PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 30th April, 2019

Special Sitting

(Convened via Kenya Gazette Notice No.3877 of 26th April, 2019)

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Lusaka): Hon. Senators, before we proceed to the next order, I have a communication to make.

Let me take this opportunity to welcome you to this Special Sitting of the Senate. I thank you for finding time from your busy schedules to attend this sitting.

Hon. Senators, by a letter Ref. No. SEN/SML/Vol.1/27, dated 24th April, 2019, the Senate Majority Leader requested the Speaker to convene a Special Sitting of the Senate pursuant to Standing Order 30 (1) to consider the following business-

(a) The Division of Revenue Bill (National Assembly Bills No. 11 of 2019);

(b) The County Allocation of Revenue Bill (Senate Bills No. 8 of 2019); and,

(c) Tabling of the recommendation of the Commission on Revenue Allocation concerning the third basis for revenue sharing among county governments for financial years 2019/20 – 2023/24.

Hon. Senators, following consideration of the request by the Senate Majority Leader, supported by 15 Senators as required by Standing Order 30 (1), I was satisfied that it met the requirements of Standing Order 30 (2). Accordingly, and pursuant to Standing Order 30 (3), Gazette Notice No. 3877 of 26th April, 2019, was issued to all hon. Senators in respect of this Special Sitting.

Hon. Senators, as required by Standing Order 30 (5), the Gazette Notice specified the business to be transacted at this sitting and it is the business scheduled in the Order Paper. Pursuant to the said Standing Order, the business listed in the Order Paper shall be the only business before the Senate, after which the Senate shall adjourn, pursuant to the Senate Calendar.

Hon. Senators, I would like to reiterate that in accordance with Article 123 of the Constitution and Standing Order No. 78, the Senate's approval on business affecting counties is carried only if a majority of all delegations; that is 24 delegations, are in support. I, therefore, urge all hon. Senators to remain in the Chamber for the transaction of business as scheduled and until their conclusion.

I thank you.

PAPERS LAID

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to lay the following Paper on the Table on the Senate today, Tuesday, 30th April, 2019:

REPORT ON THE DIVISION OF REVENUE BILL, 2019

Report of the Standing Committee on Finance and Budget on the Division of Revenue Bill (National Assembly Bills No. 11 of 2019)

(Sen. (Eng.) Mahamud laid the document on the Table)

CRA RECOMMENDATION ON BASIS FOR REVENUE
SHARING AMONG COUNTIES FOR FYS 2019/20 – 2023/24

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table on the Senate today, Tuesday, 30th April, 2019;

Commission on Revenue Allocation (CRA) Recommendation Concerning the Third Basis for Revenue Sharing among County Governments for Financial Years 2019/20 – 2023/24.

(Sen. Dullo laid the document on the Table)

BILL

First Reading

THE COUNTY ALLOCATION OF
REVENUE BILL (SENATE BILLS NO. 8 OF 2019)

(Orders for First Reading read – Read the First Time and ordered to be referred to the relevant Senate Committee)

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF CRA RECOMMENDATION ON
BASIS FOR REVENUE SHARING AMONG COUNTIES
FOR FYS 2019/20 – 2023/24

The Speaker (Hon. Lusaka): Before we proceed to the next Order, I have a Communication to make.

As you are aware, Article 217 (1) of the Constitution mandates the Senate, every five years, to "determine the basis for allocating, among the counties, the share of national revenue that is annually allocated to the county level of government".

Section 16 of the Sixth Schedule to the Constitution states that-

"Despite Article 217 (1), the first and second determinations of the basis of the division of revenue among the counties shall be made at three year intervals, rather than every five years as provided in that Article."

Hon. Senators, you will recall that the first basis was approved on 27th November, 2012, and was used to share revenue for Financial Years 2013/2014, 2014/2015, 2015/2016 and 2016/2017. The second basis for revenue sharing among county governments was adopted by Parliament on 21st June 2016, and was geared towards provision of adequate financing to counties, correction of economic disparities and minimization of the development gap and stimulation of economic optimization and incentive to counties to generate revenue. This revenue sharing basis was used to share revenue for Financial Years 2017/18 and 2018/19.

Pursuant to Article 217(2) of the Constitution, the Senate, in making its determination, is required to request and consider recommendations from the Commission on Revenue Allocation, take the criteria stated in Article 203(1) into account; consult the county governors, the Cabinet Secretary responsible for Finance and any organization of county governments; and invite the public including professional bodies, to make submissions to it on the matter.

I hereby direct that the Recommendation of the Commission on Revenue Allocation on the Basis for Revenue Sharing among County Governments, for Financial Years 2019/2020 to 2023/2024, having been tabled, be committed to the Standing Committee on Finance and Budget, which shall consult institutions referred to under Article 217 (2) of the Constitution and facilitate effective public participation on the matter.

The matter of revenue sharing among County Governments is an important one and as such I urge all of you to make your submissions to the Standing Committee on Finance and Budget at the earliest opportunity to enable the Committee finalize its report.

I appeal to the Standing Committee on Finance and Budget to expedite consideration of the recommendation of the Commission on Revenue Allocation and table a report, to facilitate the Senate to make a resolution on the Third Basis for Revenue Sharing among County Governments for transmission and consideration by the National Assembly, pursuant to Article 217(3) and (4) of the Constitution.

Thank you.

Next Order.

BILL

Second Reading

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 11 OF 2019)

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to move that the Division of Revenue Bill (National Assembly Bills No. 11 of 2019) be read in the Senate the Second Time.

The 2010 Constitution established two levels of government. It requires that all national revenues be shared between the two levels of government. Articles 203 and 218 of the Constitution provides for equitable sharing of revenue raised nationally between the national and county governments. The Division of Revenue Bill provides for the allocation for Financial Year 2019/2020. It details the proposed sharable revenue, national Government share of revenue, county equitable share of revenue and conditional grants and the equalization fund.

Mr. Speaker, Sir, as the House recalls, the Budget Policy Statement (BPS) being a precursor to the Annual Division of Revenue Bill Act, sets the fiscal framework in relation to equitable revenue sharing between the two levels of government.

The Annual Division of Revenue Bill (2019) is prepared in accordance with Article 202 of the Constitution which expressly makes it mandatory for the national raised revenue to be shared equally between national and county governments. The equitable share of the revenue raised nationally that is allocated to county governments is guaranteed to be at least 15 per cent of the revenue collected by the national Government and is further calculated on the basis of the most recent audited accounts of revenue received and approved by the National Assembly.

This Bill has passed through the National Assembly. The National Assembly approved the Division of Revenue Bill (2019) recommending an equitable share of Ksh310 Billion to county governments and Kshs1.561 trillion to national Government. This is below the current allocation to counties for Financial Year 2018/2019, which was KShs314 billion. This is Kshs4 billion below the current allocation of the financial year we ending today.

Mr. Speaker, Sir, in considering the Division of Revenue Bill, this House recalls that we passed a resolution that the sharable revenue between the two levels of government should stand at Kshs335 billion for county governments. A review of the Bill before us from the National Assembly indicates that the baseline used by the national Treasury is Kshs314.96 Billion as opposed to Kshs314 billion. They should have started from Kshs314. However, they started from Kshs304 billion arguing that the figure of Kshs314 was reduced by Kshs9 billion during the supplementary which was appropriated by the National Assembly some months ago.

The baseline of Kshs304 billion is grown by an adjustment of only of Kshs5 billion making it Kshs310 according to the recommendation by the national Treasury and adopted the by National Assembly. Therefore, the equitable share to the county government has been recommended in the Bill to be Kshs310 billion.

The Bill was tabled in the Senate on the 9th of April, 2019, and thereafter it was committed to the Standing Committee on Financial and Budget pursuant to Standing Order 141 of the Standing Orders of the Senate. The Bill provides for the division pursuant to Article 118 (1) (b) of the Constitution and the Standing Orders 145 of the Standing Orders of the Senate, the Committee in considering the Bill invited various stakeholders both from State organs and also from the non-State actors.

