Members who say it does not amount to 43 per cent. The current budget is in trillions.

Hon. Senators: Yes! Kshs1.8 trillion!

Sen. Murungi: Mr. Temporary Speaker, Sir, we, as Senators, cannot accept this game of using old accounts to cheat the counties out of their rights.

(Applause)

Those in Government must up their game. If this comes this way next year, we are going to face major difficulties even as we support the Jubilee Government, Sen. Murkomen. You can see Sen. Orenge is not here, they are drafting the referendum questions.

Hon. Senators: Yes! Yes!

(Applause and laughter)

Sen. Murungi: I know one of the questions will be on the resources to the counties at a minimum 40 per cent. Unless these accounts are updated and the people see

those resources at the counties, there will be a very difficult political situation even for those who support you.

(Applause)

The budget is not about tables and numbers. A budget is an instrument for policy implementation. We have promised people very many things. In my county, we have just released the County Integrated Development Plan (CIDP) which runs to Kshs200 billion. We are here for another less than four years. How are we going to raise Kshs200 billion to implement our plan if we are only getting Kshs5 billion per year of which Kshs3 billion goes to recurrent expenditure and less than Kshs2 billion into development? We have promised water to our people to the tune of Kshs1 billion every financial year. We do not have that money. We are doing 300 kilometres of tarmac roads in Meru County. That money is not there.

If you look at Article 6 of the Constitution, a county government is an independent government. It is a separate government from the national Government. They only relate on the basis of cooperation and consensus. This nonsense of putting ceilings from the CRA and the Controller of Budget to the county governments does not make sense because it undermines the capacity and operational autonomy of the county governments. We should be left to spend our money the way we think best. If out of the Kshs2 billion which is available to us for development, we want to spend the money purely on roads this financial year, in water the next financial year, why not? It would be a decision of the people.

I want to thank the Mediation Committee for the negotiations they undertook in respect to the issue of the Level 5 Hospitals. We know it was not easy, but we appreciate. Even half a loaf is a loaf. But for the Kshs64 million that has been given to Meru Level 5 Hospital, there is going to be a crisis because the recurrent expenditure for that hospital is Kshs300 million every year. With this Kshs64 million, what are they going to do with it? We are going to have more transfers coming to Kenyatta National Hospital (KNH). I will advise them to buy ambulances for transferring patients to KNH because this money is not enough.

There is no government which survives without deficit financing. Even the national Government had to go for the Euro Bond the other day. Unless we create mechanisms to enable the county governments to borrow against anticipated revenues, we will not move this country at the speed which we want to move development in our areas. We heard the CRA say there should be no borrowing by county governments for the next two years. Who appointed one Cheserem to be a chief governor, to be a governor of governors? We know he was the Governor of the Central Bank of Kenya (CBK), but he is not the governor of governors. We should be very careful about the illegal restrictions we are placing on the county governments. I agree with those who say that we need transparency and accountability for the national Government funds that we are transferring to the county governments. But we should also be careful not to tie their hands and their legs, paralyze them and make it impossible for them to realise development in this country.

The CRA reports are merely advisory reports to the Senate. Time has come for us in the Senate to critically analyse these reports. Even if you look at the way the resources

have been allocated through the formula, you find, Mandera County, for example, where our Chairperson comes from, with a lion's share of four per cent. Other counties like mine, where a lot of people are, we are only getting two per cent. Time has come for us, as the Senate, to hire our own experts, so that we can critic whatever reports we are getting from the CRA. We get figures two days before. We do not even have the tools to be able to unpack and analyse the data we are receiving from the CRA. The time has come for the Senate to have its own funds to hire experts to look at the basis for a fairer distribution of the resources at the national level.

Finally, Mr. Temporary Speaker, Sir, I know that it is our duty, as Senators, to oversight the county governments. The word "oversight" comes from the word "oversee." It is for us to oversee the flow of funds to the county governments and how those funds are being used. I know there is very strong resistance from the county governments in what is seen as Senator's interference with the counties. But when you are given a broad mandate like overseeing, it does not say you oversee the end; you should also oversee the beginning and the middle. So, we should oversight the counties all the way from the planning, to see whether public participation is properly being carried out. We should oversee to see whether the plans themselves make sense or not. We should oversight the implementation of those projects. We should even oversight the *post mortem* of those projects.

