

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 14<sup>th</sup> April, 2016**

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

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

**PRAYERS****PAPERS LAID****REPORT OF THE FINANCE COMMITTEE ON THE DIVISION OF  
REVENUE BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2016)**

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Thursday, 14<sup>th</sup> April, 2016:-

The Report of the Standing Committee on Finance, Commerce and Budget on the Division of Revenue Bill (National Assembly Bill No. 4 of 2016).

*(Sen. Billow laid the document on the Table)*

**Sen. Karaba:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today Thursday, 14<sup>th</sup> April, 2016:-

**REPORT OF THE EDUCATION COMMITTEE ON THE 19<sup>TH</sup>  
CONFERENCE OF COMMONWEALTH EDUCATION MINISTERS**

The Report of the Standing Committee on Education on the 19<sup>th</sup> Conference of Commonwealth Education Ministers held in Bahamas from 22<sup>nd</sup> to 26<sup>th</sup> June, 2015.

**REPORT OF THE EDUCATION COMMITTEE ON THE 38<sup>TH</sup>  
SESSION OF THE UNESCO GENERAL CONFERENCE**

The Report of the Standing Committee on Education on the 38<sup>th</sup> Session of the UNESCO General Conference in Paris, France held at UNESCO Headquarters from 3<sup>rd</sup> to 18<sup>th</sup> November, 2015.

*(Sen. Karaba laid the documents on the Table)*

REPORT OF THE ROADS COMMITTEE ON THE  
STAKEHOLDERS' FORUM HELD AT SAFARI PARK  
HOTEL, NAIROBI

**Sen. Obure:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Thursday, 14<sup>th</sup> April, 2016:-

The Report of the Standing Committee on Roads and Transportation on the stakeholder's forum held on 3<sup>rd</sup> February, 2016 at Safari Park Hotel, Nairobi.

*(Sen. Obure laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Sen. Murungi!

**Sen. Murungi:** Mr. Speaker, Sir, I would like to make the following Statement---

**The Speaker** (Hon. Ethuro): Order, Sen. Kiraitu! It is time for Papers. You have a Paper to lay first before you make your Statement.

**Sen. Murungi:** Sorry, Mr. Speaker, Sir. It is Sen. Ndiema.

**The Speaker** (Hon. Ethuro): Sen. Ndiema, do you have a Paper to lay on climate change?

**Sen. Ndiema:** Mr. Speaker, Sir, I think it is not ready.

**Sen. Murungi:** Mr. Speaker, Sir, I sincerely apologise.

**The Speaker** (Hon. Ethuro): So it is you?

**Sen. Murungi:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Proceed.

REPORT OF THE MEDIATION COMMITTEE ON THE CLIMATE  
CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

**Sen. Murungi** Mr. Speaker, Sir, on behalf of the Chairperson of the Mediation Committee, I beg to lay the following Paper on the Table of the Senate, today Thursday, 14<sup>th</sup> April, 2016:-

The Report of the Mediation Committee on Climate Change Bill (National Assembly Bill No. 1 of 2014).

*(Sen. Kiraitu laid the document on the Table)*

## NOTICES OF MOTIONS

ADOPTION OF ROADS COMMITTEE REPORT ON THE  
STAKEHOLDERS' FORUM HELD AT SAFARI PARK HOTEL, NAIROBI

**Sen. Obure:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on a stakeholder's forum held on 3<sup>rd</sup> February, 2016 at Safari Park Hotel, Nairobi laid on the Table of the House today, Thursday, 14<sup>th</sup> April, 2016.

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE CLIMATE  
CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

**Sen. Murungi:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, the Senate adopts the Report of the Mediation Committee on the Climate Change Bill, 2014 (National Assembly Bill No. 1 of 2014) laid on the Table of the Senate, today, Thursday, 14<sup>th</sup> April, 2016.

**Sen. Karaba:** Mr. Speaker, Sir, I beg to give notice of the following Motions:-

ADOPTION OF EDUCATION COMMITTEE REPORT ON THE 19<sup>TH</sup>  
CONFERENCE OF COMMONWEALTH EDUCATION MINISTERS

THAT, the Senate adopts the Report of the Standing Committee on Education on the 19<sup>th</sup> conference of Commonwealth Education Ministers held in Bahamas from 22<sup>nd</sup> to 26<sup>th</sup> June, 2015, laid on the Table of the Senate, today Thursday, 14<sup>th</sup> April, 2016.

ADOPTION OF EDUCATION COMMITTEE REPORT  
ON THE 38<sup>TH</sup> SESSION OF THE UNESCO  
GENERAL CONFERENCE

THAT, the Senate adopts the Report of the Standing Committee on Education on the 38<sup>th</sup> Session of the UNESCO General Conference in Paris, France held at the UNESCO Headquarters from 3<sup>rd</sup> to 18<sup>th</sup> November, 2015, laid on the table on the Table of the House, today 14<sup>th</sup> April, 2016.

**The Speaker** (Hon. Ethuro): Next Order.

## STATEMENTS

PRESENCE OF KDF IN SOMALIA SERVING  
UNDER AMISOM

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to renew a request for a Statement which I asked last Session. This is pursuant to Standing Order No.45(2)(b), to the chairperson of the Standing Committee on the National Security and Foreign Relations relating to the presence of the Kenyan military security forces in Somalia serving under AMISOM.

In the Statement, the Chairperson should clarify the following:-

(a) Is it true that the Kenyan military officers are abetting illegal trade in charcoal, sugar and other contraband goods and thereby unknowingly oiling the funding of the *Al Shabaab* operations?

(b) Confirm whether the Government of Kenya is aware that sometime in November, 2015, the National Parliament of Somalia voted with overwhelming majority

in a resolution that the Kenyan forces must be excluded from the AMISOM forces and leave Somalia forthwith.

(c) As a consequence, could the Chairperson explain whether the Government has an exit strategy for our military security forces from Somalia?

**The Speaker** (Hon. Ethuro): Chairperson, Sen. Haji!

**Sen. Haji:** Mr. Speaker, Sir, I wish to ask for two weeks to get the answer from the Cabinet Secretary for Defence.

However, on the question of charcoal, I have also been accused because I was at one time the Minister for Defence. God is above me, that I did not know Kismayu. I do not even have a canteen, leave alone a shop, to do the charcoal business. Anyway, I will ask the Cabinet Secretary to give a full answer to this.

**The Speaker** (Hon. Ethuro): Let us have the answer in two weeks time.

Chairperson, Standing Committee on Roads and Transportation, Sen Obure, give a response to the second Statement.

#### OPERATIONS OF KENYA AIRWAYS

**Sen. Obure:** Mr. Speaker, Sir, I regret to report that despite efforts to obtain a response, we have not been fortunate to be furnished with any. But we are still pursuing the matter with the relevant Ministry.

**The Speaker** (Hon. Ethuro): Sen. Leshore, Sen. Obure says that he has no response for you, but he is still pursuing the relevant authorities.

**Sen. Leshore:** Mr. Speaker, Sir, I would like to request that the Chairperson pursues this issue because Kenya Airways (KQ) is no longer the pride of Kenya or Africa. It is going down and they are selling planes and slots in Heathrow. Their pilots are also on a go-slow. The Chairman should request the authorities to give us the response soon.

**Sen. Obure:** Mr. Speaker, Sir, the sentiments expressed by the Senator for Samburu are shared by many Kenyans. We appreciate the importance of this matter and I can assure the Senator that we will do everything to make sure that we get an elaborate answer to his request.

#### PERSONAL STATEMENT

##### STATUS OF THE MANAGED EQUIPMENT SERVICE FOR MERU LEVEL 5 HOSPITAL

**Sen. Murungi:** Mr. Speaker, Sir, pursuant to Standing Order No. 45 2(a) of our Standing Orders, I beg to make the following Statement on the Managed Equipment Service (MES) for Meru Level 5 Hospital in Meru County.

As the Senator for Meru County, I have learnt with shock and disbelieve that despite the high incidents of death of our people through non-communicable diseases such as cancer and diabetes, the Governor of Meru, Peter Munya, has frustrated all the efforts by the Ministry of Health to install modern theatre equipment, surgical instruments, renal unit, Intensive Care Unit (ICU) facility and radiology equipment in Meru Level 5 hospital, which is also a referral and training hospital for the region.

The people of Meru stand to lose medical equipment worth Kshs460 million of leased equipment for Meru Level 5 Hospital by the national Government. They will continue to incur huge financial costs of treatment and management of cancer and diabetes at the Kenyatta National Hospital (KNH), private hospitals in Nairobi and hospitals in India, not to mention thousands of the poor people who will continue to suffer and die in pain at home for lack of access to these medical services.

It will be remembered that after several months of stubborn refusal to sign the Memorandum of Understanding (MoU) for the provision of medical equipment by the Ministry of Health, Gov. Peter Munya finally bowed to public pressure and signed the MoU on 31<sup>st</sup> July, 2015. Meru Level 5 hospital was among the first five hospitals in Kenya in which the MES programme was to be piloted and completed by May, 2015 alongside Machakos, Nakuru, Homa Bay and Kakamega hospitals, but the governor has since frustrated the pilot project.

On 21<sup>st</sup> September, 2015, the Ministry of Health wrote to the governor to constitute a hospital implementation committee, which would facilitate the Ministry to install the equipment at the Meru Level 5 Hospital, but no such committee has been formed to date. On 2<sup>nd</sup> October, 2015, the Ministry of Health project manager, Mr. Morris Karaini, and his team travelled to Meru with an intention of meeting the governor, but they only met the County Executive Committee (CEC) Member for Health, Dr. William Muraah, who was openly hostile to them. He told them not to install the equipment at the Meru Level 5 Hospital, but at Kanyakine Hospital, which according to the project manager and his team, was unsuitable due to poor, inadequate physical infrastructure and lack of qualified staff. In any event, no reason was given why the equipment could not be installed in Meru Level 5 Hospital.

To date, the governor has completely refused to meet the Ministry of Health team to discuss the matter and Meru County stands to be the only county, out of the 47 counties in Kenya, to miss out on this critical MES project, which according to the Ministry of Health has a deadline of 30<sup>th</sup> June, 2016. It is a great shame, embarrassment and an insult to the people of Meru that after rejecting and frustrating the MES project, which can alter the cancer and diabetes trajectory in Meru County, Gov. Peter Munya is busy attacking President Uhuru Kenyatta's Government for non-delivery and politicking from village to village, under the guise and smokescreen of cancer screening.

Mr. Speaker, Sir, as the Senator for Meru County, I shall not sit and watch our people suffer and die of cancer and diabetes, just to satisfy the bloated ego of this governor. I shall take a bold step to ensure that the said equipment is delivered to the Meru Level 5 Hospital, as agreed between the Ministry and the county government, if the said equipment is not delivered and installed on or before 30<sup>th</sup> June, 2016.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to confirm that indeed Meru Level 5 Hospital is one of the senior hospitals, even before devolution. I want to join Sen. Murungi in condemning the Governor of Meru. What he is doing is actually a crime against not only the people of Meru, but even the surrounding counties that would stand to benefit from this equipment.

It should not escape the people of this country that there is a lot of trade unionism within the ranks of the Council of Governors (CoGs). I believe that it is this trade unionism that is forcing my brother, Gov. Munya, who I have a lot of respect for, to

refuse to accept the equipment. A section of governors felt that they should have procured that equipment directly. Therefore, he is doing it so as to please the rest of the governors, since he is their chairman. I want to appeal to Gov. Munya that when it comes to some things, one has to reach a stage where one retreats. The point has been made that governors would have preferred to procure, but since the Government has gone ahead and done the wrong thing anyway, let them accept the equipment, so that our people can benefit from it.

Mr. Speaker, Sir, this is not just limited to Meru County. Even in Kakamega County we are yet to enjoy this equipment that we were looking forward to, to change the medical sector by way of accessibility to cheap and nearby equipment by renal, diabetic and cancer patients.

**Sen. Billow:** Mr. Speaker, Sir, the Statement by the Senator for Meru is shocking. It is not just about a governor, but the Governor for Meru is the Chairperson of the Council of Governors (CoG) in this country. Therefore, he occupies a very important office. Therefore, to imagine that today, children and women in that county can be denied essential and critical medical services because of the perceived fear, arrogance or both of the governor, is a shame and a disaster.

Mr. Speaker, Sir, some of the actions by these governors, like declining to accept medical equipment which affects the life and health of patients are tantamount to abuse of office. There is nowhere in the world where a leader in public service and in charge of an institution can refuse to accept equipment, services or any other support from the national Government where you are part of one nation.

There seems to be a perception by the governors that they are totally divorced from the national Government, yet, it is very clear in our Constitution that the governance units are interdependent. It is the national Government which finances them and, therefore, there is nothing wrong if the national Government funds them or gives them equipment and resources in the same way you accept those resources from donors, Non-Governmental Organisations (NGOs) and other third parties. It is a shame and we must not allow, as a nation, that level of impunity which will ultimately lead to collapse of essential services in our country.

It is important that as we are going to celebrate the third anniversary of devolution – and it will be celebrated in no place other than Meru County itself, this is where the nation is heading in the next couple of days. It will be a shame for leaders across this country, from all levels of Government to go to Meru, yet the leader of the CoG cannot allow his hospitals to receive necessary and essential medical equipment. That would be an embarrassment to himself and I think a message should be sent clearly by all those who are planning to attend that meeting, that it is a shame for the Chairman of the Council of Governors to behave in the manner that he has behaved.

His action is tantamount to abuse of office. The necessary Government authorities that run around when a bank director reports a loss from non-performing loans should take action on this. The same officers cannot investigate Kenya Airways when it is sinking or the chairman of CoG when they are denying people life-saving equipment and so on. There is duplicity in the way our systems and institutions are operating. There has to be some action taken to save this country from the excesses of the governors in this country.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, thank you for giving me an opportunity to

sympathise with the Senator for Meru, I am sure these sympathies will go to me as well. The Governor for Meru probably tried a bit and even signed for the equipment but the governor of my county, Bomet, who was the first chair of all the governors in the country, brought these bad manners of not serving the people in that capacity, by not signing the documents at all. It is only after enormous pressure from the people that he allowed the County Executive Committee Member (CEC) for Health to allow the use of rooms which were available for this equipment. Against all odds, the public made sure that the equipment was installed against the wishes of the governor.