In considering the Bill also we were guided by what we recommended in the BPS. Ideally, what the Senate has in the BPS is actually what the Committee together with stakeholders from Commission on Revenue Allocation (CRA), Institute of Budget Policy, some other Institutions and Council of Governors (CoG). However, apart from the national Treasury, all are in agreement that the revenue must grow in line with the inflation that is in the country and also to certain delivery requirements.

From the recommendations by the National Assembly, the Committee observed that the issue of Division of Revenue Bill (2019) as passed by National Assembly, proposes a reduction, as I said earlier, in the equitable share allocation to county governments from Kshs314 billion to Kshs310 billion.

The proposal does not take into account the effects of inflation and other factors. Whereas our economy is said to be growing and our revenue projection is growing, the revised revenue projection of this year is about Kshs1.8 trillion. That is a growth of Kshs200 billion in revenue. The projection for the next year is Ksh1.8 trillion plus. This is Kshs200 billion growth in revenue and yet they reduced the allocation to the counties.

Mr. Speaker, Sir, you recall that the Senate approved an equitable share to the county governments of Kshs335.67 billion during the consolidation of the 2019 Budget Policy Statement (BPS). This House also recalls that the leasing of medical equipment project has been a source of contention between various stakeholders.

Further, the provision in the Division of Revenue Act (DORA) has been varying in the years since inception from 2014 to 2015. The Senate in its sub-report on the 2019 BPS, recommended the suspension of the allocation to the project until the disclosure of information on the total contract sum repayment period and implementation status.

The Committee noted that the Kenya Roads Board bases the conditional allocation to counties from the Road Fuel Levy on 15 per cent of the funds' total estimated amount for the year 2019/2020. However, the National Treasury has never provided the total estimated amount of the fund for the year. Therefore, we are just using 15 per cent of the figure we do not know. There is also a problem there.

The Division of Revenue Bill has been enacted for the last several years from 2014/2015, and, in fact, the Bill has clauses 1 to 5. Clause 5 has been discussing if the revenue raised nationally in the Financial Year (FY) falls short of expected revenue set out in the Schedule, what will happen?

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones. This is an important Bill.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, in the event of shortfall of revenue, the Bill provides for what will happen in Clause 5.

In the previous Bills, before this year, Clause 5(1) was that any shortfall of revenue as set out in the schedule, that shortfall shall be borne by the national Government to the extent of the threshold prescribed by the regulations by the Cabinet Secretary.

This year, the national Treasury and the National Assembly in the Bill they have brought to us, have diluted that provision and now reads –

"If the actual revenue raised nationally in the FY falls short of the expected revenue set out in the schedule, the shortfall shall be borne by the national Government to the extent of the threshold to be determined by the Cabinet Secretary."

So, the regulations have been moved and that is a determent because when the regulations are there, it requires the intervention of both Houses before it is passed. That is wrong. We, in the Committee are saying, no. we will revert to the clause that has been there from 2014 to 2015.

Mr. Speaker, Sir, the mandate of raising national revenue – because we are sharing the national revenue raised nationally – falls squarely on the national Government. It has nothing to do with the people in the counties. Therefore, there is no reason why the national Treasury should punish them for shortfalls or non-collections of revenue. After all, we have questioned the national Treasury, where every year they project a lot of revenue yet they end up collecting little.

The other issue which stakeholders have raised is the latest audited accounts as approved by the National Assembly, whereas the Office of the Auditor-General, we were told, has submitted reports of 2017/2018. We are still stuck in 2014/2015; a failure on the part of our sister House to do the job they are supposed to do.

The Bill before us, therefore, needs to be amended. We recommend---.

(Loud consultations)

An hon. Member: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Order, Members! Hon. Members, what is being presented is so important that you need to take an informed decision in terms of voting. I would ask that you consult in low tones so that we can follow.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, in the light of that, the Committee and, of course, this Senate, is called upon to consider the Bill from the National Assembly, taking into account that there is no way this Senate will allow the allocation to the counties to go below the allocations of this Financial Year. The counties are getting Ksh314 billion this year, but the purported reduction of Kshs9 billion is not acceptable. Therefore, Kshs314 billion will be the base for us, and grow that with the three-year average inflation of 6.9 per cent and the figure comes to Kshs335.67 billion to the counties.

This Senate, because of the confusion in the medical equipment leasing – there are no answers coming in terms of the cost of the project; when the project will end and what is being delivered – in the BPS, as I said, we recommend the suspension of that project pending further information.

We, in the Committee, also recommend in our report that the proposed allocation to lease equipment of Kshs6.2 billion be deleted from the Division of Revenue Bill.

We intend to also amend Clause 5(1) to indicate that any shortfall on revenues raised nationally, shall be borne by the national Government to the extent of the threshold as prescribed by regulations by the Cabinet Secretary. In this Bill, you will see some footnotes which we consider unnecessary. In fact, there is Schedule S(4) – we are deleting it and replacing with a New Schedule. At the end of that, there is a footnote –

"The national government share includes Ksh4.3 billion which is a special grant to the National Health Insurance Fund for free medical care to be disbursed as reimbursement to county governments."

We see no reason for this. The figure Kshs4.3 billion is not appearing anywhere in the Schedule. It is only a statement, which I think is trying to appease people. So, we have deleted that footnote.

I invite the Members to look at those recommendations. This is a very important Bill. It is only after this that we can move to the County Allocation of Revenue Bill and other things. We support our counties and devolution. We do not want to reduce funding below what is currently there.

With those many remarks, I beg to move that the Bill, as sent by the National Assembly be amended to change Schedule 4 to include the deletion of Kshs6.2 billion and also the addition of Kshs21 billion for the inflation to take into account the Kshs314 billion onwards. The baseline should be Kshs314 billion and not Kshs304 billion – and that, Clause 5(2) be amended. I will move the amendment during the Committee Stage.

I beg to move and ask Sen. Wetangula to second.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. A technical issue should be sorted on the machines. Members are asking or wondering, that now that we will propose some amendments---.

I thought the Chairman should have led the Chamber to understand that at the Second Reading, although, we are proposing changes and we are objecting to the deductions, there should be a passing of the Second Reading with our objections and then, we amend at Third Reading.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, that is procedural. I moved the Bill the way it was submitted to us from the National Assembly. I have used my report to highlight the areas that we will deal with. Naturally, the amendments should be done at the Committee Stage.

I ask Sen. Wetangula to second. Thank you very much for that.

The Speaker (Hon. Lusaka): In the meantime, Chairperson, can you circulate the comments of the Committee for Members to go through?

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I beg to second.

I associate myself fully with the sentiments and submissions of the Chairperson of the Committee on Finance, Commerce and Budget to which I am a Member. This House has many businesses to deal with. However, this is one single most important business for this House; it is its constitutional responsibility.

(Loud consultations)

Mr. Speaker, Sir, there is some bit of excitement from “the mountain”.

The Speaker (Hon. Lusaka): Hon. Members, please pay attention.

Sen. Wetangula: Mr. Speaker, Sir, now that “the mountain” is tranquil, I will go on. This Bill as passed by the National Assembly must be passed in this House in an extremely qualified manner; qualified to the extent that at Third Reading, we must carry out major amendments to give to the counties what is constitutionally and dully owed to them.

Mr. Speaker, Sir, if you look at the national budget, it has been increasing year after year. Even when the national Government tells us that revenue collection has dwindled, they still provide to Parliament budgets that are higher than the previous year.

Last year, this House passed a Division of Revenue Bill that grudgingly gave counties Kshs314 billion to be shared among the 47 counties. Common philosophy in life is that we live incrementally; we cannot live by reduction. Today, we are dealing with a Bill from the National Assembly where it has been curiously reduced from Kshs314 billion to Kshs310 billion.