Mr. Temporary Speaker, Sir, it is a very comprehensive process; it is a big mandate that we have, as Senators, but we do not have the capacity. We, as Senators, are not empowered to effectively discharge that mandate. We are saying the Parliamentary Service Commission should allocate more resources to the Senate for the Senate to carry out this mandate. We need our offices to have more staff because right now we are just equalized with the Members of National Assembly, who are supposed to operate only within one constituency. Some of us are operating in nine or 10 constituencies. So, we need our offices to be properly facilitated to enable us to oversight and properly represent the interests of our counties both at the national and at the county levels.

Mr. Temporary Speaker, Sir, those who have been saying that *hii ni Nyumba ya wazee* should know that this is a House with teeth. Could we describe Sen. Mutula Kilonzo Jnr. as a *mzee*? We have Senators who are very young, even younger than some MPs. We have very energetic and sharp Senators.

(Applause)

All we are asking for is resources to enable us to cover our counties effectively and to enable us to monitor the flow of the funds that we have allocated to the counties.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Your Temporary Speaker is a very young person!

Now, about one hour ago, Sen. (Prof.) Kindiki rose on a point of order and requested that the Mover be called upon to reply. I gave an order that we have two speakers from both sides of the House, which we have done. So, under Standing Order No.8, I put the question that the Mover be now called upon to reply.

(Question, that the Mover be now called upon to reply, put and negatived)

(Applause)

So, we continue.

Proceed, Sen. Kajwang.

Sen. Kajwang: So, Mr. Temporary Speaker, Sir, the debate continues.

Thank you very much, Mr. Temporary Speaker, Sir. I want to say that I note this Bill that we are seeking to pass; and I note it with a very heavy heart, like my brother, Sen. Kiraitu. Look at the functions of the devolved Government in Chapter 11. I am looking at objects of devolution under Article 174(g). Our job is to ensure equitable sharing of the national and local resources throughout Kenya. That should be our mandate because our mandate should be to protect the interest of the counties. But before I say many bad things that I want to say about the CRA, let me say that, at least, they gave us some figures which we suppose were done after some research, and after which, they came to certain informed decisions. But even when those figures came here and they were taken to the Lower House, the argument that cut it to Kshs226 billion was not based on any research. It was based on certain attitudes of who is the big brother; is it the National Assembly or is it the Senate? So, certain figures were brought here as a *fait accompli*. In fact, I remember the Speaker giving a very emotional speech on that day from the Chair saying that: "Please, accept this one because if we do not accept it, we may never get anything better." I also remember the Senate Majority Leader on that day saying that: "Next time, we will fight. But this time, please, accept this one." What we were being forced to accept – because I was forced to – was the decision of the Lower House. I think some of us did not take it very kindly because we thought that our job is very distinct; ours is to protect the interest of the counties, especially on division and later on, allocation of revenue.

Mr. Temporary Speaker, Sir, I have heard some Members of the National Assembly when arguing against our proposed referendum questions, saying that "it is the Parliamentary Committee that is headed by the Opposition that is delaying with the reports of the Auditor-General because we are working with figures that are antique instead of working with the current figures on the revenue as it is now." They say so with a tongue in cheek because they say that we are between a rock and a hard place. But that is not even true because even if we worked with those antique figures, we would still have gotten better figures than Kshs226 billion. However, even when we went down and said "Okay, we will accept your Kshs226 billion; but, please, the referral hospitals, about 11 of them in the country, need a little more money." Last year, they spent Kshs3.7 billion. Therefore, this year, we cannot give them nothing. Instead of working with the figures that were suggested by the CRA, they still came back and told us "we can only give you Kshs1.8 billion." This is a lot of arrogance because certain people think that this House has no role.