The governor, like all the other governors, has no remorse at all. Even after the equipment had been installed, several residents of the county are still dying, but the governors are not reevaluating their concern for the citizenry despite the enormous loss of human life. This is one of the greatest omissions in terms of performing work that should be considered as criminal. Action should be taken against abuse of office that costs the lives of *wananchi*.

It is time we call upon the bulldog which is sitting at Upper Hill, the Ethics and Anti-Corruption Commission (EACC). They are supposed to look into some of these things. It is about time that they woke up and dealt with this for the benefit of the Kenyan citizens. I sympathise with what the governors are doing. It is costing lives and I hope that something will be done to save lives.

**Sen. Adan:** Mr. Speaker, Sir, I join my colleagues in condemning this situation in Meru. What the governor for Meru is doing is a crime. Women and children are suffering because of lack of equipment. The governor is doing this because of his personal interest; nothing else. He should be held accountable for this heinous crime.

For some of us who come from Isiolo and part of upper Eastern region, we consider Meru to be where we can go to, whenever we have challenges in accessing some of those facilities. The constitutional provision is very clear in terms of the right to health care in this country. As leaders we should not accept such a situation to happen in our country.

We should hold the governors accountable, especially the governor for Meru, for this action. This is very serious. We should come out and condemn it. The money he is refusing to pay is not his money. I do not know where he will get money to buy his own equipment. He is not taking that equipment to his own house. We have to condemn this and make sure he is held accountable. He should be responsible for his actions.

**Sen. Obure:** Mr. Speaker, Sir, the Statement by the Senator for Meru is shocking. The action by the governor is denying access to medical facilities in respect of those in need of them. This Senate had been petitioned by governors through a memorandum to the effect that they had not been consulted regarding the leasing of this equipment by the national Government. About ten days ago, we met the Cabinet Secretary responsible for matters relating to Health in this Chamber. We interrogated him on issues relating to procurement of the equipment. He demonstrated to us that there were meetings with governors and county health executives discussing the procurement process. In fact, he showed us agreements signed by 46 of the 47 governors signaling the acceptance to installation of the equipment in their various health facilities.

I want to appeal to the Governor of Meru, purely on humanitarian grounds, that he facilitates the installation of the equipment at Meru hospital. This will ease the burden of *wananchi* particularly those in need of these services.

**Sen. Karaba:** Mr. Speaker, Sir, it is important to note that some of the governors are trying to ride on very dangerous roads and this is one of them in the name of Governor Munya. He happens to be the Governor of Meru County which is among the Mt. Kenya region counties. Therefore, if something happens in Meru, it affects the entire region. When it comes to hospitals and health facilities, it is not to be used by one county only. It is a facility to be enjoyed by people living along the road leading to Isiolo and people living in Mt. Kenya region and other far flung areas. Therefore, if one person solely decides that it will not happen on behalf of about one or two million people, then there is something wrong.

I sympathize with my friend, Sen. Murungi and other counties which have the same problems but are suffering silently. We need to probe and find out whether the same thing is happening in other counties so that the counties suffering like Meru County can be assisted. The governor has no right to deny them the privilege to enjoy those machines. Kirinyaga County, for instance, was given two machines but the governor decided to give one to a hospital near his home instead of considering a hospital called Kimbimbi which is along a very busy road. He instead gave it to Kianyaga where he comes from. We need to decide whether the governors should be left alone to decide what happens in the counties without considering public opinion. Our people are suffering at the expense of the governors. Therefore, something should be done urgently.

**Sen. Mositet:** Asante sana Bw. Spika kwa kunipa fursa hii ili niweze kuchangia arifa hii. Gavana wa Meru ni mtu asiyezingatia mahitaji ya watu wake. Pia kwamba mashine zinazozungumziwa hazihitajiki na watu wa Meru. Ama Gavana huyo anaamini kuwa watu wa Kaunti ya Meru hawana magonjwa yatakayotibiwa na mashine hizo. Hafai kukataa mashine hizo ilhali watu wa Kaunti ya Meru wanaendelea kudhiirika na magonjwa.

Maafisa wa Wizara ya Afya pia wanafaa kushawishiwa kwamba wanaponunua mashine zozote, wanafaa kuangalia mahitaji mbalimbali ya kila kaunti kwani sio kaunti zote zinahitaji mashine za kutibu ugonjwa wa saratani. Kaunti mbalimbali zina mahitaji tofauti. Inawezekana Gavana Munya aliona kwamba mashine hizo hazitawafaidi watu wa Meru. Hata hivyo angekuwa na utu angekubali mashine zile ziwekwe katika hospitali za Kaunti ya Meru.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I stand here not to condemn Governor Munya. The issue of hospital equipment must be looked at within the context of Article 6(2) and the Fourth Schedule of the Constitution which states that health is a devolved function. The national Government is responsible for referral hospitals which are only five in number, including Mathare Mental Hospital. The rest of the hospitals are devolved. The national Government is responsible for Moi Teaching and Referral Hospital, Kenyatta National Hospital (KNH), Mbagathi Hospital, Mathare Mental Hospital and Port Reitz Hospital.

Sen. Murungi who is condemning Governor Munya should know that Article 6(2) states that:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

Where there is consultation and cooperation, there is absolutely no harm in national and county governments working together. However, with regard to the issue of



hospital equipment, there was no consultation and cooperation. I have taken the liberty in my capacity as a leader in this House and a leader out there in my own right to speak to several governors. There was no consultation between the national and county governments prior to the procurement of the equipment. The national Government simply and arrogantly procured them and forced the county governments to take them, regardless of their wish. If devolution has to work, the national Government must respect the territory of the county governments.

Mr. Speaker, Sir, secondly, if devolution has to work, then governors like Gov. Munya and Gov. Rutto must be respected for what they stand for. In this and last year's budget, there is a figure of Kshs4.5 billion towards the payment of this equipment and no county was left out. Meru and Bomet counties are both included. The reason that the national Government rushed to acquire these equipment is as clear as daylight. I have information that in the procurement of those machines, there was a hemorrhage of Kshs11 billion that was creamed off by those who facilitated the procurement. That is why there was a mad rush regardless of what the county governments think or what Article 6(2) says. They decided to buy equipment for the county governments and force it on them.

Who does not know---

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. My statement was meant to put some pressure on the governor for this equipment which has already been purchased to be brought to Meru Level 5 Hospital. The equipment is already in hospitals in Bungoma County where the Senate Minority Leader comes from. Therefore, why is he supporting Governor Munya for refusing to bring the equipment to Meru Level 5 Hospital?

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, the distinguished Senator for Meru County is trying to preempt my argument. Now that we are wiser after the event which is a very dangerous thing in life, we advise the principled and admirable Governor Munya to accept the equipment. However, if we are to defend devolution, it is wrong and dangerous to allow corrupt characters in Nairobi at the national Government level to mastermind procurements and force them on county governments then turn around and say that a specific governor is bad because he resisted compliance with the Constitution. I urge this House that if we truly have to live to the bill of defenders and protectors of counties and their governments, then we must learn to follow the boundaries set out in the Constitution; that the two levels of government are distinct and inter-dependent.

Mr. Speaker, Sir, as I conclude, I will be the last man to stand in this House and encourage an encroachment of the authority, power and independence of county governments. There may be bad governors and corruption but we all know how the national Government was threatening and arm twisting governors to force them to sign for this equipment long after procurement and delivery. After commissions have been creamed off and eaten, then they say, now you must sign to this.

The President has said that his Government is choking with corruption. As I said the other day, President Robert Mugabe who people do not quote much said, "People in Kenya are such thieves that the only thing they cannot steal is the sun because they do not know where to hide it". The Jubilee Government must wake up and stop these corrupt transactions. County governments have their needs.

*(An hon. Senator spoke off record)*

*(Laughter)*

Many of them are corrupt. We know the story of wheelbarrows in my county. I know of one governor who within the first one year of devolution bought a property in Nairobi worth Kshs850 million. We know that previously he did not have even a decent car. That is the failure of the Jubilee Government and its agencies that fight corruption to deal with corruption. It is your failure.

Mr. Speaker, Sir, I shall not condemn Governor Munya. He did the right thing but now that the equipment is here, I encourage him. I will place a phone call to him to ask him to accept the equipment. However, we should not condone and cover up dirty deals that the Jubilee Government is doing. Many of you are just cheer leaders. You do not know who creamed the Kshs11 billion. We know!

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula.

Proceed, Sen. Kembi-Gitura.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I listened to the statement by Sen. Murungi. All of us should take it very seriously. I am shocked by the statement by the Senate Minority Leader. This is not a small issue that can be thrown around by blaming Jubilee or any other person. Sen. Murungi has stood up for his county. He has said that the people of Meru are suffering because of a governor who has a big ego who has refused to accept this equipment. What shocks me about Sen. Wetangula's submission is that, despite all he has said, I have never heard him condemn his governor for accepting the equipment. In the first instance, I would have expected him to stand out at his place and condemn his governor for accepting the equipment regardless of everything else. However, out of prudence---

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

**The Senate Majority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is the distinguished Senator for Murang'a who is in constant conflict with his governor right in saying what he has said yet I was on national television touring Bungoma District Hospital inspecting that equipment? I found that, in fact, it was substandard. It was new looking but not working. I condemned the governor for accepting the national Government to arm-twist him to receive equipment which up to today, does not work.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I am sure you will allow me to ignore that. This situation is caused by the ego of a governor who does not appreciate what this kind of equipment means because, maybe, he can afford to come to Nairobi, Aga Khan or MP Shah hospitals but he may not appreciate what it means to the ordinary person out there in Meru, who has to spend money to come to Nairobi for dialysis. He or she spends money on matatu fare, accommodation and the days he spends in hospital. This money would have been more prudently used in Meru and saved. This is how we create wealth.

However, when you stand here and argue that governor is doing the right thing, it goes against the very principles that we swore to defend under the Constitution. We said that it is our duty to oversee and protect the interests of counties and county governments. Sen. Murungi is protecting not just the interests of his people of Meru but also the interest

of the County Government of Meru which is failing in appreciation of the importance of that symbiotic relationship between it and the national Government.

As one Senator said, when the Cabinet Secretary for Health came, we understood that this issue was agreed upon between the national Government and the county governments as the best thing that would have been done to expand health facilities, and, therefore, help our people in accessing health much closer to where they come from, and, therefore, help them create wealth by not spending money going to India or coming to Nairobi. The fact that you or I can afford to go to some of these hospitals in Nairobi, we must understand that, that privilege does not spread to the ordinary Kenyans in Meru, Murang'a, Bungoma, Busia and all other parts of the country.

Therefore, Sen. Murungi is right in demanding answers and insisting that this progress cannot be stopped at the behest of one person whose interest can only be personal, not for the benefit of the people of Meru.

**The Speaker** (Hon. Ethuro): Let us have the last two contributions; Sen. Hargura and then finally Sen. (Prof.) Kindiki.

**Sen. Hargura:** Mr. Speaker, Sir, I also sympathize with the sentiments of Sen. Murungi; more so because that is the nearest Level Five Hospital to my county where most of the patients from my county are normally referred to. Therefore, the idea that it is a county function to procure this equipment does not hold any water at this level because they have been procured. It is very clear that they are required throughout this country. If the governors knew that it was their responsibility, this is the third year since we started allocating them money. Why did they not procure that equipment? Why did it take them three years until the national Government realised that these equipment has to be procured centrally?

It might not have been right for the national government to procure this equipment, but it is urgently required. Any governor resisting it, is neither sincere to himself nor to the people he is representing. Therefore, the earlier the Governor for Meru accepts the equipment, the better because it could also be of use to those of us who come from counties who use that Level Five Hospital as a referral hospital. This would make those services accessible to us too.

**The Speaker** (Hon. Ethuro): Proceed, Sen. (Prof.) Kindiki. You can follow up your contribution with the statement on the business of the Senate for the coming week.

*[The Speaker (Hon. Ethuro) left the Chair]*

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

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 19<sup>TH</sup> APRIL, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, hon. Senators, the Business of next week, commencing Tuesday, 19<sup>th</sup> April, 2016 is as follows:-

On Tuesday, the Rules and Business Committee (RBC) will meet at 12.00 noon to schedule the business of the House for the week. Part of the business that will be discussed next week includes:-

(1) The Report of the Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2014).

(2) The Division of Revenue Bill (National Assembly Bill No. 4 of 2016); Second Reading.

(3) The Universities Amendment Bill (Senate Bill No.23 of 2014); Committee of the Whole.

(4) The County Assemblies Services Bill (Senate Bill No.27 of 2014); Committee of the Whole.

(5) The County Hall of Fame Bill (Senate Bill No.33 of 2014); Committee of the Whole.

(6) The County Government Disaster Management Bill (Senate Bill No. 40 of 2014); Committee of the Whole.

(7) The County Governments (Amendment) Bill (Senate Bill No.18 of 2014); Second Reading.

Mr. Deputy Speaker, Sir, on Wednesday, the House will continue with the Business that will not be concluded on Tuesday and any other business that may be scheduled by the Rules and Business Committee (RBC).

On Thursday, 21<sup>st</sup> April, 2016, the Senate will consider Bills at Second Reading, deliberate on Motions and any other business as may be scheduled by the RBC.

May I make two other comments: There are two legislative agenda whose deadline is today. I request my colleagues to stay in for a while so that we discharge that important national obligation. The first one is the Report relating to the second generation formula of allocation of funds to county governments which the relevant Committee has tabled in the House.

The second is the Division of Revenue Bill whose timelines are bound by the Constitution as the Members are aware. In order to with dispense that Business, I request the Members to sacrifice a bit of time so that we achieve that purpose.

Finally, I thank Senators for starting this Session robustly. We have a number of Bills next week many of which are at the Committee Stage. I appreciate the Members for the effort and time they have put in. I understand there are many other competing equally legal obligations including your representation role in counties and sometimes your schedules clash with your legislative and oversight work, among others. I really appreciate that and I hope if we continue at this space, we will make good progress during this Fourth Session of the 11<sup>th</sup> Parliament.

It is now my pleasure to lay the Statement on the Table.

Thank you.

