

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 25<sup>th</sup> March, 2015

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** Order, Members! It is fair that those who want to congratulate one another when you are seated next to one another can just whisper. It is more convenient for the House.

### COMMUNICATION FROM THE CHAIR

#### SPECIAL SITTING OF PARLIAMENT

**Hon. Speaker:** Hon. Members, pursuant to Article 132 (1)(b) of the Constitution, His Excellency the President has conveyed that he will address a Special Sitting of Parliament tomorrow. Consequently, and in accordance to the provisions of Standing Order No. 22(2), I wish to notify all Members that a Special Sitting of Parliament will take place tomorrow, Thursday, 26<sup>th</sup> March, 2015 at 2.30 p.m. in the National Assembly Chamber for that purpose. Thank you.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, March 25<sup>th</sup> 2015:-

The Memorandum to the National Assembly by the Cabinet Secretary for Defence on the Ratification of the East African Community Protocol on Co-operation in Defence Affairs, submitted pursuant to Section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012.

The Memorandum to the National Assembly by the Cabinet Secretary for Defence on the Ratification of the Agreement on the Establishment of the Eastern Africa Standby Force, submitted to this House pursuant to Section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012.

The Memorandum to the National Assembly by the Cabinet Secretary for Defence on the Ratification of the Mutual Defense Pact between Kenya, Uganda and Rwanda, submitted to the National Assembly pursuant to Section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012).

**Hon. Speaker:** The three Memoranda are referred to the Departmental Committee on Defence and Foreign Relations. Let us have the Chairperson of the Select Committee on Regional Integration.

**Hon. (Ms.) Kajuju:** Hon. Speaker, I beg to lay the following Paper on the Table of the House, today Wednesday 25<sup>th</sup> March 2015:-

The Report of the Select Committee on Regional Integration on the Delegation's visit to the East African Community Organs and Institutions in Tanzania from 28<sup>th</sup> January to 1<sup>st</sup> February 2015.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Energy, Communication and Information.

**Hon. Kamau:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 25<sup>th</sup> March 2015:-

The Reports of the Departmental Committee on Energy, Communication and Information on:

The Benchmarking visit to the Federal Republic of Germany from 29<sup>th</sup> March to 5<sup>th</sup> April 2014.

The 2014 African Telecommunications Union (ATU) Conference of Plenipotentiaries held in Zimbabwe from 8<sup>th</sup> to 12 July 2014.

The Commonwealth Communications Organisation Training held in London, United Kingdom from 6<sup>th</sup> to 10<sup>th</sup> October 2014.

**Hon. Speaker:** Let us have the Vice Chairperson, Budget and Appropriations Committee.

**Hon. Simba:** On a point of order, hon. Speaker.

**Hon. Speaker:** What is your point of order, hon. Simba Arati?

**Hon. Simba:** Thank you, hon. Speaker. Would I be in order if I beg to lay on the Table of the House--- I lost all my upper finger. Now that it has gotten out, would I be in order to lay it on the Table of the House so that it can be historical in the Eleventh Parliament?

**Hon. Speaker:** Hon. Simba Arati, you are out of order! You are suspended from the sitting of this House for the rest of the day! Get Out! There is no room for discussion! Get out! Serjeant-At-Arms, escort him out!

*(Hon. Simba withdrew from the Chamber)*

Hon. Members, it is fair to remind ourselves what a point of order is so that we do not fall into trouble. A Member who begins to gestulate and grimace will attract the wrath of the Chair. Familiarise yourselves with the Standing Orders, particularly Standing Order Nos. 107 to 112; they will strictly be applied to the letter.

Hon. Members, in view of the business lined up on the Order Paper, I will invoke the provisions of Standing Order No.1 and allow the Vice-Chair of the Budget and Appropriations Committee to table the Report of the Committee's consideration on the Division of Revenue Bill.

Proceed, hon. Emaase.