Mr. Temporary Speaker, Sir, for that reason, I want to agree with Sen. Murungi that this House must do something about itself. Unless you do something about yourself, I am not coming back here because I do not like just sitting here and enjoying the cameras when I know I cannot change the figures. If you cannot change certain figures then you become a debater. It is like a debate in a secondary school where you debate whether it is the Warsaw Pact or the NATO Alliance which is stronger than the other;

you cannot change anything, so you just talk. Some of us do not like “just talking”. We came here to make a difference. That difference will only be made when we do something about ourselves. We have a way to do something about ourselves which we are going to sell very vigorously to our brothers. There is no other way other than a referendum.

We have said to ourselves that the national government and the county governments are distinct and interdependent. However, the national Government is behaving a patron of the county governments. What they are doing is to give them what they want. If they want, they can take it. They even tell you that you cannot borrow, at least for three years when I know that this national Government cannot build roads unless it borrows. It cannot even pay the bills for the roads that are under construction unless it borrows and yet the county governments must pave their roads which are numerous in kilometres, with the little money that they get after they have paid their normal expenses, which leaves them with less than one third of that money.

Mr. Temporary Speaker, Sir, how are they supposed to operate? Some of these counties have very ingenious Governors and they have gone out and partnered with Malaysia, America and Germany. These countries are telling them that they can give them money which they can use to do the roads and they can pay it slowly looking at their income. Because their income is kind of guaranteed, they have no problem. I am not so sure that the “Lowe House” will accept those proposals for loans when they come because I think there is serious competition between the Members of Parliament and the Governors. We made the Members of National Assembly a bit executive. Each one of them runs a budget of about Kshs100 million which they are very much protective of. I understand why. But now they think that the resources have been devolved and, therefore, there is no need of having a Governor or a county government. In fact, if they had the power to change this Constitution, I am sure if they could, they would strike off the chapter that deals with devolution.

We should, first of all, amend the Constitution to suggest that we will work with the figures of the revenue of the previous year. The Government knows the revenue that it collects and it publishes it every year. So, we will say that we will work with the revenue of the previous year which has been published by the Treasury instead of saying, audited accounts. This is because the audited accounts must come to Parliament and Parliament must pass them. We are at the mercy of a body that is not very sensitive to the county governments. So, we are between a rock and a hard place. We must do something drastic about it. We must also increase the allocation to 40 per cent. We must engage the CRA much more vigorously and allow the county governments to borrow money from whichever source so long as it is used for the purpose for which it is borrowed.

Mr. Temporary Speaker, Sir, let me say that I am unhappy because this will not take us anywhere. The New Nyanza General Hospital is now called the Jaramogi Oginga Odinga Hospital. It is, probably, going to close down. It was in the worst state even with that Kshs3.7 billion last year and it will be in worse state with the Kshs1.8 billion shared. I do not know who will pay the salaries of staff in those hospitals. Unless the national Government supports and tops this figure, there could be a serious crisis. I understand that it is political for the national Government to be seen to be doing certain things. If all the money is given to the county governments, then what will the national Government be giving to the county government to show that it is working? That is not its business.

Their job has been cut out for them in the national Constitution. We should all be happy to be enforcing this very progressive Constitution.

Mr. Temporary Speaker, Sir, with those many remarks, I note.

The Temporary Speaker (Sen. (Dr.) Machage): That is an interesting one. Sen. Sang!

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir. Like my colleagues, I rise to support this Bill and noting that this is not the best that we could have done to our counties. It is important to note and appreciate that unlike last year, here we followed the process as provided for by the Constitution. This House passed a resolution on the Division of Revenue Bill, we increased the amount of resources that we thought needed to go to the counties. However, the National Assembly rejected our amendments and we subjected the process to mediation. I know that one of the persuasive reasons our team agreed with the National Assembly team in the mediation process was because we were cognizant of the fact that our counties somehow needed resources. If at all we stood by our position on the Kshs3.7 billion or more, most likely we would have ended up in a stalemate and the counties would not have had the resources.

The fact that the Constitution seems to allow the National Assembly to have veto power over some of the things that we would have wanted in this House, is something that needs to be addressed. I hope that our colleagues in the Opposition side, as they work on the referendum question again, they would consider looking at the issues as they are. They should look at anchoring the Senate. I personally believe that we should be able to have a classical National Assembly and the Senate as it is anywhere else in the world, where we have the Upper House and the Lower House.