*(Sen. (Prof.) Kindiki laid the document on the Table)*

**Sen. Wako:** On a point of order Mr. Deputy Speaker, Sir. I have listened to the Statement. Given the fact that next week there will be many Bills scheduled for Committee Stage, and taking into account that quite a number of these Bills will require the requisite majority to be enacted, has consideration been given to the decision at the *Kamukunji* today to the effect that Members are encouraged to attend the Devolution Conference in Meru? We have been encouraged to attend the conference.

I understand that the conference will commence on Tuesday until the end of the

week. Can we realistically have Bills next week at Committee Stage?

**The Senate Majority Leader** (Sen. Prof.) Kindiki): Mr. Deputy Speaker, Sir, I thank my senior for that reminder. I am aware that today's *Kamukunji* decided that this House, in principle, should participate. It is the reserve of the Chair to communicate it. It is not my reserve. What I am not aware of is whether next week the Senate has been adjourned. I am not sure, but since it has not been adjourned, the House must have business.

Lastly, the reason why I brought up the Bills that are in Committee Stage next week was to commend Senators for their previous work during the Second Reading. It was not to ask them to come and vote. I know the quorum may be a challenge because if a decision has been made to travel to Meru, many Senators may travel.

This is, therefore, the more reason, why today, we should dispense with the revenue sharing formula Motion as well as the Division of Revenue Bill.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I thank the Senate Majority Leader for urging the House to be present during the two critical Bills that are time bound. However, I appeal to the Senate Majority Leader and the Senate Deputy Majority Leader that we miss them in the House. They should be present so that they continue leading us. It is paradoxical for the Senate Majority Leader to appeal to us to be in the House and then watch the proceedings through remote control.

**The Deputy Speaker** (Sen. Kembi-Gitura): I think the message is clear.

Sen. (Prof.) Anyang'-Nyong'o did you seek the Floor on the Statement?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I am seeking a clarification from the Chair. If one sends a written statement required of a committee chair or a Cabinet Secretary to the Speaker's office to be scheduled on the Order Paper and you do not hear about them, what is the recourse?

**The Deputy Speaker** (Sen. Kembi-Gitura): The simple answer to it is that, that is administrative. The Senator must follow it up with the Speaker's office to be told why it has not been signed or approved. The procedure is one of approval, then signing by the Speaker before coming to the Floor of the House.

Sen. (Prof.) Anyang'-Nyong'o, you are a senior Member of Parliament. Therefore, you understand that it is administrative and I cannot deal with it in the House.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, precisely; it is administrative. The administrative machinery should function without being prompted by Senators. Sometimes one feels indulged in unnecessary work when there are officers tasked to carry out such work. I urge the Speaker's and the Clerk's offices not to wait for us to follow up on our statement requests as if it is a favour being done to Senators.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you have any specific one in mind that I can look at?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, about two weeks ago, I sent requests on three Statements which I have copies in my office. Since then, I have not received any response to them.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay. I will see what can be done.

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir. I refer to what the Senate Majority Leader said relating to the next week's order of Business and what we must do to complete the Business which has timelines.

In the next Business, we will be discussing the second basis for the equitable

revenue sharing formula. However, I have just received the documents while seated here. They were not available before. The documents contain information on the second basis for equitable sharing of revenue as well as the Division of Revenue Bill. I have just received both copies.

Mr. Deputy Speaker, Sir, my county will be adversely affected somewhat. That is the reason why I wanted to study them in greater detail so that I have some understanding before making meaningful contribution in the House. What should I do in the circumstances? I have not read the basis of the decision I am being requested to make.

**The Deputy Speaker** (Sen. Kembi-Gitura): The Notice of Motion was given and it is now at the debate stage. I am not capable of stopping the debate from going on. Therefore, my request to you is that you make the very best of what you have, so that you can represent your people in the Senate to the best of your ability. That is what I can say from where I am sitting, and I believe that goes across the board.

**Sen. Obure:** Mr. Deputy Speaker, Sir, I appreciate the advice. However, is it not possible for us to get copies of, for example, the Division of Revenue Bill earlier, since it was tabled in this House?

**The Deputy Speaker** (Sen. Kembi-Gitura): Senator, you know that once the Bill is out there, it is possible to procure a copy, most likely through the Clerk's office or the relevant office. If you are talking about a Bill, then I dare say that you had the ability of getting a copy of it much earlier; even before the Notice of Motion was given on this specific issue. Let the debate go on and we see how far we can go with it. That is over.

Next Order!

## BILL

### *First Reading*

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS  
SUBJECT TO RATIFICATION) BILL (NATIONAL  
ASSEMBLY BILL No.54 OF 2015)

*(Order for First Reading read – Read the First  
Time and ordered to be referred to the relevant  
Departmental Committee)*

## MOTION

ADOPTION OF REPORT ON THE SECOND BASIS FOR EQUITABLE  
SHARING OF REVENUE AMONG COUNTY GOVERNMENTS

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of Revenue among the County Governments laid on the Table of the House on Wednesday, 30th March, 2016.

*(By Sen. Billow on 13.4.2016)*

*(Resumption of Debate interrupted on 13.4.2016)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is a resumed debate.

The Senate Majority Leader.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, thank you for giving me a chance to contribute to this important Motion. I will make very brief remarks---

*(Loud consultations)*

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Majority Leader is making a very important contribution, but the consultations on my left are so loud that we can hardly hear what he is saying.

**The Deputy Speaker** (Sen. Kembi-Gitura): Has Sen. Omar got something to do with it? Please, let us consult in lower tones, so that we can hear each other.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir, for giving me the privilege to contribute to this very important Motion. I will make very brief remarks for two reasons. First, we are pressed for time and, secondly, we have had occasion to comment on this issue before. I would not want to repeat myself.

First and foremost, I commend the Standing Committee on Finance, Commerce and Budget for considering the recommendations of the Commission on Revenue Allocation (CRA), which is the constitutional body charged with making recommendations to this House on how money allocated to counties will be shared horizontally among the counties. I have noted that the major change in the revised formula is the one per cent increase on the equitable share of revenue. Other than that, there is one per cent that the CRA has allocated to the development index, which means that the less the county is developed in terms of services and infrastructure, the more it gets in terms of affirmative action or correctional measures, to make sure that it catches up with the rest of the counties in our country. That is the major change that I have seen. Other than that, all the other factors basically remain the same, including the size, population and fiscal discipline of the country.

Mr. Deputy Speaker, Sir, I consider this to be one of the most important exercises that this House does every year. So far the formula that has been used has been fairly equitable. This will go a long way in reducing the gap between highly developed counties and less developed counties. With the new parameter of development index, which is at one per cent of the revenue, the gap between the rich and poor counties will reduce even further.

I have also noted that over the years the amount available to less populated counties and historically marginalized counties, like Tharaka-Nithi County, has gone up, and that is commendable. In future I would like to see a greater percentage being attached to the level of development in each of our counties. This is because devolution serves one major purpose, which is to equalize our country and make sure that we exorcise the ghosts of Sessional Paper No.10 of 1965. The problems that Kenya is facing today – I dare to argue – are associated with the thrust of Sessional Paper No.10 of 1965, which

simply said: “Concentrate on the agriculturally productive parts of Kenya, ignore the rest of arid and semi-arid areas and Kenya will be a great country.”

As a result, most of our infrastructure and developmental institutions have concentrated on a small part of our country, which is actually less than a third of the country, leaving two-thirds of our nation unattended. This has led to serious tensions in our country, with some parts feeling as if they are not part of Kenya. This is what devolution has come to address. This is what this formula is enhancing in terms of reducing the gaps of inequity that centralized administration and governance structure cannot address.

For the first time we are seeing counties that never had bitumen roads building some. We are also seeing counties that never had certain health and water facilities establishing those services. So, this formula is not just a mathematical phenomenon; it is an expression of the paradigm shift that we have achieved under the Constitution (2010), which will make our country equalized for the better. We have concentrated a lot on building roads, railways and airports, but if we do not equalize our country, we will not solve our problems. The reason many Kenyans in some parts of the country feel aggrieved and agitated is simply because of exclusion.

Development experts over the years have demonstrated that if you want to equalize a country, then you need to equalize access to development, even when some areas do not look quite ‘productive.’ Since there is need for long-term planning of national development, it is important that those areas are developed. Those areas that do not seem to be ‘productive’ are likely actually to be the breadbasket of our country in the future. A good example is northern Kenya.

For a long time - for over 50 years, northern Kenya was neglected and marginalised. Recently, a number of useful resources such as natural gas and oil have been discovered in those areas. All of a sudden, Kenyans from other parts of the country have rushed to invest in those areas in anticipation of harvesting the windfall that comes with establishment of the oil and gas infrastructure. It is likely to get a reaction from indigenous communities as it has happened in many countries such as Nigeria, Venezuela and other parts of the world because we have not expressed our solidarity with these parts of Kenya for a very long time.

To avoid that kind of reaction, it is important that we treat the country equally and equalise development. That will make our country safer and united for a very long time to come. In some countries, you will find highways traversing deserts. There may not be a lot of economic activities going on there but that is an investment that we must make as a country to ensure that no part of the country feels left out.

Mr. Deputy Speaker, Sir, the second last thing I want to say is that as much as we labour very hard in this House to make sure that money is available to our counties and in an equitable manner, it is disheartening to see the culture of wastage, plunder, robbery and theft that is happening in our counties across the country regardless of political party loyalties and which part of the country you come from. There is a lot of stealing going on and I have already pronounced myself on this matter.

One of the greatest threats or obstacles to devolution that we are facing today will not be the centralist thinking because the centralist thinking has been dismantled by the Constitution itself. It is almost impossible to roll back devolution by people who have a theory that they can actually dismantle the devolved powers and return powers to the



centre. The internal threat that devolution and devolved units are facing is because unlike in the past when we had one big man in Nairobi controlling the resources of the country and using them at their whims, we now have 47 “small-big” men. The pun is intended. We have 47 “small-big” men in every part of our country trying to replicate the big-man syndrome.

We have small despots in every corner of the country perpetuating corruption, nepotism and exclusion and this is the biggest threat that we are facing today. Indeed, I dare to argue that if we do not watch what is happening in our counties today, we are staring at a monumental national security problem, where a few people use the infrastructure of the counties to amass wealth and power and create militias to protect that wealth and power at all costs. These are people who were nondescript politicians and non-entities, you can see that today, they talk the way they want; they talk down on very experienced people---

This afternoon, we have just heard what is happening to my elder brother, Sen. Murungi, a distinguished Kenyan who has served this country for many years in very senior capacities. However, all of a sudden, because he is a Senator and not a governor, he is almost getting immobilized and he cannot function because power has gone to the head of some fellow somewhere. The resources of the county are being used to harass and intimidate the leadership and that is happening in each and every county in this country. We must, as much as we argue for more resources to go to the counties, find a way of taming corruption, theft, robbery and banditry in our counties.

Mr. Deputy Speaker, Sir, finally, if this country is to stabilize in the long-term, even as we come to the end of the first cycle of implementing devolution which will end next year after the first five years, we must start thinking about reorganizing our constitutional architecture in the long-term. I know, in this country, we have had a debate on amendments of the Constitution. Many Kenyans, including leaders who sit on my side of the House, believe we will have to amend the Constitution at some point. The only difference of opinion we have had is on the timing of that referendum. Whether we like it or not, we have to redefine and retune our Constitution with the benefit of hindsight to protect devolution, among other things.

As I conclude, this is what I want to say, in terms of where we will go from here. The problem we have in counties today, because it is almost bringing the country to a halt---. You saw what county resources did to the Senate Minority Leader in this House; a senior Kenyan, former Minister for Foreign Affairs, a presidential candidate and a parliamentarian of 20 years standing. Despite all that, the small boy working within the systems using facilitation and resources coming from mostly unlawful sources actually brought pandemonium in such an important occasion when my brother was launching his presidential bid. That was simply because the infrastructure is there.

For the way forward, the problem we are having is ideological and it is in the Constitution. When you concentrate both political and economic decision making power in one person or office; that is a recipe for disaster. When we amend the Constitution – because it is not a question of if but when and the time is coming and it is not far – we must separate political power from economic power, so that governors do not have both political and economic power in terms of decision-making. That can be decentralised. You can have other organs within the county because, for example, at the national level, we have Cabinet Secretaries (CSs) and they have a lot of decision-making power.

However, the economic and accounting powers are with the Principal Secretaries (PSs).

So, we must strengthen other offices and structures in the county level. We should create a committee or an office that is more powerful in terms of decision-making. The Committee should be separated and immunised from the control of governors. However, when you look at the County Governments Act and the way the Constitution is, you will see that the governor controls almost everything. He is in charge of decision-making mechanisms. Therefore, the silver bullet that will cure the corruption that we see and the run-away banditry will be to dismantle the power arrangement and create alternative centres of power in the counties.

When I say so, I am not trying to talk about the relationship between governors and Senators. Senators will remain with their legislative mandate but there must be a power structure at the county level. This is either a committee or an office that is able to stand up against oppressive or dictatorial tendencies by governors who hold political power. We should separate the two. I am willing to provide, in another different forum, how this has been done in other countries. If you separate political power from economic power, then, you have a stable institution and a stable country. If you accumulate political and economic power in one person or institution, you will have a recipe for the kind of things we are witnessing in this country from Kilifi to Migori, from Tharaka-Nithi to Kakamega and from Marsabit to Narok.

Mr. Deputy Speaker, Sir, thank you and God bless Kenya.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I support this Motion and congratulate the Senate Majority Leader for what he has just said a few minutes ago. I support this Motion because it will be a milestone in the legislative agenda of the 11<sup>th</sup> Parliament through this Senate; that we now give this country a well thought out formula based on the benefit of hindsight given that the formula that we have been using, was actually approved by the National Assembly. I sat in that Assembly and I recall very well that we did not pay too much attention to that formula. So, it was going to be grossly wrong if we ended our tenure as the 11<sup>th</sup> Parliament either by continuing with that same formula or completely failing to give our own thinking to this very important issue.

I, therefore, laud this Senate especially the Chairperson and the Vice-Chairperson of the Committee on Finance Commerce and Budget. It has been a very protracted exercise and he has exercised a lot of patience. It has been very difficult to bring all Senators on board. I congratulate the Chairman of the Commission on Revenue Allocation (CRA), Mr. Micah Cheserem. He has truly been tested and he is a good, patient man. Congratulations!