Secondly, this Kshs310 billion is a departure, without any explanation, from the recommendation of our technical advisor in revenue allocation - the Commission on Revenue Allocation (CRA).

Mr. Speaker, Sir, the Committee has painstakingly gone through this process. For the first time I laud the Council of Governors (CoG) for appearing before the Committee. In previous years, we have voiced it on this Floor that governors used to go to Intergovernmental Budget and Economic Council (IBEC), cut deals with the national Government and put the Senate in a very difficult situation in dealing with revenue allocation.

This time round, governors appeared before the Committee and told us that they rejected the offer at IBEC. They also made some very cogent submissions to the Committee.

Equally important, I salute some young girl form the City of Nairobi called Vivian. This lady appeared before the Committee’s public hearing and she had greater knowledge of revenue division and sharing than anybody I have met since devolution. She submitted to the Committee in a manner that the Committee had no choice but to agree with her, wholly. In fact, this Senate should engage such a person as a resource person in future engagements of this nature. She was well read, vast, articulate and she had figures at her fingertips. I wish Kenyans can do the same in their interest in this allocation of revenue.

Mr. Speaker, Sir, what is more important is the National Treasury is trying to arrogate itself authority it does not have in this Bill. The Constitution is very clear. Where there is a shortfall of revenue collection in the country, the national Government absorbs the shortfall. Equally important, the Constitution gives them an even better deal, that in the event of excess revenue collection, they still keep the excess. Now, the national Treasury has passed and engineered, through the National Assembly, a Clause that says that where there is revenue shortfall, the national Treasury secretary shall determine where the loss will lie. This is a total departure from the constitutional provision.

More importantly, it also puts the national Government in a situation where they will constantly and forever disenfranchise and deny counties their fair share of revenue allocation.

Mr. Speaker, Sir, consequent upon this, the Committee, as the Chairperson has rightly said, has followed the recommendation of the technical advisor under the Constitution; the CRA. It has advised the Senate and the country that the sharable revenue in the figures provided in the Budget Policy Statement (BPS) and what is due to the counties shall be Kshs335 billion.

We urge this House that at Third Reading, we must amend this Bill and give the counties Kshs335 billion. I, similarly encourage the House that since we are headed to mediation because the moment we reject this Bill there will be mediation, the Committee, in consultation with your office, must send to mediation our best negotiators. We should not send any Senator to the negotiating table at mediation to simply provide quorum. We must have people who will go there to negotiate for counties. This is what this House must do.

The Speaker (Hon. Lusaka): Hon. Senators, we have a technical problem with our systems. Therefore, we will revert to our style where you stand so that you catch my eye.

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

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

Sen. Malalah: Thank you, Mr. Speaker, Sir. For guidance and precedence purposes, I want to understand whether the seconder is supporting or opposing the Bill. This is because the content of his contribution is as if he is opposing, yet he is supposed to second.

I would like to understand if a seconder can be allowed to oppose just for precedence and guidance purposes.

Sen. Wetangula: Mr. Speaker, Sir, I suspect that the distinguished Senator for Kakamega County was part of "the mountain group" that was engaged in active discussion when I started my contribution.

(Laughter)

I said that we will support this Bill to the extent that we have to pass it through Second Reading. Thereafter, we have an opportunity at Third Reading to amend it. If we kill it at this stage, we will put the country in a lot of difficulties. However, if we pass it with amendments at Third Reading, we will send it to mediation.

For the guidance of my distinguished colleague from Kakamega who is young, when he comes to speak, he should speak as freely as he wishes but should vote "Yes" at Second Reading and then we will deal with it at the Third Reading.

My next point is with regard to the leasing of medical equipment. Our Committee has followed very closely the history of the equipment. We have seen the difficulties the House has been facing, including the Chairperson, in trying to panel-beat and shape the Committee on Health to bring cogent answers on this issue. Unfortunately, we have not received any cogent answers on the leasing of medical equipment. So, the Committee advises this House that until the grey area on leasing of medical equipment is clear, we should not give any money towards this item in this Budget for the simple reason that the figures have been changing every year. This House has been asking for the contracts but they are not there.

We were shocked when the Chairman of the Council of Governors (CoG) appeared before the Committee and told us that even governors who signed the contracts have never seen them. They said that they have been signing Memoranda of Understanding (MoUs) which are not even addendum to the contracts. So, they do not know what they have been signing for and what they are leasing. The equipment is delivered in counties in crates and containers and they are told to keep them.

Mr. Speaker, Sir, prudent management of public resources is a cardinal principle in our Constitution. It is also a cardinal principle in the Public Finance Management (PFM) Act. Above all, it is the cornerstone of Chapter Six of the Constitution on Leadership and Integrity in the management of our affairs.

I urge Senators that even if the leasing of equipment was noble and was going to be beneficial, it cannot be a gravy train where we shroud it in mystery and nobody wants to answer questions. We have seen even how our own distinguished colleagues in the Committee on Health have looked helpless bystanders as these things happen in the country.

So, I urge the House that we delete altogether the amount of money provided for leasing of equipment. This money is not being lost in the Budget but it will be within the Kshs335 billion that will go to the counties to deal with other issues including but not limited to health. That way, we will be able to support and assist devolution.

Another important issue that I am sure many Senators will speak to is that in giving the counties Kshs335 billion that we are talking about, we will not be giving governors a blank cheque to play with the money in the manner they wish, particularly in matters of accountability. As Members of the Committee on Finance and Budget, we have urged Members of the County Public Accounts and Investments Committee (CPAIC) to speed up their audits and oversight role, so that we do not continuously look at expenditure in a manner of postmortem of what died three or four years ago.

If that was the case, this House would be able, within record time, to arrest situations where money is being pilfered like what happened in Samburu County and many other counties. As we fight to give more money to the counties, the threshold, levels and expectations of accountability must go with it.

I urge Senators in their own small way not to wait for the CPAIC of this House to carry out the oversight. Let us be part of the primary oversight, and support our county assemblies in making sure that money is put to good use.

I want to end by saying that the Committee on Finance and Budget has brought to this House a very well-reasoned, good and progressive report. For the first time, I think this House can tell the country that the Commission on Revenue Allocation (CRA) was not set up as a cosmetic venture but it was set up to truly advise the country on how to share revenue. When they say it is Kshs335 billion, they have given reasons, calculations and the philosophy behind it. We cannot, therefore, just go with what the national Treasury said and start thinking about whether it is the money or the box. We are not going that direction. We will give the counties money that can make devolution worthwhile.

With those few remarks, I beg to second.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise to support the Bill with the proposals that were made in the Committee on Finance and Budget, that several changes must be made in order for this Bill to truly reflect the wishes of devolution.

According to Article 218, the national Treasury is supposed to give reasons why the deviations from the recommendations by the CRA, which should be considered because there is no explanation for reducing the allocation to the counties by Kshs9 billion. However, it is fair to inform the Plenary that somebody from the national Treasury attempted to give a reason which was not in writing and we did not take it. They said that the country has been getting deficits for the past seven years and, therefore, the Kshs9 billion is the overall deficit.

The second reason we must reject this, is because the National Assembly has amended the Division of Revenue of 2017 and that of 2018 retrospectively without considering us by changing the baseline. The principle we have been using in the past six years is that, division of revenue must increase upwards and there is a good reason.

Before this Bill was tabled, the Senate Majority Leader tabled the State of the Nation Address by His Excellency the President. It purported that the economy has grown by 6 per cent and that by the end of the financial year, it will be at 6.3 per cent.

In his Address, the President also said that we have extra allocations and the economy is doing well. Therefore, it is inconsistent for this Bill to propose a deduction of Kshs9 billion on the allocations to the counties retrospectively, but we have not seen deductions on matters of the national Government.

The Senate must bite the bullet. It is either devolution falls on our sword or succeeds. The ghosts of killing devolution are in the national Treasury where the mandarins who are said to be experts are slowly killing it.