On matters of funding of counties, the veto power should rest with the Senate so that we are able to support counties and protect them as needed and as provided for by the Constitution. Otherwise, in the current constitutional framework, the Senator is a watchman given the mandate to protect the counties, but having their hands tied, while the National Assembly have a gun loaded with bullets, knowing very well that they are targeting counties. Therefore, I think it is important for us to look at the bigger question.

Mr. Temporary Speaker, Sir, however, we note that the resources that have been devoted to the counties can still do a lot of work in the counties if the counties are going to utilize these resources in a prudent manner. The issues that have been raised with regard to the Auditor-General's and the Controller of Budget reports coming out from the counties for the last financial year are worrying. The issue of prudent use of resources is something that is important. I want to highlight a few things that I think county governments need to pay attention to.

Whereas we are giving counties these resources which we know are not adequate, but it is disheartening to see certain counties funding functions that have not been devolved. It is important to note that if Governors and county governments can spend the resources that we are giving them in this financial year, they should be able to fund the functions that have been devolved. We know that security is not a devolved function. Establishing universities is also not a devolved function, but counties are spending their resources to fund and establish universities whereas that is a function of the national Government. They should use the Members of Parliament to push the national Government to allocate resources for the establishment of universities across our counties, so that we do not spend the little resources that we would have used to gravel

the small roads in our villages and buy essential medicines in our county health facilities to build universities.

Mr. Temporary Speaker, Sir, counties need to start prioritizing development. We have seen in the last financial year, counties investing a lot of resources in street lighting projects. One would ask: Is street lighting in our counties more important than giving medicine and gravelling our roads within our counties? What is it that we are lighting? Why would people need street lights on a small highway from Kapsabet to Kabujoi or Kapsabet to Mosoriot?

Sen. Kajwang: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Would you like to be informed?

Sen. Sang: Yes, Mr. Temporary Speaker, Sir.

Sen. Kajwang: Mr. Temporary Speaker, Sir, it is worse than lighting streets. There are streets lights from Machakos Junction on Mombasa Highway to Machakos Town, I think more than ten kilometres away. Those lights are so powerful that even lighting them for one night can wipe away the entire budget allocated for lighting. So, it is some craze. That is all that I wanted to inform you.

Sen. Sang: Mr. Temporary Speaker, Sir, if county governments could spend those amounts of resources to light up homes and villages in our counties, that would be prudent use of resources, rather than just lighting the streets in a remote area where people do not need even to work throughout the night. Therefore, counties have to prioritize their development and expenditure.

Mr. Temporary Speaker, Sir, counties are in the process of acquiring ambulance services. We have seen many counties engaging the services of some private company associated with the Red Cross, which is leasing ambulance services at a cost of Kshs600,000 per month. One should ask: Why do you need to spend Kshs600,000 per month on only one ambulance? Is it not better use of resources to acquire the ambulances that you need? Do we need 70 ambulances, for example, in Nandi County where we have 30 wards? I am not saying that Nandi County has acquired 70 ambulances. I know that we need a few ambulances, but why would a county invest county resources to acquire over 70 ambulances? I think that it is important for counties to really consider and think through their priorities.

We need to ask ourselves what our priorities are as counties. If you have a limited budget, you need to spend a little more time budgeting and prioritizing the kind of development activities that you need to consider and fund. So, I think that our counties need to be honest and the county assemblies also need to do their job. If a county government spends Kshs600,000, how much does that translate to at the end of the year? You would better acquire an ambulance that you will use for five or ten years. When figures are exaggerated to this level, somebody is tempted to ask: Is somebody getting something out of it? This is possibly an exercise where county governments are working in collusion with service providers to swindle some of the resources in the counties. Therefore, counties need to look at that.

Mr. Temporary Speaker, Sir, we have the TA that we gave the responsibility to take an audit of the assets in our counties. Some of the resources that we are now sending to the counties will be spent in acquiring some offices and building some structures within the counties, yet we know that we already have some of these facilities existing in

the counties, but they are still under the hands of the national Government. Why can we not prioritize and focus on auditing of assets, so that we are able to complete that exercise and then assign some of these assets to our counties? This will ensure that counties do not need to use their resources in setting up county headquarters and putting up new buildings, yet some of these facilities already exist within the counties. Therefore, for the remaining one year that the TA still has in office, we hope that they can finalize this process, so that in the next financial year all the resources that will be availed to county governments will go into development projects rather than recurrent expenditure.