When you look at this formula that we have decided that we make a decision on adoption, the parameters that were there in the last formula were five; namely; population, basic equal share, poverty, land area and fiscal responsibility. It is good to note that because of the benefit of hindsight, we have now introduced a sixth parameter and that is the development factor. It is very important that we explain to Kenyans why we have found it necessary to introduce the development factor. Kenyans must know that this factor gives in this formula an opportunity to address, through consideration, of access to water, electricity and roads and capture existing economic disparities and development needs of the counties of the Republic of Kenya. This factor directly complements the poverty factor parameter so as to ensure that counties with the greatest development needs, get additional resources to bring services to the level enjoyed in other

counties in accordance with Article 203(f) and(g) of the Constitution.

Mr. Deputy Speaker, Sir, looking at the formula *vis-à-vis* the old formula, I laud the Committee for ensuring that emphasis remains on population. I also congratulate the Senators who come from sparsely populated counties for supporting this. Just like in the 10<sup>th</sup> Parliament, also in this Senate, it was very difficult to accommodate those Senators who thought they represented vast counties like Marsabit. They felt they were not being listened to. I must congratulate them.

However, having agreed that population should get the highest weighting of a whopping 45 per cent, let me talk to the national Parliament and urge them to be aware that, population will now be viewed beyond just the desire to have many people voting in your county for you, voting from your community or in your constituency. People have been emphasizing the importance of population purely because of politics; voters. People will now increasingly focus on population because the bigger the number of people a county has, the more the resources they will get. It is a good thing but it has inherent dangers to the extent that if we are not careful, during the census of 2019, we will be lucky if the census will not be tampered with. There will be an attempt for some people to try and increase the number of people in their counties so as to enable them access more resources.

Many people do not talk about it but the last census of 2009 was actually contested. The matter is still in court. Surprisingly, the rate at which the population grew in five former districts in this country was not consistent with the demographic dynamics of population growth. I am, therefore, afraid that unless we will be alert, counties that have communities across the border namely; Somali in Kenya and Somalia; Luhyas in Kenya and Uganda; Tesos in Kenya and Uganda; Maasais in Kenya and Tanzania; and Luos in Kenya and Tanzania, will count their people at home and also include in their figures the population of their cousins in the neighbouring country so as to have more resources.

I call upon Senators from the communities that I have stated – if we truly want to live up to the principle of patriotism – you should be the first to insist that Somalis of Somalia should never be counted as if they are Somalis of Kenya; the Luhyas of Uganda should never be counted as Luhyas of Kenya. Even the Maasais, my good neighbours, friends and relatives of Arusha. If we do not do this, we will end up walking the path that is in Nigeria. Because of devolution, Nigerians have been unable to agree on the census. This is because every ethnic community wants to claim that they have increased at a higher rate than scientifically permissible.

Mr. Deputy Speaker, Sir, let me speak, in support of this formula, to the issue of corruption. It is true, as the Senate Majority Leader has said, we have now opened 47 new centres where the practice of corruption is being done on a very large scale. It is, regrettably, similar to what happens in the national Government in Nairobi. I want to go down on record for saying that if God gives me a long life, then my greatest regret about the 11<sup>th</sup> Parliament – this Senate of ours – is that we failed on two fronts of corruption. We failed the people of Embu County when we failed to conclusively get Governor Wambora out of court. What brought him was nothing other than corruption.

**Sen. Kagwe:** On a point of order Mr. Deputy Speaker, Sir. I have just heard the Senator for Kakamega say that - I totally share his sentiments about certain things he has said - this Senate failed to remove the Governor of Embu County when actually this

Senate voted twice and removed the Governor who was subsequently reinstated by the court? In fact, Sen. (Dr.) Khalwale was the Chairman of that whole event. Not only did we vote once but twice and removed the Governor. In fact, the Governor is in office courtesy of the Judiciary.

Is the Senator in order to propose that this House has failed to execute its responsibility, totally and completely?

**Sen. (Dr.) Khalwale:** Thank you Mr. Deputy Speaker, Sir. If the distinguished Senator from Nyeri had just been a little bit patient, I was building my argument. I was leading to that point that this Senate failed the people of Embu County by failing to put up a robust defense of our decision; both in the High Court and the Court of Appeal or wherever it is. We needed to hire the best legal brains so that we do not fail the people of Embu County.

Secondly, we failed the people of Embu County because I have not heard of---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I think the point Sen. Kagwe is making is that we did what we had to do as Senate. I think that is the point he is making. That is the only issue you need to deal with; that we did what we had to do and finished but another institution did what it did.

**Sen. Okong'o:** On a point of order Mr. Deputy Speaker, Sir. I have heard the Senator for Kakamega saying that the legal staff of the Senate of the Republic of Kenya are inferior to other lawyers in this country. Is he in order to mislead the country that Parliament does not have enough capacity to have robust legal advice?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, before I deal with that point of order, I was concluding by saying, that I expected the Senate would again appeal that decision of attempting to reinstate Governor Martin Wambora so that it is not only deliberated upon by the Court of Appeal but also even if we were to lose, we go all the way to the Supreme Court. If that has not been done, I urge that the process be pursued until it is clear to this country that the Senate is still convinced that Governor Wambora was not fit to serve as a governor for five years.

Mr. Deputy Speaker, Sir, dealing with the point of order by Sen. Okong'o; you will forgive me because those are your own words. I imputed nothing against local lawyers---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Address the Speaker.

**Sen. (Dr.) Khalwale:** Thank you Mr. Deputy Speaker, Sir. Those are the Senator's own words because I never imputed any improper motive against the local lawyers, considering that my own Deputy Speaker is a lawyer of high standing and high regard; not to mention the fact that my daughter and son are able lawyers of the High Court of Kenya. I believe in local lawyers.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Let us deal with the issue, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I regret that this Senate let down the people of Murang'a County.

*(Applause)*

How Governor Mwangi Wa Iria was acquitted, let it remain forever that we let down the people of Murang'a County. Fighting corruption is not an easy thing. Whatever

the reasons---

*(Sen. Musila consulted loudly)*

Mr. Deputy Speaker, Sir, protect me from my senior chairman of our coalition. He can deny me a nomination certificate.

**Sen. Kagwe:** On a point of order Mr. Deputy Speaker, Sir. I totally support what the Senator for Kakamega County is saying. Could he also add that this Senate continued to let down the people of Machakos County along the same vein?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to thank the Senator for that piece of information. There are many others including Kakamega County where the governor has almost succeeded in defying the Senate. He is yet to appear before us but he is hiding in court. To use Sen. Okongo's words, he is busy swallowing pain killers when the ailment is still with him. We are going to catch up with him now, tomorrow or later.

Mr. Deputy Speaker, Sir, my last point is on the issue of insecurity. As the Senate, we must address this dangerous threat. We must now say never should the function of security be devolved. What we saw in Kericho by-election---

Mr. Deputy Speaker, Sir, give me two minutes because points of order swallowed my time, if you do not mind.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, I grant you two minutes Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you Mr. Deputy Speaker, Sir. What the country witnessed during the by-election of Kericho should be a wakeup call. How could a governor lock out the Deputy President of Kenya from entering a venue in Kericho which he had secured? If we do not address this, then during the next general election, we are going to be locked out of our venues---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo what is your point of order?

**Sen. (Prof.) Lonyangapuo:** On a point of order Mr. Deputy Speaker, Sir. Is Sen. (Dr.) Khalwale in order to mislead this House and the nation that the Deputy President was locked out of a venue that had been booked? That venue had been booked by the Kenya African National Union (KANU) and the venue that he was coming to was a different one. So, he needs to get his facts right and clear.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! You have made your point so let him answer.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I never mentioned the word KANU. No wonder we have the English saying; the guilty are afraid. So, you are the ones who participated in locking out the Deputy President from the Kericho rally.

I say this with all due respect not just to Sen. (Prof.) Lonyangapuo but also to those who have proposed that Kenya should pull out of the International Criminal Court (ICC). We want to remain in the ICC as a State so that governors who might want to visit violence on their opponents should face the likelihood of ending up in the ICC because using the billions they have stolen, they can buy their innocence or justice in the local courts.

Mr. Deputy Speaker, Sir, as Sen. (Prof.) Lonyangapuo defends this injustice, he should know that he is doing so because the shoe is on the right foot. But change has got

only one constant thing. That change must change, you cannot stop change. So, the shoe will be on the other foot sooner or later. I therefore, insist---

I support.

**Sen. (Prof.) Lonyangapuo:** On a point of order Mr. Deputy Speaker, Sir, did you see Sen. (Dr.) Khalwale pointing his finger at me almost all the time as he was finishing his contribution? I do not know what his hand has to do with me.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, the only problem is that what he did is not on the HANSARD. I was not looking. Therefore, if you ask me whether I saw, I must confess I did not because I was not looking on that side.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I support the Motion.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I am not condoning your action. I am just making a point that I did not see what you did.

*(Sen. Hassan spoke off the record)*

Order, Sen. Hassan!

Proceed, Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I also rise to support this Report. I thank the Committee that has worked on this Report and given us its views that we are looking at in this debate. I also thank the Commission on Revenue Allocation (CRA) for the work they are doing. They have given us material to use for debate.

Although the formula we have had for the last three years has been inadequate in some way, it has served this country well. For the last three years when we have had three financial reports, there has been no conflict between counties. The resources may not be adequate; however, there has been no conflict. This is an indication that the formula we have used over the years has been very useful and adequate.

There has been little change in the Development Index. This is welcome. This is an area we can address to align some of the minor difficulties that we have in terms of sharing revenue. This country has various terrains. These terrains and geographical features have an impact on the functions that are undertaken in these areas. For instance, there is a whole lot of difference between construction of roads in different terrains in this country. Such a feature should be captured by the formula we use to differentiate the terrains and the distribution of resources.

The Development Index is one of those criteria that we continue to look at. This is an area that we can still develop. We can look at more factors that affect the development of the index itself. That way, we can make it more sensitive than it is at the moment.

There is the issue of the formula used in the distribution. Article 61 of the Constitution simply states that Kenya is divided into counties. In the First Schedule of this Constitution, there is an enumeration of the counties of this country. There is no mention or specification of the various areas of this country. The Senators for Lamu, Mombasa and Kwale should pay attention to this. Their population uses extra-territorial waters. In the schedule we have here, the size of the area of the land that borders the sea in the coast and who controls it has not been indicated. That is the area which should

appear as land for counties of the Coast. This has a serious and important impact on the revenue of these counties. For fair and equitable distribution, we should accept and point out that we are working and using specific and true areas of the counties of this country. That way, we can fairly and equitably distribute the revenue of the country.

I support this formula which will go on record as one that has been amended and produced by this Senate. This is a formula that will fairly distribute the resources of this country and create peace among communities in the country.

I support the Report and recommend that it be used continuously for the next few years to distribute revenue.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Hargura!

**Sen. Hargura:** Mr. Deputy Speaker, Sir, I support this Motion that requires us to adopt the new CRA formula. Initially, the one we were using was done by the National Assembly. We have used it well. Last year we had a proposal from CRA which was not approved by the Senate. This is a better one in the sense that much as population is still the major consideration, but the basic equal share has been improved. This gives improved funding in terms of the counties which are disadvantaged by population.

We now have a formula which is approved by Senate unlike the other one. It will be used for the next three years. The effect it has on redistribution is not much. However, counties from marginalised areas which are disadvantaged by population have a bit of advantage in terms of basic equal share.

I thank the CRA for the hard work they have done in research. They have compared this kind of revenue sharing from various jurisdictions. They have also taken their time to discuss this with the Senate committees after the last formula until they have come to a compromise. It is a bit different from the last one. It addresses the situation better than the proposal which was given in February last year.

I would like to comment on the issue of how these funds are being spent in the counties after we have done the allocation from the Senate. We are experiencing a lot misapplication and loss of these funds. We cannot see any change. Some counties have received close to Kshs30 billion for the last three years. There is nothing much to show for it on the ground. That shows there is a problem somewhere on the ground. That is a matter of corruption.

In some of these counties, when it comes to procurement, they are doing badly. We have very clear procurement laws in this country which have been developed and used for the last 50 years. However, what is going on is that the whole procedure right for the planning stage is not being adhered to. Public participation is not there. It is the governor's office which comes up with this budget. They will just go round for the sake of it and come up with some priorities which they claim are public priorities.

The worst is when the procurement is being done. At best, they will advertise the work. However, once the advertising is done and tenders are opened, then certain companies are contracted. From the opening register, one can see how the bidders fare. After that, one can see some people going round doing 'tender peddling'. Somebody will be trying to look for people to give a certain job. The main consideration is either you are the governor's supporter or you are being lured to support the governor through that tendering.

Once a job is given using the wrong consideration like political support, then after that there is no moral authority to enforce the contracted person to do a quality job. The

contract between the two is to offer support in the following elections, not a guarantee for quality job. The whole issue is just to lure for support. One will just do some shoddy job and get as much as possible out of it. That way, nothing will accrue to the public in terms of quality service.

This is where the Government authorities which were supposed to deal with this kind of things, like the Ethics and Anti-Corruption Commission (EACC) should come in. Unfortunately, some of us have lost trust in that Commission. People have complained and a lot of information has been given to them. However, up to now, they have done nothing. It is business as usual. That is why governors are doing whatever they want to do, left, right and center. One will even get stories. We have been told that wheelbarrows have been purchased at Kshs100,000. So what? What happened after that? Nothing! That was just information. The governor is in office and everything is going on. What will stop him from doing the same thing again?

When the relevant government institutions are compromised, we do not expect anybody to follow the law, because at the end of the day, you will know how to get yourself off the hook at whatever level. Much as we are saying that governors are corrupt, they are doing it because the Government machinery, which is supposed to hold them accountable, is not working. The reports by the Auditor-General's office come in late and do not even reflect what is happening on the ground. They just go to the office and pick the paperwork. If they had a way of doing physical audits on the ground, they would realise that some projects are not there at all.