Let me explain to those who are Members of the Committee on Finance and Budget that the allocations to the counties have been reducing from 4.4 per cent to 2.3 per cent this financial year. On the other side, the allocations to the national Government have been increasing 4 per cent relative to the economy. Are we living in the same country? Are county governments step children of devolutions or the country? By rejecting this allocation and amending it to conform to the allocations done by the CRA, we will be following the Constitution where in Articles 217 and 218 we are required mandatorily to consider the recommendations made by the CRA.

On the second aspect which is leasing of medical equipment, for the first time, this House through the Committee on Finance and Budget, has made a decision. We have dilly-dallied, moved back and forth and made noise but this is the time to put our foot on the ground. The allocation for leasing of medical equipment has moved from Kshs3.8, 4.5 billion, 6.1 billion, 9.4 billion and now 6.2 billion.

Sen. Wetangula did not mention that the Chairman of the CoG told us that the meeting where the MoUs were signed was called by the Principal Secretary (PS). He called the 47 county executives of health and told them to sign an MoU and the governors were not aware. By the time governors arrived in the room, they were told that the contracts had been signed for and on behalf of counties. Secondly, the documents that were tabled here by the Cabinet Secretary for Health have not been seen by any governor in this country. Yet, my dear colleagues, your counties have paid a minimum of Kshs450 million since 2013.

Mr. Speaker, Sir, the total allocation from 2014 up to now is Kshs450 million. We constructed a hospital using Kshs135 million. Imagine Kshs450 million and you have not seen a document or a contract. In Trans Nzoia County, for example, half the hospitals do not have the equipment. They are still in stores and some of them are still in boxes. They have never been used. This is fraud. It is corruption. We must say no to it by rejecting it from the schedule.

If you want to know what the deduction means, there is a schedule attached to the Report. I hope it is there. Let me just give you a few examples. Nairobi County's allocation will be reduced by Kshs454 million if we accept the Kshs9 billion adjustment. Kakamega County will also suffer a loss of Kshs297 million.

Sen. (Eng.) Mahamud: On a point of information, Mr. Speaker, Sir. The Schedule referred to by Sen. Mutula Kilonzo Jnr. is in the Report of Commission on Revenue Allocation (CRA) to the Committee. It is not in this one.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, it would be nice for you to see it because it is earthshaking. You will tremble if you see it. Elgeyo-Marakwet and Embu counties will suffer a loss of Kshs108 million and Kshs128 million, respectively. This is not a recurrent expense. This is development money that is being deducted from your poor counties. This is minus the Kshs200 million that will be deducted as source, once you pass the medical leasing equipment. So, we have double tragedy.

When we told the Committee on Health to save us, this is what we were talking about. The minute we did not take action, they went further pinching and pressing. They will continue pressing. Mandera County will lose Kshs 292 million while Narok County will lose Kshs184 million. The Schedule goes on and on.

Why should your county suffer a deduction of a shilling this financial year? What is the reason? Revenue has been collected and some of it lost through mega corruption which is synonymous with the Jubilee Government. We must say no because Article 96 is a special jurisdiction of the Senate. Sen. Haji asked me that question. Somebody went to the Building Bridges Initiative and said that devolution has failed because Senate has refused to pass legislation.

Devolution is falling because of limited resources. Article 203 talks of 15 per cent of the total revenue not the Kshs936 million. Here, the basis of allocation of revenue should be Kshs3 trillion. Why are we dealing with less than Kshs1 billion for allocation. Resources must follow functions under Article 187(2). It is a pity that the Ministry of Health has been allocated Kshs60 billion while counties do not have funds.

Mr. Speaker, Sir, let me tell you the last truth about what they have said about Level 5 hospitals. This is what the national Government has proposed in order to punish counties: It says:

"The funds allocated to Level 5 hospitals are only transitional and may be reallocated to fund Universal Health Coverage (UHC) once it is scaled up."

The national Government and the Treasury are slowly trying to pinch. They are saying the 13 Level 5 hospitals will be funded discretionally. They will translate this money and remove it. While they are giving only Kshs4 billion, they now purport to take it away from our counties. What will be left of devolution, my dear colleagues?

It is a sad day and people are talking about referendum to increase and reduce counties. Counties are falling on their knees and bellies on resources alone. I apologise for painting a bad picture of the Division of Revenue Bill, 2019. It is the bitter truth that somebody sitting in Nairobi City is slowly trying to kill devolution. By the time they finish with these allocations, they will come for the Senate and Senators. You will become jobless and carry the casket of devolution on your backs. History will judge us harshly.

That is why my vote is no and it will be no. let us go to mediation, let it fail and let the country come to a standstill until we tell everybody who sits in national Government that the 47 counties are not an accident. They are in the Constitution. The Cabinet Secretary for National Treasury has said that he has granted himself in the Division of Revenue a discretion which the President does not have. Parliament does not seem to have that discretion. The discretion is to vary changes according to collections. He wants to sit in his office on 14thFloor and make some discretionary amendments. As opposed to that, the national Government should shoulder the burden of a short fall. The discretion is left to one CS Rotich.

Mr. Speaker, Sir, this country does not belong to the national Treasury. We must tell him that by rejecting this Division of Revenue Bill. Let us go to mediation red eyed, look at the National Assembly and tell them that this country does not belong to them either. This is because they have not reduced the allocation to the National Government Constituencies Development Fund (NG-CDF) but they find some very good reason to punish devolution or governors.

When you punish devolution, you punish the poor of Kenya, who for the first time, have seen boreholes, roads, hospitals, *et cetera*. Embu County now has a macadamia factory. People of Isiolo, Kirinyaga and many other counties have now seen development. Are we going to allow this reduction? The answer is a straight no. *Kama ni mbaya, mbaya*.

(Some Senators withdrew from Chamber)

The Speaker (Hon. Lusaka): Order! Hon. Senators, you will have to remain because we have numbers and we will take a vote in a short while.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill. I support it with amendments.

There was a proposal to reduce some money from counties in the last financial year. The fact is that the national Treasury has not revised the revenue collection estimates. Why are we reducing money to counties yet even if you were to buy their argument that they are underperforming in terms of collection, even their estimates according to the BBs that we looked at in February, they still showed that it is Kshs1.6 trillion in terms of revenue generation for this country.

We are now speaking about referendum and the need to change the Constitution to accommodate more people at the national level. I think we are missing the point because money going to the counties is doing much better than the amount of money that is retained at the national Government. Therefore, we should increase the allocation for counties to 50 per cent. Whatever function that we devolve, there should be no remnant in the national Government.

Mr. Speaker, Sir, it is estimated that the Gross Domestic Product (GDP) will grow to 6.3 per cent this year. That same GDP is what we use to borrow. It is the same that we are benchmarking in terms of how much we borrow. So, the risks are many and it is time, whether in this or the other House, Parliament determined borrowing. If it does not, I tell you we will sell all our assets until we have nothing more to sell.

Mr. Speaker, Sir, wages in the county should not exceed 35 per cent. However, counties have continued to recruit and that threshold has already been surpassed. Who checks and what action will be taken against counties that have surpassed the threshold? Laws are passed for a reason. If governors ignore those reasons, what avenues are available for this House in terms of taming that situation?

Mr. Speaker, Sir, who is accountable in the national Government for the conditional grants given to counties? This is money that is in the budget of the county governments. It is implemented directly or through the county governments. Who monitors the use of the conditional grants? Who ensures that all the disbursements that were guaranteed are disbursed on time?

Mr. Speaker, Sir, according to the Budget Policy Statement (BPS), when you deduct the revenue that we raise as a country from the national Budget, there is a gap of Kshs628 billion, which I suspect that the Government plans to borrow either locally or internationally. Are we making sustainable investment from the borrowing that we do? Is the money that we are borrowing being invested, so that the loan can easily be repaid? Secondly, is that debt sustainable given our income?