Mr. Temporary Speaker, Sir, it is also important for counties to carry out an audit of their staffing needs. Our counties continue to engage new staff. This is something that we, as the Senate, need to look into. After hiring 30 ward administrators in my county, for example, do we need to employ another 300 or so village administrators? What is the work of a village administrator? What is it that the ward administrator cannot do? We need to really rationalize the staffing requirements that we have in our counties, so that we are able to release more resources from recurrent expenditure into development projects within our counties. Therefore, the aspect of prudent use of the very little resources that we are sending to counties is important.

We hope that our Governors will be able to agree with us that devolution was about development at the county level rather than resources at the county level. We have heard some phrase in Kiswahili "*pesa mashinani*," but if you ask the ordinary *mwananchi* at the county level or grassroots level, they are not keen on just money getting to the grassroots level, but *maendeleo mashinani*. We can only achieve this, if more resources are allocated to development projects within the counties, rather than recurrent expenditure.

We already have a Bill in this House that gives us an opportunity to discuss whether to increase the percentage of the amount of resources that will be allocated to development rather than recurrent expenditure from 30 per cent to 40 per cent or 50 per cent. I think that, that debate is healthy, but counties that are keen on ensuring that they have development at the counties do not need to wait for a law.

It is the responsibility of every county government to ensure that they are able to provide services at the county level. A county government is a service providing entity rather than a hiring bureau. We need to allocate more resources to the counties. However, we, as the Senate, should not continue to go through the difficulty that we went through in the previous year and in this financial year in terms of passing these Bills.

I think that it is more important for us to really consider how we deal with the constitutional mechanisms or provisions, so that we are able to give this Senate some teeth to ensure that our counties get resources. The Committee on Legal Affairs and Human Rights was scheduled to meet with the Attorney-General of the Republic of Kenya to discuss this particular issue. Unfortunately, I have been informed that the Attorney-General has rescheduled the meeting. We need to ask ourselves whether we should continue to beg the national executive to recognize the role and the mandate of this House or should we go ahead and think about a constitutional amendment that will give the Senate the necessary teeth to perform its functions. This is not about the Senate insisting on being the Upper House. We need to give it the necessary strength and power to ensure that our counties are protected and devolution is entrenched in this country.

With those few remarks, I beg to support.

Sen. Musila: Mr. Temporary Speaker, Sir, I thank you and I will be very brief. First, I want to appreciate the contribution by Sen. Murungi, Sen. Sang and Sen. Kajwang. We have figures here and they look beautiful. For the case of my county, Kitui, I see Kshs6.3 billion. Last year, it was something like Kshs5 billion. They are good figures but during the year that is ending, there has been hue and cry about the manner in which counties have spent the monies that we allocate. This is the place we should start. We are asking for more money but are we satisfied whether the funds that we allocate are properly utilized. Therefore, we must also insist on financial discipline. When I read newspapers every day, you might think governors are doing these things deliberately or they do not know what they are doing. A case in point is what Sen. Sang has just said, about spending money on functions that are not devolved. It is like you have money but you are just dishing out to projects without a proper procedure. I think this Senate must be very clear that when we allocate these funds, they must be properly utilized.

Mr. Temporary Speaker, Sir, Senators must be fully involved in the consultations that go on in the counties in budgeting. I do not know whether Senators here are involved because in my case, I am not. We allocate money, we do not participate in budget making, we do not know how it is spent and some of us cannot access the Printed Estimates. You are giving out Kshs6 billion and yet you do not know how it is spent. You just read in the newspapers about street lighting, ambulances and so on. That is why I support the Bill by Sen. Sang. Senators must sit in some forum to get educated and to know how funds are going to be spent.