## PAPER LAID

**Hon. (Ms.) Otucho:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Budget and Appropriations Committee on its considerations of the Division of Revenue Bill, 2015

**Hon. Speaker:** Next Order!

### MOTION

APPROVAL OF APPOINTMENT OF MAJ-GEN  
L.K. TUMBO AS AMBASSADOR TO SOMALIA

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the vetting of the nominee for appointment as Ambassador, laid on the Table of the House on Tuesday, 17 March, 2015, and pursuant to Article 132(2) (e) of the Constitution, approves the appointment of Major General (Rtd) Lucas K. Tumbo as Ambassador to the Federal Republic of Somalia.

*(Hon. Gethenji on 18.3.2015)*

*(Resumption of Debate interrupted on 19.3.2015)*

**Hon. Speaker:** Hon. Members, what remains on the Motion under Order No.8 is merely to put the Question, which I proceed to do.

*(Question put and agreed to)*

Next Order!

### BILL

#### *Second Reading*

#### THE DIVISION OF REVENUE BILL

**Hon. Speaker:** Is it the case that hon. Boniface Gatobu, the Member for Buuri, has an intervention? Please, proceed.

**Hon. Kinoti:** Thank you, hon. Speaker. I am rising on point of order No.1 with regard and in connection with a Communication---

**Hon. Speaker:** Hon. Gatobu, you cannot rise on point of order No. 1. There is nothing like that. These things must be pointed out. You can only claim to be rising on Standing Order No. 1.

**Hon. Kinoti:** Hon. Speaker, I am sorry. I rise on Standing Order No. 1 in relation to a Communication you made two weeks ago. In that Communication, you directed that Committees should table their Reports in a span of two months. I am requesting for your

guidance on whether you have powers to do the same with regard to Bills that have been in the conveyor belt of the system of Parliament for quite some time. Do you have powers to give guidance on how long it should take? I am happy about the legislation that we have done in this House with regard to Bills and Motions, especially the two Motions that I moved here with regard to education, which the Government has acted on and another one with regard to fencing of the Kenya/Somalia Border, which the Cabinet Secretary for Interior and Coordination of National Government promised to implement, starting last week.

However, there are Bills which have been pending in the system of this House for very long. I have two Bills which have been with the printer. Printing only has taken three months. So, with regard to Standing Order No.1, I wanted to ask whether you can set timelines on how long it should take a Bill to come to this House since our legislative role is being affected by the length of time it is taking for the Bills to come here.

Hon. Speaker, I seek your guidance.

**Hon. Speaker:** Hon. Gatobu, I belong to some background where I do not delay making decisions on simple matters. You cannot rise on Standing Order No.1 because the provisions already exist in the Standing Orders, relating to the time Bills, petitions and any matter that is referred to a Committee are supposed to take. As you rightly pointed out, I have already given direction about how that should happen. If we all paid attention last week, a major application was made here by hon. Chepkong'a. Many of you may have forgotten that in the course of last year, you made some amendments to the Public Appointments (Parliamentary Approval) Act and allowed Committees to seek extension of time for a period not in excess of the original 14 days.

So, it is fair that Committees should take advantage of that provision. However, more particularly, with regard to Bills, again, if a Bill remains pending for more than two sessions, it lapses. I would like to remind hon. Members that you approved amendments to the Standing Orders to specifically permit that because previously they would lapse after only one session. So, I would advise that Members take advantage of those provisions. I do not have to invoke Standing Order No.1 because provisions exist. But if you are complaining about administrative action, what you need to do is to write to the Office of the Clerk drawing his attention to the fact that a Bill has remained with the Government Press for an inordinately long period so that the Clerk can take administrative intervention.

**Hon. Kinoti:** Thank you, hon. Speaker. I stand guided.

**Hon. Speaker:** Very well. Hon. Mary Emaase, the Vice Chairperson of the Budget and Appropriations Committee.

**Hon. (Ms.) Otucho:** Hon. Speaker, on behalf of the Members of the Budget and Appropriations Committee, following the introduction of the Division of Revenue Bill 2015, I hereby present to the House the Committees Report on the Bill as required in our Standing Orders.

The Bill provides for the division of nationally raised revenues between the two levels of Government as well as demarcating specific resources to be provided to the counties as conditional grants and the Equalisation Fund.