In my county, the county assembly has tried to do that for one year. The report they are producing is revealing in terms of that, because they are talking of projects which have been paid for, but are not on the ground. That is one way of making sure that the public does not get any service out of these funds. We are allocating the money but nothing is being done. In some cases the projects are not done; it is only the paperwork that is done and that is what is being audited and it ends there. As much as we are allocating funds to the county governments, the relevant Government machinery which deals with enforcing laws - the Ethics and Anti-Corruption Commission (EACC), the Procurement Oversight Authority and the Auditor-General - should do their work and make sure that these funds are put into the right use. If they are not, which most of the time is the case, the necessary action has to be taken.

I support the formula and insist that the Government has to make sure that the funds that we allocate are used for the intended purpose.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I rise to support the Motion. I want to start by thanking the Committee led by our able Chairman for this new formula. It was a long journey that started at the beginning of last year. We had several consultative meetings, which finally resulted in giving us this formula. Allow me also to thank Members of the Committee for working tirelessly to make sure that we come up with this formula. I also want to thank the Commission on Revenue Allocation (CRA) and the public in general. During the public participation in a number of forums, a number of Kenyans spoke about the new formula. We found that Kenyans always follow what takes place in Parliament. Almost a month ago, a Kenyan from Kakamega came up with his own formula and tabled it in the Committee. We discussed about it, engaged him and we were ready to accept it.

Mr. Deputy Speaker, Sir, I support the sentiments of the Senate Majority Leader



that our Constitution requires some amendment. I remember the humiliation that we went through during the division of revenue formula in the first year of the Senate. It resulted in the Senate going to the court, and we know what came out of it. We now know that for this country to get onto the right track, we need to come up with a new Constitution, which will strengthen the Senate, so that whatever is done in the Senate shall never be by-passed by another House.

Devolution came so that the areas that felt marginalized and had been left out in terms of development for 40 or 50 years since Independence could be uplifted. Those who came up with the first formula, which we are correcting by coming up with the second formula, wanted to make sure that funds reached those areas that felt left out, so that they could offer good services to the residents. There was a body that was created to be in charge of the implementation of the Constitution and also the Transition Authority (TA).

I think the TA did not perform as was expected. Its focus should have been on the areas which never used to receive billions of money. The impact should have been forecast, so that the menace of corruption and putting up of white elephant projects could not arise. Through the old formula, a lot of funds have gone to the counties which never used to receive enough allocation. Turkana County got Kshs12 billion; Mandera and Wajir Counties got over Kshs10 billion. On top of that, the Constitution states that there should be an Equalization Fund to cater for the same counties. However, despite that allocation, governors came up with projects that do have a direct impact on the citizens. There are counties which have built big hotels and headquarters, as if those are the things that people were missing. The truth is that people were missing health facilities, good roads and water.

Mr. Deputy Speaker, Sir, I happened to interact with the Prime Minister of Algeria. He told me that he was elected as the Prime Minister because, once he served as a Minister for Water Resources, he made sure that the entire country had water through the construction of many dams, drilling of many boreholes and harvesting of rain water. The ordinary people of Algeria ended up getting enough water. These governors from the pastoralist counties should have ensured that the herders and animals have enough water. Instead, we hear that those counties have five-star hotels and are constructing airports and many other things that have no direct relation to the *wananchi*. It beats the purpose of devolution.

Mr. Deputy Speaker, Sir, that is why corruption has found its place there. I have mentioned areas which had never seen money of that kind yet people are still suffering in such areas where they have no roads or networks for communication. That is why you will find that almost all employees of the counties drive 4x4 vehicles and are concentrated in the urban areas. The billions of shillings that are taken to counties are not just supposed to be spent at the county headquarters. Such monies should be distributed equitably to ensure that the services reach *wananchi*.

The new formula is addressing quite a number of things. One of the major factors that did not change is the population at 45 per cent. The Senator for Kakamega County put it well when he asked; how much money can be allocated per head? I believe that 45 per cent is a very good figure. When the 3<sup>rd</sup> generation formula will be in place, even the areas that are still facing severe poverty will be in a better place. Therefore, it is fair that services should be given to all Kenyans at a good rate. The basic equal share at 26 per

cent is also fair because poverty is at 18 per cent. People should not feel that they should live in poverty always. A time should come when all the counties that feel that they should receive money from the national Government must come up with tools and good systems to ensure that they are also able to collect money from the residents and from the business communities within those counties so that they may not just depend on the national basket.

Mr. Deputy Speaker, Sir, I think that allocation of eight per cent for the land area is fair. We should make sure that we provide some amount to develop those areas so that even the people in the most populated areas can feel catered for, including areas like Kiambu, Machakos and Kajiado Counties. We need to encourage fiscal responsibility so as to ensure that the money is spent in a way that even the ordinary *mwananchi* will be satisfied; that it was utilized well and see value for money. That needs to be encouraged so that the governors who spend the money well to serve the *mwananchi* and make sure that their towns are clean, water is supplied and health facilities are running well, can be rewarded.

We also need to encourage the county government to budget in a way that a big percentage of the budget goes into development. The purpose of devolution is to ensure that we take development to the village. If we did that, I am sure that the people of Kajiado County will praise me for making sure that money went to the county and that is why they have a road linking Mosiro to Najile or Najile to Ewaso Kedong.

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

**Sen. Musila:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity to contribute to this Motion. From the outset, I support the formula that has been put forward in this report. This formula has been discussed extensively. I recall that we had a chance to discuss the said formula and we were all in agreement. We have in the past advocated for population to play a major role in allocating funds to the counties. It has now been proposed that we allocate 45 per cent on population basis. I think that is fair and it will go a long way in ensuring that where there is a bigger population; people get more money because they need services. Therefore, 45 per cent as recommended sounds and appears to be fair and it should be supported.

The issue of poverty in this country has continued to make our people poorer. Since Independence, 53 years ago, I do not think that we can stand up and say that we have reduced poverty in this county. If anything, we have continued to see people become poorer. Therefore, it means that our efforts and that of our representatives in regard to reducing poverty have not been successful. This was identified by our founding fathers as one of the enemies of this county, in addition to disease and ignorance. Therefore, poverty in my view and in this context, ought to have been given a bigger share, that is, more than 20 per cent.

Be it as it may, I support the 20 per cent and hope that in the next formula, we will give a bigger weight on poverty because even in the cities, when you go to slum areas, you find real poverty in our midst. People in the rural areas cannot afford three meals a day and they are lucky if they afford one meal. Therefore, the issue of poverty must be tackled more vigorously than we are right now doing.

Mr. Speaker, Sir, I would like to make reference to Article 204 of the Constitution which created the Equalization Fund. This is an issue that we must resolve once and for all in this House. Since the equalization fund was created by the Constitution, nothing has

been done. It was agreed that 0.5 per cent of revenue was to be put in a special fund and allocated to the counties that had been marginalized since Independence. My County of Kitui is one of those counties that have been marginalized and I know that there are many others including West Pokot. However, that money lies with the National Treasury to date. Four years down the line, the money is yet to be disbursed. I insist that this House should be responsible for the allocation of this money. Although the other House is saying that the money should be put under Constituencies Development Fund (CDF), that is not right. This is money that was meant to go to counties. We must therefore be told where that money is, when it is going to be allocated and to whom it is going to be allocated.

Land area is also a very important consideration. We have given it 8 per cent yet I know that there are counties with large areas, for instance Kitui County is 30,000 square kilometers. Therefore, while I support the 8 per cent that has been given, I think that we should rethink that percentage. We should rethink the three areas; land area and poverty. We are talking about fiscal responsibility. It is a good idea because it gives incentives to counties and governors to be more responsible in management of funds. However, as of now, we are not giving anyone incentives in the present set of counties to the extent that we can give them this 2 per cent. If given, it will just be money put in a deep hole. Therefore, if I had my way, I would have recommended that this 2 per cent go probably to land area and make it 10 per cent instead of 8 per cent. Fiscal responsibility is lacking in counties. Someone said it is as if we devolved corruption. We had one centre of corruption at the national level but now we have created one plus 47; so, there are 48 centres of corruption in this country. I say this because we keep on talking about the money that the national Government will allocate to counties without thinking about the local revenue that the counties are supposed to collect.

Mr. Deputy Speaker, Sir, in my county, there is no accountability in as far as local revenue is concerned. I suspect this is the money which governors are misusing, dishing it out here and there because they think, wrongly so, that the national Government or the Auditor-General has no mandate to audit it. There are all sorts of allegations going on regarding this revenue. Our poor folks; women in markets are being harassed by county governments. They collect money from them, only for it to end up in the pockets of a few.

Therefore, I urge the Auditor-General, that, as much as he claims not to have personnel or funds; this is where we are failing this country. We have fellows called auditors in the county headquarters but they are so junior that they have also been pocketed by the governors to the extent that we ask for audit reports but we get nothing. If we get any, they are just very mildly put. However, no auditor has reported the magnitude of corruption that is in the counties because we have junior officers. Governors are swimming in money and any junior fellow there trying to write something is compromised very easily.

Kitui County is a victim of theft. As I speak, Kshs100 million has been stolen. This was granted by a bank here in Nairobi. People have been arrested for the last six months; we do not hear of the progress of the case yet money has been stolen. The Governor has suspended five staff members for alleged corruption but he has not told us what they did. He has appointed a committee of persons who have no knowledge of investigation to investigate them. So, what we see in counties - Kitui County, many other

counties and yours because you have been talking about it - it is clear theft of public funds. When we talk about these issues, the governors say that we want their seats. First of all, it is not "their seats". They are public seats. However, as far as theft is concerned, if we get proper auditors, we will get somewhere. Not only auditors are incapable but also the criminal investigation agency is not capable. The prosecutor is not capable too. In Nigeria, where we think they are more corrupt, governors are jailed every day. How come our governors cannot even honour summons of the Senate or the courts? Something is wrong with our devolved system.

Therefore, as much as we will allocate money – the national Government is giving money and the local revenue is being collected – unless, we tighten the administration of fiscal responsibility in those areas, we are deceiving our people that we are devolving to help them or taking money to them only for the money to be misused. As of now, Kitui County has received Kshs19 billion. This is a lot of money. We have never heard of this kind of money in that county ever since this world was created. However, we are poorer than we were when we devolved. We had many facilities. In a way the national Government has pulled out slightly to allow the counties to function but they have gone to sleep.

Mr. Deputy Speaker, Sir, you have heard of governors refusing to accept equipment yet people are suffering and sick. They cannot be treated because the governor has refused to accept medical equipment. It is a serious matter. As a Senate, we must seek to ensure that these governors do their work. If it means that Senators will take over those seats when elections are due, so be it.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, we are dealing with a very emotive agenda. It involves allocation of money which has been earned by the same people who are supposed to share it. In this case, we are dealing with a very sensitive subject. We should satisfy every category of people in our country. Therefore, in this case, it is important to note that; when we talk of 100 per cent as indicated in this Commission on Revenue Allocation (CRA) formula, we should know what it is in figures. Therefore, if we are told that it is 100 per cent, we should know if it is 100 per cent of Kshs1 billion, Kshs1 trillion, Kshs2 trillion and so on. when we talk of 45 per cent of that money going to the county to be shared against the population index, we should believe that is a very serious figure; because 45 per cent out of 100 per cent and the 100 is known to be a figurative amount so that amount is converted to the actual amount of money to be shared – the 45 per cent to be shared by 47 counties – therefore, this is a very serious parameter of looking into this.

Mr. Deputy Speaker, Sir, as far as I am concerned, this issue of population was arrived at in a census. I do not know when this census was conducted. However, I believe that it was conducted in 2009. Other censuses have been done. We need to be told for sure, the exact population of our country. We should also be informed about the population trends. It should not be the total number of people *per se* in a county. We have been informed by other speakers that we have some people at the border; they can migrate to other territories in times of peace or rain. Some people share boundaries. They migrate to look for pastures, as we have seen the Maasais of Kenya and Tanzania do. In Busia, we have seen how people can move across the border. Similarly, it happens in Mount Elgon and northern Kenya. We should be told when this census was conducted. Was it conducted when people were moving towards Kenya or away to the other areas?

That will give us absolute total figures.

These figures can be misleading. It is also important to know that the population is a migratory factor. It is a factor of production that is mobile. This means mobility of labour. When we consider 45 per cent as an important factor in the distribution and sharing of revenue, we should know exactly the characteristics of this population; when it was conducted, how it was obtained and the total population. We might be talking of a population that was collected wrongly or falsely. By bad luck, people who migrated from other areas to the present census stations when they were required for purposes of revenue collection. Therefore, when we put 45 per cent as a definite per cent and leave other factors like development factors, we must reconsider.

Mr. Deputy Speaker, Sir, since we are almost coming to the end of our five year term, some of us will be governors. It is important to come up with some other deadlines on how to get these figures redone. In 2002 and 2003 when we were Members of the Tenth Parliament, there were figures which were collected which showed how the Constituencies Development Fund (CDF) money should be allocated. Those who were responsible crafted the figures to show that some areas were poor yet they were rich. When it came to the distribution of CDF, the areas which were said to be poor - going by the figures which were released - continue to date getting allocations based on that. They knew the possible outcome of such manipulated figures.

Here, we are dealing with a factor which keeps on changing. When it changes, we should also change the allocation. That is what should happen. Suppose we go to look for these people and see whether they are still there and if they are getting the 45 per cent of the sharable revenue, do you think we can find that population there? Some of them might have moved to other places. What happens to the difference? That is what is being pocketed by the governors in those areas.

Mr. Deputy Speaker, Sir, we should not blame the governors for doing so because they are in a place where there is so much money that they have no use for. That is why they purchase helicopters and fly from one market centre to the other. This is happening because of the availability of money.

There are some areas where the factors of production are adequate. There is land for utilisation. In those areas, people work hard to make ends meet. They earn money through sweat. They make money for themselves and contribute a lot to the revenue of their respective county governments and the national Government. Some of these areas include the coffee, tea, sugar and rice growing areas. These are places like Kirinyaga County that contribute more than 70 per cent of whatever is collected as the national revenue. Out of it, you find that what we are allocated are peanuts. We only get around Kshs3 billion. That is a small percentage.

Mr. Deputy Speaker, Sir, those counties which contribute a lot---

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. The Senator for Kirinyaga County has talked about contribution of Kirinyaga County to the Gross Domestic Product (GDP) at 70 per cent. Can he clarify what he means by 70 per cent?