This is a very critical point. During the last one year, the money that was allocated, consultations were done but we do not know why Senators were not included in them. Budgets were made and we only hear quarrels between the governor and Members of the County Assemblies (MCAs) about approvals and so on. We only read about it but we are not involved in this process. Therefore, I want to urge that we must be involved in budget making of counties as well as oversight to make sure that projects that are being funded are funded from allocated funds.

The other area that concerns me is the area of collection of revenue. It is apparent that most counties have neglected collecting revenue locally. They just sit and wait for this House to allocate funds from the national Government. That is the money they want to receive and spend. They have forgotten that these funds are given by the national Government to supplement the local revenue that they would have collected.

We do not hear of counties talking about how much they have collected. They simply start crying that they want money from the national Government or else they get stranded. So, I ask myself, what about the local revenue that they must have collected. In fact, I hear that the funds being collected in rural areas are not being accounted for properly. It is just being eaten around by revenue collectors. It is not being taken as money necessary to fund development in counties. They say that the national Government is bringing money. I want to urge the Committee on Finance, Commerce and Budget and the Committee on Devolution to look into this. They must insist to be shown how much revenue was collected and even compare it with the former county council. You will be shocked to learn that the county councils collected more revenue than the current county governments. Therefore, I want us to be very clear.

Mr. Temporary Speaker, Sir, a point has been raised where the national Government always claims that we are required to give to the county governments 15 per

cent but we are so generous we are giving 43 per cent. Let us be realistic. The audited revenue of the national Government is so much delayed. Right now, we are dealing with the audited accounts of 2009/2010. This is a long time. During those days, the national Government used to spend something like Kshs800 million but today, it is over a trillion. It is very unfair to inform the public that you are giving county governments 43 per cent when you know that in the current Budget, it is not 43 per cent. I would like to urge the Auditor General to audit these accounts---

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order. Consult in low tones.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. I was going to urge the Auditor General, who has so far done a good job, to ensure that he audits the national Government accounts to be current so that the allocation is based on real figures and not figures that are assumed to be there when they are not there. I also want to congratulate Sen. Sang because he agrees with this side of the House that a referendum is necessary in order to correct many things that are wrong. I hope that when questions are framed, we would be on the frontline to support the move.

Sen. Sang: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Musila, do you want to be informed?

Sen. Musila: Yes, Mr. Temporary Speaker, Sir. I do not mind being informed.

Sen. Sang: Mr. Temporary Speaker, Sir, we have just received news that the County Governments (Amendment) Bill that Sen. Musila has mentioned has been signed into law.

(Applause)

The Temporary Speaker (Sen. (Dr.) Machage): That is very good.

Sen. Musila: Mr. Temporary Speaker, Sir, that is good information. I thank Sen. Sang because this is what we have been waiting for. The governors will no longer be able to singlehandedly run counties as they have been doing in the past. Therefore, I congratulate the President, Sen. Sang and the whole Senate for this move. I think with this Act, things will never be the same again. Governors will have to consult Senators whenever they are making any move. I do not think I will have to beg to be given Printed Estimates anymore from the Governor of Kitui County. I will be finding those documents on my table when they are ready.

Finally, I want to talk about an issue that is very dear to me and which I raised last year. This is the matter of the Equalization Fund. I am aware that it is not covered under this. But you will recall that when the CRA under Mr. Cheserem did their work, we were very clear that it was not properly done. Some counties which have been marginalized ever since the beginning of the world continue to be marginalized. The framers of the Constitution wanted to address the issue of those counties that are marginalized. Last time, the CRA allocated funds under the Equalization Fund to 14 counties. Number 15 was Kitui County. Number 16 was Baringo County. I believe the other county was Tharaka Nithi. I am sure there are other counties that could make a case to be considered

under the Equalization Fund. Therefore, I would urge Mr. Cheserem, the Chairperson of the CRA that, that formula be reviewed so that this year, we will get a fairer allocation of the Equalization Fund. I want to believe that this is coming because we are looking forward to allowing all counties that have been marginalized to enjoy the Equalization Fund because that is why this Fund was created by the Constitution.

With those remarks, I beg to support.