Hon. Speaker the Bill is accompanied by an explanatory memorandum as required by Article 218(2). The memorandum sets out an explanation of revenue allocation as

proposed by the Bill along with evaluation of the Bill in relation to the criteria mentioned in Article 203 of the Constitution and a summary of any significant deviation from the Commission on Revenue Allocation recommendations.

The Committee has done this pursuant to Article 95 of the Constitution which provides that the National Assembly has the responsibility of playing part in the determination of the allocation of national revenue between the levels of Government. Specifically, Article 95(4) provides the mandate by which this House examines the Division of Revenue Bill by stipulating that:-

“The National Assembly –

- (a) determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve;
- (b) appropriates funds for expenditure by the national government and other national State organs; and
- (c) exercises oversight over national revenue and its expenditure.”

Hon. Speaker, it is therefore important to note that this financial year, both Houses of Parliament were involved in the processing of the Budget Policy Statement (BPS) which is the precursor of the Division of Revenue Bill that we shall be looking at today. In this regard, Sections 191 and 25(2) of the Public Finance Management Act, 2012, provide for legislative proposal on the division of revenue to be submitted to Parliament along with the BPS by 15<sup>th</sup> February every year. It is, therefore, important that the Executive endeavors to submit these documents much earlier to give both Houses sufficient time to process them.

Hon. Speaker, the Budget and Appropriations Committee, as constituted now, has 51 Members. The Committee has held two meetings to look into the Division of Revenue Bill. We are grateful to the Members of Parliament who participated in the process for their due diligence and insightful input in making sure that Parliament fulfills its role provided under Article 95 of the Constitution.

I would like to remind Members that ideally, the enactment of the Division of Revenue Bill should swiftly follow the approval of the Report on the BPS. This is in order to allow for the preparation of the subsequent documents in the budget process which take cue from the enactment of the Bill. I, therefore, urge this House to consider and approve this Bill in sufficient time to allow for preparation of the submission of Estimates by 30<sup>th</sup> of April this year.

The Committee is grateful to the Office of the Speaker, the Clerk of the National Assembly and the Parliamentary Budget Office for their continuous and relentless support received and discharged by their mandate. It is, therefore, my pleasant undertaking, on behalf of the Budget and Appropriations Committee, to table this Report to this House.

Hon. Speaker, the Committee took note of the resolutions on revenue sharing contained in the BPS Report as approved by this House on 17<sup>th</sup> March, 2015. In considering the BPS, this House observed several challenges experienced in the first two years of budget under devolution that hampered smooth Budget implementation at both county and national levels and resulted in suboptimal service delivery to citizens from the devolved units. Among these challenges are: Disputes on budgetary ceilings with national

institutions, for example, the Commission on Revenue Allocation (CRA) and the Controller of Budget, County Finance Bills and submission of budget documents in formats that were not approved by law as well as the absence of the Medium-Term Planning in the budget cycle.

Additionally, the Committee observed that there have been weak methods used in the projection of revenue by counties. This resulted in unrealised revenues. Targets were not met by most counties. Therefore, it is important that national Treasury undertakes capacity building for counties to ensure that skills for preparation of financial Bills are available to devolved units.

On the Division of Revenue Bill, in reference to the revenue sharing basis of the 2015/2016, the Bill begins by adding the following items to the 2014/2015 equitable portion of revenue availed to the counties: One is the allocation of personal emoluments for staff transferred to county governments from the State Department of Livestock Development amounting to Kshs466 million.

Secondly, there is an allocation of Ksh935 million for village polytechnics previously under the Ministry of Education, Research and Technology. Another item reflected under the Division of Revenue Bill is allocation of Kshs545 million for functions transferred to county governments, vide Transition Authority Gazette Notice of March, 2014. This results in a new baseline figure of Ksh229.6 billion for the Financial Year 2015/2016. The resultant revenue figure of Kshs229.6 billion is then grown by a rate of revenue growth of 10.41 per cent. That amounts to Kshs23.9 billion before an additional allocation of Kshs4.5 billion to provide for salaries and allowances awarded to State and other public officers of the county governments by the Salaries and Remuneration Commission (SRC) in the 2014/2015 Financial Year. This figure arrives at a total sharable revenue figure of Kshs258,008 billion.