Mr. Speaker, Sir, we also need to address issues around national interest as well as debt. The revenue that we generate is the first charge that we have. We should have a conversation around what makes a public debt and every given year, determine how much debt we should acquire. Short of that, we will have a moving goal post. The counties do not generate revenue and the two charges go to the decision made by the national Government, yet the consequence is felt by the county governments. One of the reasons given by the national Government as to why money to counties was deducted is because whatever was available is less after those two deductions.

Mr. Speaker, Sir, the county governments are not on the decision making table where those figures are determined. Therefore, unless this conversation happens and we agree on the parameters, devolution will die. This is because someone can say that out of the Kshs3 trillion, Kshs2.9 trillion will go to those two charges and the balance left is for the national Government and counties. Under these circumstances, the counties risk being on their deathbeds as Sen. Mutula Kilonzo Jnr. said.

Mr. Speaker, Sir, health is a devolved function, yet we have issues to do with medical equipment. Money should be given to counties and let them to prioritize according to their needs. Why should equipment such as trolleys and gloves be bought for the counties, yet they do not even need them, in the first place. Counties should recruit doctors who can treat patients.

The Speaker (Hon. Lusaka): Sen. Farhiya, seemingly you are done.

Sen. Farhiya: Mr. Speaker, sir, I wish to support Sen. Mutula Kilonzo Jnr. in terms of the parameters determined by the Cabinet Secretary. If we take this route, the same fate will befall counties and we will be killing them.

I beg to support this Bill with amendments.

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir. I beg your indulgence given the matter that is before us. We know the length at which we have to go to do the Second Reading and conclude. I request that you guide this House in terms of how much time every Senator can take. I propose five minutes if you can agree to that.

The Speaker (Hon. Lusaka): In fact, I was going to reduce the number of people who will debate because if we lose the Second Reading, we will not achieve what we want in the Third Reading. I, therefore, reduce the number of speakers and the time to five minutes.

Sen. Olekina: Mr. Speaker, Sir, I thank you for giving me an opportunity to support The Division of Revenue Bill (National Assembly Bills No.11 of 2019). I sat here one day until 10.30 p.m. with a few other Members to consider the Budget Policy Statement, where the Committee on Finance and Budget had done a tremendous job in trying to make sure that they increase the revenue that goes to the counties. I am baffled today because I see a Bill that was passed by the National Assembly reducing the amount of money that is supposed to go to the county governments.

[The Speaker (Hon. Lusaka) left the Chair]

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

Mr. Deputy Speaker, Sir, one of my constitutional mandates is to defend the interests of county governments. My role here is to fight for more money to go to the county governments. It is hypocritical for the national Treasury which is charged with the mandate of ensuring that they collect more revenue to ignore what this House has done.

Mr. Speaker, Sir, we start to negotiate from Kshs314 billion and nothing less than that. When we agree to pass this Bill as it is, all of us will be negating our duty and it will be a sad day in the history of this country. Early last year, I thought that we were moving back into a unitary State because everything focused on the national Government. The Constitution is very clear that whenever there is shortfall, it is not the county governments to absorb, but the national Government.

Mr. Deputy Speaker, I want to make my submissions very brief. I will only vote for this Bill to go through once I am assured that Narok County will not lose money. The schedule that has been presented by the Committee shows that Narok County will lose Kshs183 million. That is money that can be used to build hospitals and water pans. It is a rainy season and our people do not have water, yet instead of us sending more money to the county governments, we are saying that the national Government can have all the money.

Mr. Deputy Speaker, Sir, saying that Kshs1.56 trillion remain with the national Government and only Kshs310 billion goes to the county governments, makes me wonder what we are doing in this House. This is the time that I do not give a hoot whether we call for the national Government shut down. We have to put our feet on the ground and more money has to go to the county governments.

Mr. Deputy Speaker, Sir, I hope that the distinguished Senators who will go to mediation will be able to stand there and look at the National Assembly team and insist that the only way we can agree, if even, at the beginning, the base of negotiation is at Kshs314 billion and nothing less. We increased the revenue allocated to counties to Kshs335 billion because we saw all that is happening in this country. We are talking about our economy growing by 6.3 per cent. Why is it that the economy is growing yet we are killing the county governments which we are supposed to support?

This House is not a rubberstamp. We cannot be rubber-stamping legislations. I have a lot of respect for the Cabinet Secretary for the National Treasury, but with this one, I begin to lose respect for him. He cannot sit there and decided to reduce the money that goes to counties to Kshs310 billion yet this House, in its wisdom, thought otherwise. The amount of work that the Committee on Finance has undertaken and all these other agencies which are tasked with looking at how the economy is growing has recommended that we increase more money, to at least, Kshs335 billion yet he has decided to unilaterally reduce it down to Ksh310 billion.

A few days ago, we had a stakeholders meeting at the County Public Accounts and Investments Committee (CPAIC) where we requested the Cabinet Secretary for the National Treasury to provide us with the contract that they signed with the manufacturers for this MES programme. We gave them a few days but the CAS who represented the Cabinet Secretary then said, "I do not think I can commit to giving you that agreement." So, what are we saying? There are things which are allowed for the national Government to do yet we are supposed to ensure that everything we are doing is for the interest of *Wanjiku*.

Mr. Deputy Speaker, Sir, because my time is over, I support with amendments. We must send more money to county governments or call for a government shutdown.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you, Senators. As you are aware, this is a Special Sitting. We have to exhaust today's agenda. Unfortunately, because we have to dispense with Second Reading, to Committee and we need numbers to push this agenda forward, we will not be in a positon for all of us to debate this matter. Therefore, I will allow one or two other speakers, three minutes each and then we take a vote.

It is so ordered. I thank you.

Proceed, Sen. Mwinyi.

Sen. Faki: Asante, Bw. Naibu Spika, kwa kunipa fursa hii kuchangia Mswada wa ugavi wa pesa za Serikali kwa muhula wa mwaka wa 2019/2020. Kwanza, ninaunga mkono lakini kwa masharti. Ni lazima ufanyiwe marekebisho kwa sababu mapendekezo ya Kamati ya Fedha ya Seneti yalipuuzwa wakati Mswada ulipopitishwa katika Bunge la Kitaifa. Mapendekezo kwamba pesa ziongezwe kutoka Kshs314 billion zilizotolewa mwaka huu mpaka Kshs335 billion. Mapendekezo hayo yalipuuzwa na Bunge la Kitaifa. Kupuuzwa huko ilikuwa ni dharau kwa Bunge la Seneti kwa sababu Seneti ndiyo inayoangalia maslahi ya kaunti zote. Bunge la Seneti ikisema kwamba pesa zinazotosha ni Kshs335 billion ni kwamba wamepima na wakajua kwamba ni sawa lazima ziongezwe. Ni lazima Mswada huu ufanyiwe marekebisho kuambatana na mapendekezo ya Bunge hili la Seneti.

Jambo la pili ni kwamba tumeona kaunti zetu zimeweza kutoa huduma zaidi kwa wananchi katika Jamhuri ya Kenya. Hata hivyo, huduma hizo haijaambatanishwa na ugavi wa pesa zinazokuja katika kaunti hizi. Hatuwezi kusema kwamba huduma zimeboreshwa katika kaunti wakati pesa zinazotolewa zinazidi kupungua.

Bw. Naibu Spika, tukiangalia kila sehemu katika kila kaunti, ijapokuwa ufisadi pia unaongezeka, tunaona kwamba huduma zinapatikana katika kaunti hizi. Huduma hizi zinahitaji pesa na kila aina ya msaada kutoka kwa Serikali kuu pamoja na wafadhili wa kutoka nchi za nje. Hatuwezi kupunguza pesa zinazokuja katika kaunti zetu kwa sababu huduma pia zinapungua.