Sen. Haji: Mr. Temporary Speaker, Sir, I want to follow suit following the remarks of Sen. Kajwang that I take note of the Bill on the allocation of funds to the counties. I am saying so because while rightfully we are supposed to agitate and fight for the counties to be given adequate resources for them to do the service that is expected of them. Personally, and I am not talking about all the governors, but some of the governors are not able to manage the affairs of the counties particularly when it comes to the resources that are being allocated to those counties. I am saying so because I personally feel, in some cases, devolution instead of being helpful becomes devolution of corruption in some of the counties. I am saying this with a lot of concern, particularly regarding some of these marginalized areas; they are not fit even to be clerks in any office, let alone being Governors.

(Applause)

This is because contracts are being awarded left, right and centre and it is already pre-determined even before it is advertised. In some cases, instead of these contracts being open and being given at the county headquarters, they are taken to another county so that the corruption is taken very far away from the eyes of the people of that area. I have evidence to support that claim.

Mr. Temporary Speaker, Sir, when it also comes to employment, I have a case whereby the post is being advertised and the candidate to be employed is the one who is using his own money to pay the *Standard Newspaper* to put up the advertisement---

A Senator: Shame!

Sen. Haji: Yes; I have the evidence of that also and I am going to submit it to the County Public Accounts and Investments Committee (PAIC), because the Ethics and Anti-Corruption Commission (EACC) and the Auditor-General are not doing their job. This particular case I am referring to has been referred to the Criminal Investigations Department (CID), the evidence has been given to the EACC office in Garissa and, up to now, they have not prosecuted anybody. Today, as I speak, that same fellow has been given that employment.

Hon. Senators: Shame!

Sen. Haji: Can we really say that devolution is helpful to every part of this country? It is not!

The second thing, Mr. Temporary Speaker, Sir, is that instead of contracts being advertised – I have just heard Sen. Ongoro talking of people of Nairobi being elite – the people in the rural areas, particularly in these marginalized parts of our country, do not read newspapers or notices. They use their money to get contracts and they are given the contracts without any advertisements. I also have evidence to that effect.

So, Mr. Temporary Speaker, Sir, we should not be lamenting here that the Government is not allocating funds or resources. Resources for what purposes? To go to the pockets of very few people? That is what is happening!

(Applause)

By next year, we want to see heads rolling; some of these Governors should be taken to court. The county assemblies are compromised; they cannot raise a finger because they are given contracts to give to their kith and kin. This is a fact.

(Applause)

So, Mr. Temporary Speaker, Sir, this Senate should wake up, not to merely support devolution just for the sake of it while we know that this money is being misused left, right and centre; and by who? By some Governors! I am not talking about all the Governors. Some of them might be doing a very good job. We have heard that Members of County Assemblies (MCAs) are travelling all over the world such that now, some of them are not even accepted in South Africa, Malaysia; and they have been refused entry into Tanzania. Who has been brought to book? What is the Auditor-General doing? They are doing nothing! Are their officers in the field – who are supposed to pass vouchers – compromised also? I think time has come for the Government to employ private auditors to go and audit some of these counties.

Mr. Temporary Speaker, Sir, if it is not because even that little money is going to some of our people, I would have totally rejected approving of any resources to some of the counties, particularly in my own county. I am not a person who complains. I have done everything possible, but you cannot push a donkey which is not willing to move because you have overloaded it. The only thing it will do is to sit down because it cannot speak. So, some of these Governors are just doing things the way they want to do them because they do not know their responsibilities. There is no accountability or transparency. I appeal to the County Public Accounts and Investments Committee chaired by Sen. (Dr.) Khalwale to visit the counties and have public hearings, then they will realize what I am talking about.

With those few remarks, I note.

Sen. Hargura: Thank you Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to this important Bill. I have noted what my other colleagues have said and I agree with what they have said. I would like to note what I think has maybe not been said.

Last year we, gave this Bill the benefit of the doubt because it was a transition year, just after the General Elections, but we had the whole year to check out things. Now as it has been said, what we are doing is to accept what has been shared out between the national Government and the county governments and then try to share out what has been allocated to us because we have been told that the allocation for the counties is Kshs226 billion, but if you check the same report, CRA which is more competent in this field has given an allocation of Kshs279 billion. I know that is part of the Division of Revenue Bill, but that is where we have failed because we are just sharing what has been given to us. However, even with that, there is the CRA formula which is being used.