**The Deputy Speaker** (Sen. Kembi-Gitura): Is it 70 per cent of the GDP Sen. Karaba?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, no. I am sorry about that. I meant that 70 per cent of the revenue from Kirinyaga County comes from hardworking people and part

of it is the one which is contributed to the national revenue. I am sorry for that mix up.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is not clear still. It is 70 per cent of what?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, in Kirinyaga County, 70 per cent of her land is arable. It is suitable for farming. Some of the produce from here is sold to earn foreign exchange. The foreign exchange is partly retained in the county and the rest is released to the national kitty. That is why I am saying 70 per cent of whatever is earned in Kirinyaga County will be contributed to the national kitty. There are many other counties which produce cash crops.

**The Deputy Speaker** (Sen. Kembi-Gitura): Kindly go on. It is a matter of argument.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, there are some counties - even if I missed the figures - which work hard to produce. The 2 per cent should be spread to the citizens of the respective counties and not the governors.

*(Sen. (Dr.) Khalwale rose on a point of order)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, what is your point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the Senator for Kirinyaga County is suggesting that some counties have citizens who work hard. By extension, he means that there are other counties where people do not work hard. Can he substantiate which counties are these whose people do not work hard?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I do not need to substantiate that because it is indicated by the figures.

**The Deputy Speaker** (Sen. Kembi-Gitura): I think it is a point of argument. The Senator is expressing his view. In which case, he may be wrong or right. Therefore, you do not have to accept it.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, you have to balance---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order Senator! I have given my ruling. Kindly continue with your argument.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, those counties which cannot produce enough on cash crop and subsistence farming should be encouraged to grow more by providing monies for development. The Mwea rice in Kirinyaga whose pishori rice is the best brand of rice in Kenya cannot be sold in the local market because of the invasion of the foreign rice. Why is the Government not encouraging farmers to grow more so that they can take care of the domestic markets in Kenya?

Secondly, we have coffee farmers not only in Kirinyaga but also in other areas that need to be supported by putting up all weather roads. Some of the tea growing areas have poor roads between the tea growing areas and the factories. The counties known to produce and contribute a lot to the national revenue should be encouraged to continue producing more for the foreign markets.

For those counties which cannot do other agricultural activities in order to earn that money, let them be encouraged by maximizing and trying to produce more of what they have. That is the opportunity cost of whatever else they are doing. If it is the rearing of animals, let there be a fund to increase the production. We should not have a figure

which will reduce the efforts of the people to grow, produce, transport and even sell internally. This figure is missing here yet we are given only 1 per cent for development. Therefore, we need to come up with a reserve fund to bail out farmers who are suffering, particularly, during the time of bad weather, bad international markets and infestation from various pests and diseases. If farmers are not encouraged, the poverty index which is at 18 to 20 per cent will continue going up. People will become poorer because of not giving them enough incentives to produce more. Therefore, we need to be careful with these figures and they should vary going by the years, so that we encourage farmers who are capable to produce more and areas which produce to continue producing.

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

*[The Temporary Speaker (Sen. Mositet) took the Chair]*

Mr. Temporary Speaker, Sir, other discoveries have been of late. A lot of underground water was discovered in Turkana. What economic use will we put that water to? Coal was discovered in Kitui and we have oil in Isiolo. Are we going to have these same indexes as we continue looking for discoveries and exploitation of the same natural resources? This should, therefore, change. Those counties which have done well---

**The Temporary Speaker** (Sen. Mositet): Sen. Karaba, for your information, the formula is supposed to be revised after every three years.

**Sen. Karaba:** That is why I support.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I would also like to support the Motion before us which is that we adopt to the Report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among the county governments. Being a Member of the Committee, I will be very brief. I want to remind Sen. Karaba that agriculture is a devolved function and so is land. So, it is upon each county government to have a policy that will promote its agricultural production and make sure that its farmers earn the most from agricultural production. County governments should enter into discourse with the national Government regarding certain national policies which may inhibit productivity in agriculture in the counties. In that regard, the Senate will come in handy.

Mr. Temporary Speaker, Sir, I would also like to just give a piece of information to Sen. Karaba. The Governor of Kericho, Prof. Chepkwony, was given an incentive to export sweet potatoes to the Middle East and other external markets. The sweet potatoes are available in plenty in southern Nyanza. I understand the Governor arranged for purchase of sweet potatoes from south Nyanza which are now exports from Kericho. This is the kind of imagination in terms of making use of agricultural products that counties should do. If Homa Bay County is not alert that it can export its tomatoes, Kericho is nearby to take advantage of that opportunity. So, rather than counties keeping on looking at the national Government, especially, with regard to agriculture which is a county function, we Senators should ascertain whether the money we give to counties is being channeled to food production and agricultural productivity or not.

This is one of the reasons why the Senate has been looking for resources for better oversight and keeping counties accountable. We cannot make sensible statements in this Senate on how responsible governors are using development resources unless we have

access to information at the county level. Definitely, Sen. Karaba, will be in a better position to assess what is going on in Kirinyaga if he had some resource to employ investigators and get information on his own rather relying on the same national or county government to get the information. Therefore, the issue that Sen. Karaba has raised is very important. I hope that the oversight resources that we are looking for will make it possible for us to advise counties and keep them accountable on how to invest development resources effectively, especially, in those functions which are already devolved to counties.

Mr. Temporary Speaker, Sir, I want to speak on four issues. The first one is on the locally raised revenue, how it is used and controlled. This comes under the responsibility of the Controller of Budget. The Controller of Budget's responsibility is, as the word says, to control the budget. He controls the Budget and how it is used. The Commission on Revenue Allocation's (CRA) responsibility is just to allocate revenue. Once revenue is allocated, the responsibility of how it is used falls in the Department of the Auditor-General. The trouble with the Auditor-General is that he does a postmortem work after the money has been used.

So, the Controller of Budget, the Auditor-General or ourselves should ensure that locally raised revenue which by the way, we are not in a position to know how much is raised because neither the Controller of Budget nor the Auditor-General have been in positions to dig into the locally raised revenue and ascertain exactly how much a county raises every year which enters its own budget. We know that these revenues are tremendously understated because of previous figures from local authorities and so on. In order to allocate the money for fiscal responsibility, it must begin with the extent to which revenue is raised locally and used in the county government.

Mr. Temporary Speaker, Sir, I may be wrong but this is my understanding. The 2 per cent for fiscal responsibility will not be given to every county which does not demonstrate fiscal responsibility. Otherwise, why is it called "fiscal responsibility"? The 2 per cent should be held in abeyance until a county can demonstrate that it is fiscally responsible. One test of fiscal responsibility is raising local revenue and demonstrating that the county is developing more and more capacity to raise the local revenue and use it responsibly.

The problem in many counties including mine is that there are many sources of locally raised revenue. For example, counties with cities such as Kisumu or Nairobi County have tremendous revenues coming from the city market rates, parking rates, land rates and others sources like advertising rates. People advertise in public by, for example, putting a billboard indicating that there is *nyamachoma*. The moment you put that sign board in public, there is a rate you pay to the local authority. The moment you announce what trade you are involved in by putting some signs on your car, there is a rate you pay to the local authority. If a local authority is not efficient to find out how many advertisements are there in the city or county, they will not collect that rate. So, the efficiency with which local authorities collect rates and they enter into the Budget of the county is very important.

The second issue I want to raise, which Sen. Hargura also raised earlier, is the role of the national institutions at the county level. These are the Kenya National Audit Office (KNAO), the Ethics and Anti-Corruption Commission (EACC), the Criminal Investigation Department (CID) and the National Security Intelligence Service (NSIS).



These are national institutions but they cannot function without having roots among the people and counties where the people are. So, their first line of action is in the counties. You cannot say that you are a national organisation and you only relate to Nairobi City County. Nairobi City County would not be there if other counties were not there. These national institutions must show us their work at the county level.

Senators here are complaining about corruption in counties. What is the EACC doing? What is NSIS and KNAO doing at the county level. I think Sen. Musila was right that some of these offices--- I do not believe that these are junior people because the other day – Sen. (Dr.) Khalwale and Sen. Ndiema will support me – we were looking at the audited accounts of a certain county. The information that was being given by the audit office at the county level definitely showed that there was some mickey-mouse going on and these are people who know what they are doing. So, before we even hold county governments responsible, the national oversight and accountability institutions at the county level must do their work transparently and accountably.

Unfortunately, at the moment, corruption is so rampant in this country that these institutions are also on the take. One day, I overheard a discussion between some governors in the Very Important People (VIP) lounge who had not realized I was there. They said: “Look, do not worry about this auditing. We can take care of those people at the local level.” This is a disastrous statement coming from people who are looking after counties.

These national institutions at the county level, which should help us, are given a lot of money. Unfortunately, the Senate which is very vocal on this issue is not given resources to go and do its work. If we had resources, we would have research assistants in our offices who can go to these national institutions at the local level and get information for us, so that we can talk with more authority in this Senate. Unfortunately, the kind of staff that we have in our offices are so minimal that they can only receive letters, arrange meetings and so on. Specialised work like getting information from KNAO needs somebody with knowledge of auditing and finance. Some work needs somebody going to the EACC and it needs some lawyers or somebody trained in this kind of work. These are the kind of personnel that we need in our offices to do this oversight work properly and it will be value for money. People who downgrade the Senate and do not want to put resources in the Senate are being what I call "pennywise and pound foolish".

Thirdly, it is the role of the internal audit offices and internal auditors in counties. Since I have an interest in becoming governor, one of the things that will be in my interest is to have an independent capable person in the county who can audit books of accounts before KNAO comes in. It is in the interest of a county government to ensure that monies are being spent properly. That will help you not to come to the Senate and look like an idiot who does not know what is happening in his or her county. So, this idea of having internal audit offices, which are by their very nature weak, is counterproductive. It is not helping governors, let alone the people of counties.

We are now going on the last stretch in county governments. Unfortunately, during this last stretch is when money will be spent wantonly, purely for political reasons. The national institutions at the county level should help us stop governors from spending resources wantonly to ensure that they get re-elected. This is hard earned money by the *mboga* woman or the man tilling his land till 6.00 o'clock in the evening and have to pay Value Added Tax (VAT) ---

**The Temporary Speaker** (Sen. Mositet): Order, Senator! Do you want to be informed by Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Temporary Speaker, Sir, I think I will get the information later from my friend, Sen. (Prof.) Lonyangapuo. We think alike.

**The Temporary Speaker** (Sen. Mositet): Okay. Continue.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Temporary Speaker, Sir, this is very hard earned money. This is what pains me; if you look at the number of Kenyans who live on US\$ 2 or 3 a day, these are the same people who pay VAT like we do. When they drink a soda, they will pay the VAT just as I do. This is why when I was the Minister for Medical Services, I advocated for contribution to the National Hospital Insurance Fund (NHIF) in a graduated manner. Such that, I, who is earning more money than my driver, should not pay Kshs320 to the Fund like my driver. It is my social responsibility to the nation to contribute more to that kitty. Although I may not use the NHIF because I am insured by AON Minet, it will support some poor Kenyan who needs access to health. This is what social democracy is all about. It means that those who have more will pay more to the social kitty, so that those who have less can have more access to social amenities like health, education and so on. If at the county level county governments are the ones cornering resources for themselves and their interest and watching the poor mother, boy or man toiling up to six but not having access to social amenities, this is an economic crime that the EACC should look into.

I do not understand why that Commission was named “ethics and anti-corruption”. When that Commission was set up, we had rightly named it the Economic Crimes and Anti-Corruption Commission (ECACC). Why somebody got rid of the word “economic crimes” I do not understand. An economic crime in this case, is something that is unethical. To put it nicely, “ethics and anti-corruption” and now it is even more inefficient than the previous ECACC, is a travesty in national justice. There are economic crimes going on in this country and the same Commission calling itself the “Ethics and anti-Corruption” is doing nothing. Cases upon cases are being piled up in court, records are being kept and announced every day when we have the state of the Nation Address but we are not seeing any concrete thing being done. At the county level, this pains because we brought devolution to help the common man and woman at the county level.

Therefore, I would like to propose, finally, that this which is called “fiscal responsibility” at 2 per cent, is not there as ---

*(Sen. (Prof.) Anyang'-Nyong'o's microphone went off)*

**The Temporary Speaker** (Sen. Mositet): I give you one minute.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Temporary Speaker, Sir, it not there just for dressing purposes. It is there to mean something. I would like to join Sen. Karaba. For a county to have access to these 2 per cent fiscal responsibility, it must have shown fiscal responsibility. Secondly, all counties have potential. If a county shows – even if it does not have lot of agricultural resources and so on – that the revenue it is raising painfully from that county is raised and used properly, it should have access to that 2 per cent fiscal responsibility. That way, it will then help that county to have a resource to stimulate productivity in whatever area it has comparative advantage in. Whether it is pastoralism, agriculture, fishing or whatever, then, that 2 per cent will make sense.

I beg to support.

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, for the record, I rise to oppose this Motion. This is because I verily believe the Report is constituted and as reported, is not representative of the current situation in the county. The Report is also deficient in addressing critical and important issues that, after three years, have been given by the Constitution in the process of transition; that constitutional commissions can take the time to study, learn and understand the issues and matters that require to be either corrected, amended, improved or changed. This Report fails as it came from the CRA to address those issues. My conscience refuses to accept the excuse, other than a good reason given by the CRA, that they have tried and that the negotiations could not yield better results than what they gave us.

Mr. Temporary Speaker, Sir, to begin with, if I can use a quick example which I can completely agree with, is the contribution by the Senator for Kisumu. How can we as a Senate accept that for three years, even after the CRA has conducted its studies, that they have never found that it is erroneous to continue to disburse 2 per cent of Kshs229 billion, another Kshs269 billion and now going to Kshs300 billion to 47 counties unilaterally and equally without having to address the real reason of what fiscal responsibility means?

How can we as a Senate say that it is right for CRA to tell us that when we impeached Governor Martin Wambora, because of malpractices and corruption, that it was okay for us to go and give him 2 per cent of the devolved funds and tell him that he has been a very good governor who has managed his county well and he deserves 2 per cent, meaning that he managed his funds well?