Jambo la tatu ni kwamba katika hizi kaunti zetu zote tumeona pia kwamba hili suala la vifaa vya afya imekuwa ikitumika vibaya na Serikali kuu kwa sababu vifaa vile vinaletwa bila ushauri mzuri kutokana na kaunti zile. Kwa hivyo, zile pesa zilizotengwa kwa huu mradi wa vifaa vya afya zitolewe na ziongezwe katika ule ugavi ambao utatolewa kwa Serikali za kaunti.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Mwinyi. Hon. Senators, kindly do not leave the Chamber for the reasons that we have already stated.

Proceed, Sen. Cherargei.

Sen. Cherargei: Mr. Deputy Speaker, Sir, I rise to support this Division of Revenue Bill with amendments. I agree that the counties need more money. The Kshs310 billion that was proposed was too little for the counties. Therefore, we need Kshs335 billion. We need more money to go to the counties.

First is the (Medical Equipment Scheme) MES. This issue has been very thorny because there have been unclarified matters. That has been a conduit of corruption – even if the National Assembly had proposed a reduction from Kshs9.4 billion to Kshs6.2 billion, I thank the Committee for removing the money that is deducted at source for MES. This was a way of swindling money. As set out in the Fourth Schedule of the Constitution, the health function has been devolved. When you look at MES and upgrading of Level 5 hospitals, the increment on trying to bring back the national Government to continue discharging the health function is against the spirit of devolution in this country.

I have seen their proposal on agriculture. These are some of the issues that we need more money to be given to the counties. We do not need more money to be given to the national Government on issue of agriculture. Agriculture has been facing many challenges. We know the issue of the national subsidy programme and the National Cereals and Produce Board (NCPB). We need these functions to be devolved so that people from where I come from in Nandi County and the North Rift benefit. This is where our main backbone of the economy is agriculture. Therefore, we need to devolve all these functions through the NCPB and the national subsidy programme.

Finally, Kshs310 billion is too little for counties. We need Kshs335 billion so that our counties can realise the full potential of implementation of the schedule and functions that have been devolved. As I speak, in most of our counties, there are so many questions on spending and accountability due to corruption allegations, but that one should not be a justification by people who want to undermine devolution by saying the more we give money to the counties the more corruption will be.

We challenge the DCI and the EACC and most of the organs that participate in the fight against corruption to do their job. We shall not deny our counties the money simply because somebody somewhere thinks that there is corruption at the county level. We must agree that corruption should be fought but also that more money should be allocated to go to the counties. I am happy that we have at least removed the MES which was one of the best well organized conduit of siphoning public money that would have ensured that our people continue to receive services.

Sen. Khaniri: Mr. Deputy Speaker, I thank you for the opportunity. Sen. Wetangula and Sen. Mutula Kilonzo Jnr. put it very well; that, we will support this Bill to go through this stage knowing very well that we do not support the contents of the Bill. We will certainly have to make amendments at the Third Reading. I remind my colleagues, that as we debate this Bill, we must remember the provision of Article 96 of the Constitution that the Senate represents counties and serves to protect the interests of counties and their governments.

One of the cardinal responsibilities of this House is to pass this Bill and the County Allocation of Revenue Bill. These are the two major cardinal responsibilities of this House. Therefore, we support the Senate Majority Leader for recalling us from our recess to ensure that we push this particular agenda.

Article 202 of the Constitution provides for equitable share of revenue between the national Government and county governments. Looking at this particular formula that is being used, we cannot call this equitable. We will oppose this vehemently to ensure that the reduction of Kshs9 billion does not go through.

If we allow this to go through the way it is, for sure, we are setting the counties to fail. We may accuse counties of corruption and other reasons. However, the reason they are not doing well is because they are underfunded. Counties have basically become employment bureaus. They just get enough to pay salaries and other recurrent expenditures. They are left with very little to do the actual development that was the main reason of creating counties and devolution. Therefore, I support those who have said that we will oppose reduction of the Kshs9 billion and ensure that we insist on Kshs335 billion to the counties.

I support those who are opposed to the leasing of medical equipment. The Kshs6.2 billion to me is a fraud. We have talked about it several times in this House but we must now walk the talk and ensure that we stop these deductions that go towards payment of medical equipment that is not helpful to most of our counties. This should have been left to the counties to purchase things as per their needs. This was forced down the throats of most counties. Therefore, as the Senate, we must ensure that devolution succeeds and we must stand with the counties.

Sen. Linturi: Mr. Deputy Speaker, Sir, I add my voice to this particular important Bill before this House. I stand to support it with the proposed amendments by the Committee on Finance, Commerce and Budget.

Mr. Deputy Speaker, Sir, as many of the speakers have said, the cardinal principle of protecting the interests of the people in our counties and their governments is our mandate that we cannot compromise. Whatever it takes, we must stand to be counted.

I must tell you that before I came for this sitting, I had a meeting with the people of Meru County at a function in a place called Kionyo Market in St. Stephen Catholic Church, Kionyo Parish. I had very express instructions from the people of Meru County, especially the St. Stephen Catholic Church, Kionyo. This is the message they gave me. They told me that as I come back to Nairobi because they have been told that I have been called, I should kindly come and say no to the reduction of the money that goes to the counties. So, when I speak here, I speak with full authority from the people that I respect and that gave me the opportunity to represent them in this House. No kind of intimidation, coercion or persuasion will make me change my position.

I am happy that the mood of this House from all the Senators that have spoken is so clear that we cannot and shall not allow the variation or deduction of the money that goes to counties.

Mr. Deputy Speaker, Sir, the authority was ceded to us by these people. Therefore, we cannot participate in a matter that reduces the amount of money that goes to them when there is a constitutional provision that protects the reduction of emoluments of commissioners of other certain public officers from varying their benefits at the time they are in office. Similarly, we cannot vary amounts of money that goes to counties by virtue of a mere assumption that the national Government has failed in its responsibility to collect more taxes and for that matter enhance and boost the sharable revenue.

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. I stand to oppose this Bill with a window of supporting it only if the amendments will be tabled in the Committee of the Whole. However, as it stands right now, I oppose it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah! Do you support or oppose the Bill?

Sen. Malalah: I oppose it.

The Deputy Speaker (Sen. (Prof.) Kindiki): You cannot do both.

Sen. Malalah: Mr. Deputy Speaker, Sir, I oppose it with a primary reason that Kakamega County will lose Kshs297 million out of this arrangement. A sum of Kshs297 million is enough money to build almost 250 Early Childhood Development Education (ECDE) classes in Kakamega. Therefore, as the representative of the people of Kakamega, I cannot sit in this House and pass a Bill that will disadvantage Kakamega County to a tune of Kshs297 million.

Mr. Deputy Speaker, Sir, I stand to oppose this Bill with the sole reason that we must define the role of the Senate in the administration of this country. The other day, I saw Members of the National Assembly seated in a luxurious hotel in Mombasa trying to demean the role of the Senate. We want to hold them by their balls and show them that we have a role in decision making---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! Proceed, Sen. Malalah.

Sen. Ochillo-Ayacko: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Ochillo-Ayacko?

Sen. Ochillo-Ayacko: Mr. Deputy Speaker, Sir, I know we are in a different century, but the last time I was in this House, the language had to reflect its dignity. Is it in order for my colleague to say that we should hold some people by their balls? Which balls?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Ochillo-Ayacko, which particular part of that do you find un-parliamentary?

Sen. Ochillo-Ayacko: Mr. Deputy Speaker, Sir, holding people by the balls is equivalent to ‘scooping’. It is a very brutal exercise.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that true, Sen. Malalah? Is Sen. Ochillo-Ayacko assertion true?

Sen. Malalah: Mr. Deputy Speaker, Sir, they are not. I was trying to use my linguistic prowess to figuratively express myself.

The Deputy Speaker (Sen. (Prof.) Kindiki): What did you mean?

Sen. Malalah: Mr. Deputy Speaker, Sir, I meant that we need to teach the Members of the National Assembly a reason.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is good enough.