*(Sen. Murkomen stood on his feet
to consult other Senators)*

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Do you realize that Sen. Hargura has the Floor and yet Sen. Murkomen is also having the Floor?

The Temporary Speaker (Sen. (Dr.) Machage): Order Sen. Murkomen! You know the rules of the House.

Sen. Murkomen: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Proceed, Sen. Hargura!

Sen. Hargura: Mr. Temporary Speaker, Sir, we are sharing this revenue which as I have said has already been decided by the National Assembly. The Constitution states in Article 127 that it is the Senate which should set out the formula for the division of this revenue, whereas we have not set this formula. I think one year is a long time and it is time we looked at it. We have different parts of this country at different levels of development and that is why we talk of marginalized areas. This formula does not have any element of correction to that marginalization while in statistics, we have the development index of various parts of this country. We should look at that formula and see how we are going to cure marginalization.

The Constitution talks of the Equalization Fund which is 0.5 per cent of the national Budget. I stand to be corrected, but I understand that even last year's allocation has not been utilized because of some regulations which have not been put in place. Who comes up with these regulations and why is it that some arms of Government are seating on responsibilities which should have been discharged? These regulations should be in place so that even the little money that has been allocated under the Utilization Fund can be availed to the counties.

Mr. Temporary Speaker, Sir, we know that the Equalization Fund is supposed to cure marginalization at the county level, but who is administering that Fund? We have a tendency in this country whereby any amount of---

(Loud consultations)

I think the consultations are getting very loud.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senators. Could you consult in low tones? Proceed!

Sen. Hargura: Mr. Temporary Speaker, Sir, with regard to the Equalization Fund, my submission is that it is dismal and will not make much difference. But even that little amount has not been utilized because it has not been availed to the 14 counties which are supposed to benefit. When we inquired, we were told that the regulations are not in place. Who is supposed to put those regulations in place? If it is the Senate or the National Assembly, then we are failing and somebody has to take the blame. These regulations have to be in place, so that, that amount of money can be availed to the counties which are supposed to benefit.

How that money will be availed also has to be very clear in the regulations, because we have a tendency in this country where the Members of the National Assembly would like to have a say in any funds which come from the national Government. They

start doing executive work with it and that is how those funds will be misdirected because people will apply for those funds along political inclinations. This will not actually address the issue of marginalization.

When it comes to the Commission on Revenue Allocation formula, we have to see how we can cure the element of marginalization through inclusion of development index and even looking at how those factors like the land size and population were put in place. We have to see how we can use them for---

(Sen. (Dr.) Kuti and Sen. Murkomen consulted loudly)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mohamed Kuti, can you move to closer Sen. Murkomen and consult in low tones?

Sen. Hargura: Mr. Temporary Speaker, Sir, once we have allocated these funds horizontally among the counties, the main issue which all the Senators who have raised is how these funds are utilized. We know very well that the Governors are responsible for utilization of those funds, but the issue of prioritization and budgeting has to come from the communities. That is what is missing.

Just like Sen. Musila, I do not know how prioritization has been done in my county, because there is no formal forum for consultation. Public participation has to be done in a structured manner and whatever they are proposing has to be guided, so that there is continuity. When we talk of marginalization, it has a lot to do with the infrastructure which is available. There is some basic infrastructure which has to be in place for development to take place. Water has to be available. Also, the health facilities and roads have to be there depending on the way of livelihood. If it is the culture of livestock, there must be infrastructure to support the livelihoods of the people. There must be some development from the first to the fifth year, so that we can say that we have moved from marginalization, at least, to some relative development.

Every elected leader has a vision which has to be taken into account when these funds are spent. If that is not done, then we will end up with expenditure which is not in line with the priorities of the counties. That is what we are hearing now; funds being spent without following the Government procedures. We have the Public Finance Management Act and the Public Procurement and Disposal Act which are not being followed.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Order! It is now 6.30 p.m. We have come to the end of today's business. The House stands adjourned until tomorrow, Thursday 31st July, 2014, at 2.30 p.m.

The House rose at 6.30 p.m.