Mr. Temporary Speaker, Sir, we had addressed in this Senate, so many petitions which have alleged corruption and some of them have even been proven. I sit in the County Public Accounts and Investment Committee (CPAIC) and in that Committee, we have recommended prosecution of governors to the Ethics and Anti Corruption Commission (EACC) based on monies that have been lost. The other day, as one of the Senators has said, we were addressing the question of funds lost in Murang'a County. We addressed Kericho County and others as well. How then can we say that it is right for the CRA to continue telling us that, indeed, they have not found that there should be a more responsible application of just that one parameter of fiscal responsibility?

Mr. Temporary Speaker, Sir, even more so, why I am convinced that I should not support this formula is because there has been virtually no change in the way the formula was from the time we started until now. If you look at the percentages as allocated to each of the parameters, there is only one change of 1 per cent which has been taken to development. Every other parameter; from population to land mass, everything has remained constant.

Is it okay for us to say that the CRA told us that these parameters are just a negotiated arrangement and they did not find anything? While we know that when we were in Mombasa, the CRA tabled to us three reports which contained details of visits that they paid to various countries across the globe and they came up with several proposals which included new areas and parameters.

Mr. Temporary Speaker, Sir, what I want to address mostly is that the Constitution itself within the transition period, allowed that every three years, these parameters become open for introduction of either new parameters or change of those

percentages. It is because it was envisaged correctly that there should be and there can be fundamental changes to those parameters. That is why there is a further constitutional requirement that after another three years, similar studies and changes can be observed in the course of implementation of the Constitution that we still require the changes.

I will find it hard to agree with the CRA that they have observed nothing after three years that would necessitate that in the question of addressing how our equality as a country should be, they have found nothing but a change of only 1 per cent.

Mr. Temporary Speaker, Sir, let me make my most fundamental argument. The CRA has attempted to introduce a new concept about how we should view poverty. The general concept that they have tried to sell to us, is that we should see poverty as though it is contagious or as though affluence or richness is contagious. It is as though if I as the Senator for Kiambu County - no matter how poor I am - live next to somebody who has a million dollars in his account, I automatically become rich.

Mr. Temporary Speaker, Sir, the United Nations (UN) has conducted studies globally. There is already an agreed known worldwide poverty determinant of how we conceive poverty based on an individual's condition of living. In that concept, it does not say that a poor man ceases to be poor if he lives in Nairobi or a poor man ceases to be poor if he lives in central Kenya. Poverty is a very individual condition. It is not collective. So, this is an attempt to zone people and say that as long as they live within a particular geographical area, they are poor.

According to the UN international standards, for one to be said to be poor, if you earn or live on less than a dollar a day, even if you live in Nairobi, north eastern or wherever, you are a poor man. Following those actualities, if we would apply the correct standards, Nairobi would probably be the poorest county. Is it right to say that all those people who live in Kibera slum who lose their children every time there is cholera outbreak are not poor but a herdsman who has 10,000 head of livestock is necessarily determined to be poor? Is it fair to say that a man or woman who lives in the slums of Thika called Gitambaya or those who live in the slums of Obunga in Kisumu is supposed to be a rich person just because according to the zoning that has been done by CRA, that is a rich area?

Mr. Temporary Speaker, Sir, this concept of failing to address poverty as an individual condition has made these formulae completely lopsided. This has disadvantaged hundreds of thousands of Kenyans who live in abject poverty and who require to be addressed in the new and proper concept of addressing who a poor person is. How do you determine poverty of an individual? The standard is set. There is no need to reinvent the wheel. It is so easy to know and determine a person who lives below the poverty line.

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

*[The Temporary Speaker (Sen. Sang took the Chair)]*

Secondly, I would agree to a fair extent that, indeed, we can argue that arriving at these parameters is supposed to be a negotiated process. Yes, we have indeed, come up with a lot of conceptions and negotiations. That is why if I would be explaining, for example, when we look at the concept of land mass, we have all agreed that we use the

concept of land mass but we know also that there are counties which have already admitted on record that their counties are more than 70 per cent national parks which is included in the landmass.

We also know that the Government provides for different compensation for national parks. Have we stood to ask a governor that when we give them Kshs2 billion, what investment do they do in Tsavo National Park, Amboseli National Park and Maasai Mara? For example, the boundary that determines the landmass in the coast, extends many kilometers into the sea. Therefore, when it is used as a concept to say that it is the landmass of a particular area, we will agree to use that as the basis of division. That is why we agree that is a negotiated process.

If in that process we have not realised that there are counties, according to the submission by the Commission on Revenue Allocation (CRA), which undergo excessive service pressure--- For example, yesterday, I was in my country and we were opening some Intensive Care Units (ICU) in some hospitals. Out of 18 beds in three Level 4 hospitals, more than 70 per cent of patients in those hospitals are from neighbouring counties. They are Kenyans and have to be admitted and given services there. Kiambu County houses so many people; some who work in Nairobi and others elsewhere. If they have children, they go to schools in Kiambu County. They also get health services in Kiambu. The CRA even said that in other countries like Ethiopia and Ghana, there is a parameter called service pressure that recognizes that countries that fall within highly urbanized places require to be considered for where they spend their money. Therefore, I find it dishonest that they did not include this parameter. This should have been done.

Mr. Temporary Speaker, Sir, my last point is on the question of introduction of the parameter that recognizes that indeed we are all Kenyans who work together, but there are some who contribute more to the national kitty, either by geographical location or nature of activities. We should recognize within the new parameters that in a county like Trans-Nzoia, where my friend, Sen. Ndiema, comes from, the producers of wheat contribute a lot to that kitty. We should recognize that the dairy farmers in Uasin Gishu, coffee farmers in Kiambu and tea farmers in Nyeri and Kirinyanga counties contribute more. This formula must recognize their contribution and make sure that something is sent back to them, so that their activities continue. If we do not recognize that in the new formula, we are being dishonest. It is based on those arguments that I find that the CRA has not done its work. It is, therefore, our work as the Senate to sanction. If we continue with the failure to address issues, we will go wrong. For example, we are addressing the issue of the debts that the counties are claiming to have accumulated. The report to the County Public Accounts and Investment Committee (CPAIC) indicates that almost more than Kshs100 billion is claimed in outstanding and pending bills. This is about a third of the entire amount to be allocated. That is the kind of situation that we are looking at.

Mr. Temporary Speaker, Sir, all the other allegations have come to the Senate regard how funds are being used. In this Chamber we addressed the question of borrowing by governors. When will we stand as a Senate and say---

*(Sen. Wamatangi's microphone went off)*

**The Temporary Speaker** (Sen. Sang): Sen. Wamatangi, what was your last Statement?

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I said from the word go that I stood to oppose the report.

I oppose.

**The Temporary Speaker** (Sen. Sang): You were off-record when you mentioned that and that is why I wanted you to repeat.

Sen. (Prof.) Lonyangapuo, the Senator for West Pokot County.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I stand to support this Report for the reason that the previous formula that we used has elapsed. The proposed one will be coming to an end after three or five years, as indicated in our Constitution.

We introduced devolution in 2010. The new Constitution was promulgated and it proposed that funds are supposed to be distributed in 47 counties. The manner of distribution then depended on a revenue sharing formula that was proposed by the National Assembly. Five parameters were chosen, which talked about population, 45 per cent; basic equal share, 25 per cent; poverty, 20 per cent; land area, 8 per cent, and fiscal responsibility, 2 per cent, adding to a sum total of 100 per cent. That translated into giving counties funds, ranging from Nairobi County which is the richest, to Lamu County. We know that because of the tourism potential of Lamu County, it should be the richest. Recently, when we discussed about the formula, the arm that we depend on, that is the CRA--- We know that the CRA does not generate the formula on their own; they propose it to the Senate. If there are some people who think that the Senate is not the ultimate solution, they are misled. We are the ones who have the prerogative to agree to or reject the formula.

We are considering a Report that has been generated by the CRA under our guidance. It has been brought, courtesy of the relevant Committee, which is headed by Sen. Billow and I am a Member, together with a number of us. The CRA appears before the relevant Committee where many meetings, formulation and trials are run. Because of time we agreed to submit this one.

We have introduced the last parameter called the development factor. These parameters must be accurate, so the counties with the smallest population get their share that is proportionate to their population. However, the data that we are using to determine population is as old as the year 2009 and the devolution law came into effect on 27<sup>th</sup> August, 2010; two years later. The population has changed, yet we are now moving to the second formula using the population of 2009. This calls upon the relevant arm, the Kenya Bureau of Statistics (KeBS) and every other arm that deals with planning to give us the correct data. We must not wait for 10 years to get an accurate data. There is a way of getting data. There is data regarding some counties that was contested that we are using to give them a premium funding compared to other counties.

Mr. Temporary Speaker, Sir, if the Senate is bold enough. We should demand because we can count those counties so that we can give proportional percentage because we are using population as a measure. Basic equal share percentage is good but we just increased it a bit because we have just increased it to 25 from 26 per cent. This is because every county gets a standard amount of money to maintain certain basic key functions.

However, the poverty index is interesting because it is claimed that some counties are poor when it is not true. I do not know where they got the poverty index that they use. We asked where they got those figures from but nobody is giving us an accurate answer.

It is surprising that even Nairobi County is claiming to be poor yet even in the slum areas of this City, one can wake up and walk to the nearest rich estate and get a job to do.

The poverty index needs to be relooked at again so that it does not make people lie. As I mentioned earlier, if we continue maintaining the population percentage at 45 per cent, in the next census which is about three years from now, some counties will count even stones to ensure that their number goes up. I saw the data that was released on population recently and I contested because West Pokot which is my county was said to have the highest birth rate. If we continue basing allocation of funds on population, it means that Kiambu County with her 1.8 million people and my county at 800,000 people and the fastest reproducing units will overtake Kiambu County. We need to review how we handle population as a unit of allocation.

Mr. Temporary Speaker, Sir, most of us live in Kiambu County which is not very far from here. Are you counted as a resident of Kiambu County and thus are represented by Sen. Wamatangi including someone like me or am I counted in West Pokot? There are people who have more than one home, for instance, you live in Kiambu County and own a house in Nakuru and Milimani in Kisumu County. Is it the person who owns the houses that is counted or it is the houses? I am also amazed that Marsabit County with the biggest land size but with a small population scattered all over is first. Turkana which is rated second has been given 8 per cent because of the land. That is what we should be looking at.

Mr. Temporary Speaker, Sir, when you go to Kiambu, everybody has a plot yet when you go to some remote areas, you walk for 100 kilometers before you can see a home. Why are we then wasting money on empty space? If we are considering land space, we should overlook the unoccupied land, and get the total sum of occupied land. We should be addressing the three pillars of the Vision 2030; the economic, social and security pillars. If we must address our problems then we should channel development to where our people are; we should supply water and electricity to the manyattas where people have schools and connect roads to the people. We should not just blindly distribute money.

It is no wonder we have some counties which roll over their money to the next Financial Year. Some counties have even employed and bought vehicles for the village administrators yet they still have so much money left. We have talked about fiscal responsibility and development factors here but just as one of my colleagues mentioned earlier, I wonder where the Equalization Fund is. It is six years since we enacted the Constitution yet we have not utilized that money.

We recently saw in the news that the President and the Deputy President went to Isiolo County and gave out a little of the same. However, where are the previous allocations? I ask because it came into effect on 27<sup>th</sup> August 2010 but we are yet to receive the money. We are being told that the National Assembly wants the money reallocated to them. What do they want to use that money for? It is not meant for the national Government issues. Constituency Development Fund (CDF) has lost meaning because it looks like it is an allocation of the national Government, yet it should also belong to the county government. I am unable to trace where that money goes to unless there is any Senator here who knows where the CDF goes to.

Mr. Temporary Speaker, Sir, in 1965 the first Sessional Paper, African Socialism and its Application to Planning in Kenya identified agriculture and land tenure as key

and decided to concentrate development along the railway line. Therefore, marginalization was deliberate at that time because it talked about less developed areas and what needed to be done. However, we have not done it. Therefore, the reason why people move to the cities is because the rural areas are not developed. I suggest that in the coming generational formula, Nairobi should be removed as a poverty zone as well as the former provincial headquarters because they enjoyed a status we never did for over 50 years. For instance, Kakamega County should be removed from the consideration as well as Nakuru, Nyeri, Mombasa, then look at the formula keenly.

The people of Elgeyo-Marakwet who are my neighbours all live in the hills and rocks of ages. Now then can we term them as a small county yet you cannot climb the hills to reach the people because you will collapse. The other day I went with my colleague to talk about peace in Elgeyo-Marakwet and by the time we were down the valley, all the brake pads of the new car were finished. I am still waiting for Sen. Murkomen to reimburse me.

Looking at the second basis for revenue sharing, anybody with a high population index, you will discover that it was an original headquarter of the province and, hence, development concentrated in that area. What about Lodwar that has just discovered oil or Lamu and Mandera counties as well as West Pokot with lime stone and gold?

We need to find ways of developing those areas quickly and give them the necessary infrastructure so that the people of Kiambu County who have money can go to those counties and seek processes and procedures of investing there. However, how would they go to a place with no water or power?

**Sen. Wamatangi:** On a point of order, Mr. Temporary Speaker, Sir. Did you hear my good friend, the Senator for West Pokot referring to the people of Kiambu as having money? Could he substantiate whether he means that all the people of Kiambu have money or he is specifically referring to a few people in Kiambu who may be having money? He may cause a wrong impression by the wording of his statement and create an impression that all the people of Kiambu have money yet we have extremely poor people in very big numbers in Kiambu County.

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. Is it in order for Sen. Wamatangi to run away from the obvious? It is common knowledge in this country, that if you are looking for money, you go to Kiambu or its environs which is Nairobi. Therefore, is it in order for Sen. Wamatangi to cover up that which is so obvious just like the sun and the moon?

**The Temporary Speaker (Sen. Sang):** Sen. Murkomen, Sen. Wamatangi was on a point of order. You are completely out of order to rise on a point of order pursuant to a point of order.

Sen. Wamatangi, there is no county known as Pokot. It is West Pokot.

Proceed, Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I expected my colleague to congratulate me for lifting the status of Kiambu and telling them that is a benchmark. If you want to see how people have developed and how they can save money, you go to Kiambu. Therefore, with your little savings which are now very many compared to other counties, come to our counties and invest. How do they come? They will only come when we have all other structures in place.