Sen. Malalah: Mr. Deputy Speaker, Sir, we need to induct them on the role of the Senate when it comes to decision-making in this country.

It is sad that this House has been demeaned. People think that we are a bunch of idol people. However, I remind them that our role is entrenched in the Constitution under Article 96.

The other day we invited the Cabinet Secretary for Health. When she came to make a presentation on the leasing of equipment, she was non-committal. She thought that this House is a dog that cannot bite. We want to show them that we can bite by deleting and stopping the leasing of the medical equipment from counties. Therefore, it is important, as we carry out this exercise today, to remind ourselves that we are representing millions of Kenyans who depend on our decision today. Therefore, I urge Members to oppose this Bill as opposed to saying that we amend and support it later.

The Deputy Speaker (Sen. (Prof.) Kindiki): Time is up. Thank you, Sen. Malalah.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also contribute to this important debate. From the outset, I am guided by the remarks of Sen. Wetangula that we should support this Bill. However, when it comes to the Third Reading, we must take it to mediation.

I want to begin by thanking the President of the Republic of Kenya. On 4th of this month, he declared on record that the state of our economy and our nation is strong. That strength must be felt in every county in this country. However, we cannot feel that strength by reducing the allocations to the counties.

I also thank the national Treasury. Last week, it is on record that they declared that our economy has grown by 6.3 per cent in 2018 on the back of agriculture, manufacturing and transport sectors. Agriculture is a fully devolved function. The only thing you can do is to give more monies to this function to boost economic growth. You cannot do that by reducing allocations to the counties. What the National Assembly is inviting the Senator for Kitui to do with the proposed amendments is to deny the people of Kitui Kshs251 million which would go to the water, agriculture and roads sectors. I have just arrived in Nairobi from Kitui and the message from Kitui is loud and clear that this Bill must fall flat on its face.

I thank Members of the Committee on Finance and Budget and appreciate the proposal to delete the allocation on leasing of medical equipment. I am meant to understand that on Saturday, Members of the Committee on Health visited Kitui County to apprise themselves on the status of the equipment. I am yet to see their report, but I must say without blinking an eye that the leasing of medical equipment is fraud on the people of this country.

Mr. Deputy Speaker, Sir, I support.

Sen. Dullo: Mr. Deputy Speaker, Sir, from the outset, I wish to support this particular Bill but with amendments that were proposed by the Committee. I do not see why we are even sitting in this House yet the provisions of Article 96 are very clear in terms of protecting the interests of the county governments. The National Assembly has gone against that and reduced the budget allocation to the county governments.

For example, if we go by this proposed formula, Isiolo County will lose Kshs362 million. That is a lot of money. That is why I am wondering whether we are really doing what we are required to do or whether we are just being used to rubberstamp. What recourse does this House has or are we just debating here for the sake of it?

If you look at the County Allocation of Revenue Bill that is before us – I know Members have not looked at it – the formula that is used reduces allocations to some of the counties. We have discussed with the Chairperson of the Committee on Finance and Budget, but I hope the CRA will not implement the new formula before this House approves it.

On the leasing of medical equipment, some counties are for removal of the same. Are we going to make that actionable? I do not think so because the money is deducted at the source. These are the things we need to ask ourselves.

Looking at the Report of the Committee, I would like to talk about the grants. This morning, Members from northern part of Kenya had a meeting with the donors that support projects in county governments of northern Kenya region. It appears as if the Senate approves programmes and budgets for donor funds without knowing what is being implemented on the ground. It is high time---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo, time is up!

Sen. Dullo: Mr. Deputy Speaker, Sir, allow me to finalise. The Senate should be on top of these issues.

(Several Senators walked out of the Chamber)

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators leaving the Chamber, we will be voting in the next two or three minutes.

Sen. Ndwiga: Actually that was my concern, that Members are leaving but we want to vote.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chair has noted and we will conclude shortly. Sen. Dullo, your time is up.

Sen. Dullo: With your indulgence, Mr. Deputy Speaker, Sir, can I finalise?

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up. Let us listen to Sen. (Prof.) Ongeri. You have three minutes.

Sen. (Prof.) Ongeri: Mr. Deputy Speaker, Sir, I have one fundamental message. If you look keenly, you will realise that the revenue has been increasing since FY2015/2016. In the FY 2015/2016 the revenue was Kshs1,152,972 and in the current 2018/2019 Financial Year, it is Kshs1,651,517. The projected revenue for FY 2019/2020 is Kshs1,877,176, which is an increase of about Kshs200 billion. In the face of increase, you can only increase but not deduct. That is point number one.

Secondly, when the decision to remove the base from Kshs314 to 310 billion was made, it was consultation between the National Treasury and the rest of the people, but this House and the county governments were not involved. Therefore, we are not party to the decision. On that basis alone, this will be rejected during the Third Reading.

Thirdly, our public debt has been growing. In 2015/2016, it stood at Kshs250 billion. Last year, it was projected to be at Kshs5.85 billion, not taking into account the recently borrowed resources which on paper would go beyond what they are projecting. The public debt is meant to spur development and growth in the economy much more efficiently.

One of the things that is clear to me is that if you look at the national interest, there are packaged in some elements that do not qualify for national interests. The only reason they have done it is to create it to be part of the first charge on the revenue that is accrued to the Government.

Therefore, on behalf of Kisii County, I vehemently support the Division of Revenue Bill. However, when it comes to the baseline, I object the reduction from Kshs314 billion to Kshs310 billion. I support Kshs314 billion as a baseline and apply the criteria which the Chairperson of the Committee on Finance and Budget has said is the inclusion of the inflation rates.

I stand at the Second Reading to support the amendments to this Bill. The National Assembly should be well advised not to even enter into this unchartered territory because they do not know what happens in the counties.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. I will be extremely quick because I know we are pressed for time. One cold morning on 11th September, 2001, Al-Qaeda struck at the heart of America. At that particular time, the Congress which was on recess, was recalled. Speaking later on that afternoon, the Congress passed a unanimous decision that Washington had lost touch with the reality and the challenges that the people of their country were facing. We are presented with one such situation. They went on, by using legislative power, to set up Homeland Security which up to date, is a signature government agency that is being studied and replicated across the globe.

Mr. Deputy Speaker, Sir, as Parliament, we have been challenged this afternoon and are being asked to make a very difficult decision; whether devolution will succeed in this country, or whether it will fail. That is the very question that is before us, as Senators this afternoon. If we vote to accept this reduction, we can as well fold up this House and forget that there was once something called devolution in this country. Revenue cannot be growing and yet we keep telling counties to keep on spending less by the day.

Finally, one of the things that we have noted, because I am a Member of this Committee, one policy that the national Government keeps on abusing when determining the revenue to be divided between counties and the national Government is this word "national interest". We are told the reason they keep on budgeting trillions to the national Government and a paltry to county governments is because of national interest. We will propose legislation to this House to define what national interest is. After that, money shall be fairly distributed across counties as per the dictates of Article 202 of our Constitution.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Mover, you have one minute to reply given the circumstances we are operating in.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I thank Members for the contribution to this important Bill. As I earlier said, we will move amendments to put the

Bill in line with our Budget Policy Statement. Rest assured that those amendments will take into account all the proposals and recommendations that came from Members.

With those remarks, I beg to move.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you, Members. For your understanding and co-operation, we should leave the debate on Second Reading of this Bill at that point.

The two Whips, kindly approach the Chair.

(Sen. Kihika and Sen. Malalah approached the Chair)

Very well. We now proceed to Division on Second Reading. Therefore, I direct that the Division Bell be rung for three minutes.

(The Division Bell was rung)

(Several Senators stood up in their places)

Senators, kindly take your seats including the Whips.

I now direct that the doors be locked and Bars drawn.