Mr. Temporary Speaker, Sir, the Jubilee Government has embarked on a process



of developing our counties. However, I would like to see the 1,000 kilometres of road per year in the North Rift. We do not have it yet.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, from the onset, I find it very difficult to accept the criteria that has been in existence since we came to this Senate. I had hoped that with time, the Commission on Revenue Allocation (CRA) would use the funds allocated, experience and professionalism to arrive at criteria or formula that meets the constitutional requirements.

Article 203 of the Constitution lists the criteria which must be met. While some criteria have been given weight, sometimes undue weight, other criteria have been neglected. Article 203(1)(d) of the Constitution requires that the counties must be supported to perform their functions, in this case, the devolved functions. Therefore, when we are allocating resources, we should look at those functions which have been devolved. What comes to my mind quickly is agriculture, health and infrastructure. How has these criteria addressed those issues? Article 203(1)(i) states:-

“the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;”

This means that when we are allocating funds to each county, we should also allocate not just to alleviate poverty and so forth but also to enable those counties to produce more revenue that will be subject to allocation at a later stage. That means that those who generate more need to be given something in appreciation, not as a reward but to enable them raise more revenue for the country. I do not know whether that has been taken care of.

We have discussed this issue here, even last year. We hoped they would change. We had even indicated that each county's contribution to the Gross Domestic Product (GDP) be used so that if, I am giving more in terms of GDP, then I am given something commensurate to my effort. We can call it fiscal responsibility. Fiscal responsibility does not mean fiscal discipline. There is fiscal discipline where you have used resources correctly but fiscal responsibility means how much you are putting in the basket.

Mr. Temporary Speaker, Sir, when we discussed this matter with the CRA, they said that it was not possible that there were no figures to indicate how each county is contributing. However, the CRA has been quick to arrive at figures to state which counties are poorer than the others; the poverty index. If you can arrive at the poverty index, what is so difficult? We have an institution, the Kenya National Bureau of Statistics (KNBS) which CRA could have mandated to do that for them. Unless, we do that, we shall just be distributing money and creating more poverty.

There are countries such as Germany, where I had an opportunity to go to look at their taxation system and their Constitution. It provides that a certain amount or percentage of revenue that is raised in each Region must remain in it whether you use the pay as you earn, income tax and so forth. There are many ways of arriving at that.

Mr. Temporary Speaker, Sir, a lot of weight has been given to land area, poverty and population in this formula. It is obvious that when you talk about land area in this country, large counties happen to be also poor. So when you are rewarding poverty and land area, you benefit that county twice; not to mention that in the Constitution, there is also an Equalization Fund which is supposed to address that inequality. So, that county of large land area benefits thrice.

When we talk about functions, agriculture, for instance, Trans-Nzoia County feeds this nation. We produce a third of the maize that is produced in this country yet my county has that responsibility but that effort has not been recognised. The maize we produce is not only for Trans-Nzoia County, it is for the whole country. We save foreign exchange; otherwise, we could have imported that food. However the farmers in Trans-Nzoia and other agricultural counties are suffering. They are also poor. Their land is being sold. They cannot repay loans. When banks collapse, some of the loans that make them collapse are agricultural.

Mr. Temporary Speaker, Sir, the loans that make banks collapse are the agricultural loans. The farmers are no longer making any more money from coffee, tea and maize, among others. What we should be doing is ensuring that the counties which produce food are fully supported. In the same manner that we give conditional grants to the counties to run the Level Five hospitals, Trans Nzoia County also demands that we give conditional grants to produce maize and purchase fertilizers. If my county were to purchase fertilizers today with all its resources, the allocation we get would not be enough.

What is developing from the first year is the small disparity between the highest and the lowest county. The highest was getting two or three times more. As the amount grew, the disparity increased. There are counties which are getting almost five times what the other counties are getting yet the administration is the same. Since the allocation is based on the percentage, some county assemblies have more money and are remunerating their members better than others.

Mr. Temporary Speaker, Sir, since we are advocating for more funds to the counties, it is not to say the counties are innocent. There is misallocation of funds. The counties are getting funds for devolved roles but they misappropriate on roles which are far off their mandate. There is a lot of impunity in procurement departments. The county officials deliberately and wastefully procure because they have been in government before.

The procurement officials know the procedure because they have been in the Government for a long time but through impunity, they are wastefully procuring by overlooking regulations and the law. They carry out single sourcing. It looks like they know that if they appear before the Senate, the Ethics and Anti-Corruption Commission (EACC), they will claim they knew and that they are in a learning process. Therefore, they request to be pardoned.

Unless stern action is taken, particularly by the Senate against the officials who are misusing public funds, this problem will persist. There are enough legal provisions to deal with such cases. The Senate has authority to recommend that certain public officers do not deserve to hold public office. Those who wish to be elected will not be elected. However, we are yet to see strong recommendations to that effect.

Mr. Temporary Speaker, Sir, devolution was supposed to be devolved further to the counties. However, if you go to most counties today, the governors have concentrated power on themselves. They authorise vouchers on who to be paid and those to be awarded tenders. Tenders are only given to the governors. The Executive Committee members in most counties are idle. They are not AIE holders and they cannot transact business. Therefore, sub-counties have no money. That is not to mention the wards. They have recruited officers who are idle, earning but they are doing no work.

The public debt has been growing in this country. How much is this debt supporting the county programmes? It looks like the national Government has found a way of going around the budgetary process by outrightly signing loans without consulting the counties and the Senate. It is high time that the Senate is involved in how much is borrowed by the national Government.

Mr. Temporary Speaker, Sir, the Audit Office is doing a good job in some cases. However, we thank them because they have been bold enough to point out some cases. Where they have pointed out misdeeds, they have not been taken seriously by the county assemblies, the Ethics and Anti-Corruption Commission, the prosecution authorities and the Criminal Investigation Department (CID). When theft occurs, it should be called “theft” and not “corruption”. It has nothing to do with corruption. The Ethics and Anti-Corruption Commission does not need to deal with it. The CID is the institution to prosecute because it is outright theft or theft with violence. Why should someone who has stolen a cow be jailed for seven years and another who has stolen billions or “closed banks” is walking scot-free?

These are issues which are of concern and I only support this formula if necessary amendments are done to cater for what I have mentioned. That is the recognition of the functions that the counties have been given and the counties contribution to the Gross Domestic Product (GDP). Unless this is done, it will continue as an unfair system.

The opening remark in the Constitution at Article 203 is that there must be equity. Equity does not mean that we get equal allocations; it means that you get what you deserve. That means one who has contributed more to the economy will get what he or she deserves. If we rely much on the issue of population, we shall not last for a long time. We should use other parameters to determine allocation. The population census may be used together with the registration of persons to determine those who are registered and the ones who are dead because there is registration of births and deaths. School going children and the population of the youth in the counties together with the number of registered voters should also be used.

**Sen. (Dr.) G.G Kariuki:** Thank you Mr. Temporary Speaker, Sir. I have been trying from the time I came here to see if I will get a chance to contribute on this Motion. I was not convinced from the Committee Stage to this stage that we are doing the best we could as Kenyans to distribute the little money that we are given by the system.

It is difficult to share that money. Members of the Senate should consider the Senate as a small county assembly which has been asked to share the money. It is a difficult exercise. There is nowhere where the poorest of the poor and the richest of the rich sit down and compromise over something which some people think they have gotten more than the others. Philosophically, there is no rich person who has not been made rich by the poor people. It is the poor who make us who we are. In fact, it is something that we should start thinking about.

Mr. Temporary Speaker, Sir, we have been talking about governors and how they behave. We have also talked about the accountability yet this is not what this Motion is all about. This is not what is being asked here. Are we starting a different thing from what our tradition is? If we want the status quo to remain, then, let us all agree that our country will be nursed and protected as a capitalist nation and nothing more. You cannot apply capitalism and socialism together or try to find out the balance unless the systems which have been there are totally forgotten, it does not work.

Officers serving in the Commission on Revenue Allocation (CRA) and also Members of Parliament here have been talking as people with the authority to tell them not to do certain things or, by their own conscious, that you cannot do that because it is not our system. However, time has come for change.

Mr. Temporary Speaker, Sir, we are about to clock 55 years of Independence. People who fought for Independence had their time. They worked so hard and also got problems in the process. It took this country about 25 years talking about nothing but *Majimboism*. Finally, what came out is not even *Majimbo* or anything closer to that but county assemblies. County assemblies have not lasted more than five years and we have started talking about how the Constitution needs to be amended. Our biggest problem is not the current Constitution but our making from the beginning.

Our children are growing up knowing that they should have money and the easiest way of making money is to commercialise politics like their fathers, sisters or a relative who did so. What do you expect to be the results of commercialization of politics? You expect a lot of theft where people take away public money in the open. When you say there is a court of law, but managed by whom? When you have money, you can buy justice. We should realize that we have misled this country and we must now change our attitude towards our fellow brothers and sisters and their welfare.

We are lauding the new formula saying that it is the best. I can assure you that you do not need to go to Ghana or any other country to obtain this formula. We should have come up with our own formula. It is absurd to jump into an aircraft to go to Ghana or Israel to be shown how to divide money within your family. What a shame! We have people who are very learned in this country. In the whole of East and Central Africa, there is no other country which has better brains than Kenya. However, since the process of going to Ghana or Nigeria is a money-making process, everybody would want to go there. It is time we stopped deceiving ourselves and the people of our country that we are there for them. We should tell the people that we are here for ourselves and not for you.

It is the high time we told the people that we are here for ourselves and not them. It is also time people started to understand that there is nothing criminal like using a fellow whom you know does not understand, but has given you all the power. Just because you think he does not understand, you just misuse him. When do you expect revolution and other things to take off? It is when people are completely "tight" and have no otherwise.

Mr. Temporary Speaker, Sir, this country has wide ventilation space from the Senate to county assemblies. We have the National Assembly and the Cabinet where you can say whatever you want to say, and yet we cannot open up. Why do we not open up? Whom do we fear? If we want this Senate to move to Laikipia County or Kisumu County for that matter, who will stop it? That will be easier, provided that the person who will be involved in variation, transformation and transfer will get something in the end and things will be done.

When you count the population of this country and even immigrants, what are you trying to tell us? This country has gone through tribal clashes and people have moved from one area to another. No one knows how they live, yet we pretend here that we are considering the landmass, population and whatever. When was this population data taken? Where are the boundary between Kenya and Somalia to determine the people coming in? Where is the boundary between Uganda and Kenya, which determines and

stops people from moving in? Who can afford to do that? I think time has come to consider whether we can continue with this forever. Nothing continues forever; even rains stop at times. You should not wait until your maid starts wondering what kind of a person you are and yet, you pay her. It is the beginning of fermenting evil things.

I will not go into specific crimes that people are talking about. The CRA and Members of Parliament know everything and do not require our input.

**Sen. Abdirahman:** On a point of order, Mr. Temporary Speaker, Sir. Just before Sen. G.G. Kariuki spoke about the CRA bit, he spoke about boundaries and movement of people and I kept wondering. We talk about regional integration and easy movement of goods and people within the East African Community (EAC) countries. Does he imply that the movement of people is the problem? I felt he was somehow referring to it in the negative. Is he in order?

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, I have no objection to the question by my honourable friend. If we subjected it to an international debate, there would be no need for any boundary in this world. This is because you will enter Tanzania, Kenya and Somalia for that matter and no one will stand at the doors of economic forces. They will still move around whether we like it or not. People are being educated to move around. However, we are talking about a specific isolated problem. That is why we talk about landmass and population. As far as I am concerned, boundaries mean nothing. If you look at our history from 1894 and 1895, you will see how it was done. It is only those people who are powerful that we are following today. You have to be powerful to sustain yourself and what you have acquired.

Mr. Temporary Speaker, Sir, this is what they did; the Germans and the British. They shared this country. Where were we to tell them not to share yet we were left like horses and only told to follow this path and no more? When they tell us to stop, we stop. This continued for a long time. My children continued with this kind of illegal perpetration of democratic life which I think we need to change.

I did not intend to speak to this Bill because most people expected me to talk about my county government, my governor and my county assembly. Suppose you give them the opportunity to talk about their Senator, I even do not know what they are going to talk about me. Some of you just stand here and button your jackets thinking that you now control the world. Nothing! You must know that you are a servant and we must be slaves of our people, which we have refused; we have decided to say no; we have decided to take money from them and we do not care.

Many people have died since Independence with billions of shillings. None of them has been taken with him all his money to the coffin. We just leave them here to be shared by the second or third wife with their children and some unknown women.

**The Temporary Speaker** (Sen. Sang): What is it Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order Mr. Temporary Speaker, Sir. Does my senior Sen. G.G. Kariuki imply that we should not follow this little money misused by these people, just because a few purported money looters are on the loose? Can he substantiate what he means yet this is our duty? We do not know those thieves, we know these ones.

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, currently, it is our duty to behave the way we are behaving but we are not stopped by anybody to think beyond that. The Senator is a professor of Mathematics but he cannot go through his exams unless he

knows the beginning of Mathematics. Why was it decided and why is it there? This is how you start. Now you are given a table by Kenyans. This is where I give you a place to say what you want on our behalf. There is nothing more that they need from us. This is the kind of message I wanted to pass and I do not want to continue because I can see some---

**The Temporary Speaker** (Sen. Sang): Sen. Kisasa, what is your point of order? Sen. G.G. Kariuki, you have a point of order from Sen. Kisasa.

**Sen. (Dr.) G.G. Kariuki:** Okay, I will reach there. Whether I will support it or not, I will keep quiet.

**Sen. Kisasa:** On a point of order Mr. Temporary Speaker, Sir. Is Sen. G.G. Kariuki in order to say that second and third wives are not supposed to inherit his money?

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, the biggest problem of making a serious statement in a situation like this is that you just find some cheap questions---

**The Temporary Speaker** (Sen. Sang): Sen. G.G. Kariuki you are totally out of order. The Senator has just asked a question, kindly respond.

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, all the wives married legally have a right to take anything they want to take; you cannot stop your wife from eating what you have. When you work hard day and night, who do you work for? You work for the wife and her children. Is that not the case? You will be gone yourself.

Thank you.

#### ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, it is now 6.30 p.m. time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 19<sup>th</sup> April, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.