(Doors were locked and the Bars drawn)

DIVISION

ELECTRONIC VOTING

(Question, that the Division of Revenue Bill (National Assembly Bills No. 11 of 2019) be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kihika, Nakuru County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County;Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeri, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Deputy Speaker (Sen. (Prof.) Kindiki)**:** Hon. Senators, the results of the voting are as follows:

AYES: 33

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 33 votes to nil)

(The Bill was read a Second Time and committed to a Committee of the Whole today by leave of the House)

The Deputy Speaker (Sen. (Prof.) Kindiki): Before we move to the next Order, I direct that the doors be opened and Bars undrawn.

(Doors were opened and Bars undrawn)

Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 11 OF 2019)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, we are now in the Committee of the Whole to consider The Division of Revenue Bill (National Assembly Bills No. 11 of 2019).

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will come at the end.

Clause 5

The Temporary Chairperson (Sen. (Dr.) Lelegwe): There is an amendment by the Chairperson of the Committee on Finance and Budget, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, clause 5 of the Bill be amended in subclause (1) by deleting the word "determined" appearing immediately after the words "the threshold to be" and substituting therefor the words "prescribed in Regulations".

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will come at the end.

Schedule

The Temporary Chairperson (Sen. (Dr.) Lelegwe): There is an amendment by the Chairperson of the Committee on Finance and Budget, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by deleting the schedule and substituting therefor the following new schedule-

SCHEDULE

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20

Type/level of allocation	**Amount in Ksh.**	**Percentage (%) of 2014/15 audited and approved Revenue i.e. Ksh.1,038, 035 Millions**
A. National Government	**1,535,746,497,191**	
Of which:		
1. Leasing of Medical Equipment	-	
2. Compensation for User Fees Forgone	*900,000,000*	
3. Level 5 Hospitals	*4,326,000,000*	
4. Supplement for Construction of County Headquarters	*485,152,184*	
5. Rehabilitation of Youth Polytechnics	*2,000,000,000*	
B. Equalization Fund	**5,760,000,000**	**0.60%**

C. County Equitable Share	**335,670,000,000**	**32%**
D. Total Shareable Revenue	**1,877,176,497,191**	
Memo items		
1. County Equitable Share	**335,670,000,000**	
2. Additional conditional allocations (National Government share of Revenue) of which;	**7,711,152,184**	
*2.1. Leasing of Medical Equipment***	-	
2.2 Compensation for User Fees Forgone	*900,000,000*	
2.3 Level 5 Hospitals	*4,326,000,000*	
2.4 Supplement for Construction Of County Headquarters	*485,152,184*	
2.5 Rehabilitation of Youth Polytechnics	*2,000,000,000*	
3. Allocation from Fuel Levy Fund (15%)	**8,984,062,500**	
4. Conditional allocations (Loans & grants) of which:	***38,704,877,210***	
4.1 IDA-Kenya Devolution Support Program (KDSP) Level 1	*1,410,000,000*	
4.2 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)	*4,890,000,000*	
4.3 IDA-Transforming Health Systems for Universal Care Project	*2,994,247,736*	
4.4 DANIDA-Universal Healthcare For Devolved System Program	*986,583,544*	
4.5 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	*7,232,719,940*	
4.6 EU-Instruments for Devolution Advice and Support (IDEAS)	*492,698,583*	
4.7 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	*3,643,298,670*	
4.8 World Bank- Kenya Urban Support Program (KUSP)- UDG	*11,464,702,500*	
4.9 World Bank- Kenya Urban Support Program (KUSP)- UIG	*396,000,000*	
4.10 IDA- Water and Sanitation Development Project (WSDP)	*3,500,000,000*	
4.1 1 Sweden Agriculture Sector Development Programme II (ASDP II)	*849,626,237*	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	*495,000,000*	
4.13 Drought Resilience Programme in Northern Kenya	*350,000,000*	
Total County Allocations= (1+2+3+4)	**391,070,091,894**	

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will come at the end.

Clause 2, The Title and Clause 1

(Question, that Clause 2, The Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will come at the end.

Hon. Senators, we shall start with division on the clauses with amendments, that is, Clause 5 and the Schedule.

The Temporary Chairperson (Sen. (Dr.) Lelegwe): I now order that the Division Bell be rung for one minute.

(The Division Bell was rung)

Order, hon. Senators. I order that the Door be closed and the Bars drawn.

(The Door was locked and the Bars Drawn)

DIVISION

ELECTRONIC VOTING

(Question, that Clause 5 and the Schedule be amended as proposed put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kajwang' M., Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County ; Sen. (Dr.) Lelegwe, Samburu County ; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeri, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.

NOES: Nil.

ABSENTIONS: Nil.

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, these are the results of the Division –

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 31 votes to nil)

Hon. Senators, we will proceed to clauses without amendments. I will now put the question.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3, 4, 5 (as amended), the Schedule (as amended) Clause 2, The Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kang’ata, Murang’a County; Sen. Kajwang’ M., Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeri, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County, and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, the results of the Division are as follows.

AYES: 32

NOES: Nil.

ABSTENTIONS: Nil.

The ‘Ayes’ have it.

The Temporary Chairperson (Sen. (Dr.) Lelegwe): I request that the doors be open and the Bars be drawn.

(The doors were opened and the bar drawn)

I request the Mover to move.

Sen. (Eng.) Mahamud: Mr. Temporary Speaker, Sir, I beg to move that the Committee do report to the Senate its consideration of the Division of Revenue Bill (National Assembly Bills No. 11 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 11 OF 2019)

Sen. (Dr.) Lelegwe: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the Division of Revenue Bill (National Assembly Bills No.11 of 2019) and its approval thereof with amendments.

Sen. (Eng.) Mahamud: I beg to move that the House do agree with the Committee on the said report.

The Deputy Speaker (Sen. (Prof.) Kindiki): Who is seconding?

Sen. (Eng.) Mahamud: I ask Sen. (Eng.) Hargura to second.

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

THIRD READING

The Deputy Speaker (Sen. (Prof.) Kindiki): Mover!

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I beg to move that the Division of Revenue Bill (National Assembly Bills No.11 of 2019) be now read a Third Time. I ask Sen. Dullo to second.

Sen. Dullo: I second.

(Question proposed)

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kindiki): It is time for Division. I now direct that the Division Bell be rung for one Minute.

(The Division Bell was rung)

The Division Bell has stopped ringing. I, therefore, direct that the doors be locked and the bars be drawn.

(The doors were locked and bars drawn)

Senators, assume your seats. It is now time to vote. Start voting now.

(Voting in progress)

The Deputy Speaker (Sen. (Prof.) Kindiki): You have 30 seconds to go. That is the end of voting. Assisted voters, please approach the Clerks-at-the-Table. Assisted voters led by the Senator for Migori County who is perpetually assisted should approach the Clerks-at-the-Table.

(Sen. Ochillo-Ayacko walked to the Clerks-at-the-Table and registered his vote)

Sen. Kang'ata, you have not voted.

(Sen. Kang'ata walked to the Clerks-at-the-Table and registered his vote)

DIVISION

ELECTRONIC VOTING

(Question, that the Division of Revenue Bill (National Assembly Bills No.11 of 2019) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. Kajwang' M., Homa Bay County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeri, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows: -

AYES: 35

NOES: Nil

ABSTENTIONS: Nil

(Question carried by 35 votes to nil)

(The Bill was accordingly read the Third Time and passed)

The Deputy Speaker (Sen. (Prof.) Kindiki): I now direct that the Bars be undrawn and the doors opened.

(The Bars were undrawn and the doors opened)

(Several Senators stood up in their places)

(Loud consultations)

Order Senator! The House is still in session!

Hon. Senators, as you are aware, this was a Special Sitting. Therefore, the business that we had to transact is only the business which was disclosed not only in the Order Paper but also in the Gazette Notice and that business has been exhausted.

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 14th May, 2019, at 2.30 p.m.

The Senate rose at 4.45 p.m.