The Division of Revenue Bill further provides conditional grants to counties as follows:-It was also observed that some counties are still charging for maternal healthcare because they have never received these allocations. Going forward, those are areas of concern. We need to ensure that the money reaches all the counties.

The Kshs4.5 billion is for leasing medical equipment. As a Committee, we noted that there is need for further consultation and a clear policy towards these engagements. It has come out clearly that most of the governors were not in agreement with the policy. Therefore, before we factor such figures in the Budget, it is important to have a clear policy and an agreement at all levels of the Government, so that by the time we budget, we know that money is going to be forwarded to the various counties for the intended purposes.

The other item is the allocation for the Level 5 hospitals. There is an allocation for compensation for foregone user fees for health of Kshs900 million. There is also an allocation from the Road Maintenance Fuel Levy of 15 per cent amounting to Kshs3.3 billion. We then have the conditional allocations, which are loans and grants of Kshs10.6 billion.

Adding this to the equitable share, the total allocation to counties in the Division of Revenue Bill amounts to Kshs283.741 billion. This is an equivalent of 37 per cent based on the 2012/2013 revenue numbers. The Committee took into account the salaries allocated to State officers by the Salaries and Remuneration Commission at devolved

level of Government with the inclusion of Kshs4.5 billion. The Committee, however, observed that this amount would not support the proposed principle of containing the wages at 35 per cent. It is important that all the Government agencies work in synergy to ensure that there are coherent policies in remuneration of public service workers. We should not continue to increase the wage bill, but maintain it at sustainable levels.

The Committee further included the Fuel Levy Fund loans and grants in the computations. These resources have been provided in the Bill as conditional allocations pursuant to Article 202(2). These are national Government resources, which are additional resources to county governments. This comes from the national Government share to the county government.

Looking at the vertical allocation, the Committee made the following observations: These are some of the activities that were undertaken by the Committee prior to formulating of the Division of Revenue Bill. The National Assembly organised public hearings in October 2014. The public views and recommendations are to be used to inform the 2015/2016 Budget. The Constitution recognises the public as a key stakeholder in the Budget making process to enhance openness and transparency and to ensure that the Budget is responsive to the public needs. The issue of public hearings was substantially discussed and we are seized of it. In that regard, the hearings were held in 14 counties around the country, namely, Turkana, Muranga, Baringo, Kajiado, Kiambu, Nandi, Busia, Kirinyaga, Siaya, Elgeyo/Marakwet, Vihiga, Mandera, Kericho and Migori. Those are the counties that we visited as a Committee and we obtained views from the public.

The focus of the hearings was to use the information when reviewing key policy and budgetary documents including the Budget Review and Outlook Paper submitted to Parliament by 30<sup>th</sup> September. This is as well as the Budget Policy Statement, which was submitted by 15<sup>th</sup> February together with the Division of Revenue Bill. Through this process, the Committee received invaluable input from the public which has been instrumental in arriving at the vertical allocation of resources as proposed in the Division of Revenue Bill, 2015.

Having considered the Bill and in order to provide guidelines to the relevant spending units in budgeting for the respective functions, the Committee recommended that:-

1. Parliament processes the Division of Revenue Bill in an expedient manner to give firm direction to both levels of the Government on the share of the national revenue due to them respectively to use when finalising their budgets for the Financial Year 2015/2016.
2. The County Allocation of Revenue Bill be introduced in a timely manner to give counties direction on their respective share of nationally raised revenue for use when preparing their respective Estimates of Expenditure for the Financial Year 2015/2016.

It is important that we conclude the process in time to give county assemblies time to develop their budgets. By so doing, we shall ensure that people get services in good time and counties do their disbursements in time. Once this process is delayed, then the entire Budget process is delayed.

I beg to move.

**Hon. Speaker:** Who will second?

**Hon. (Ms.) Oticho:** I ask hon. Muli to second.

**Hon. Speaker:** Before hon. Makali Mulu takes to the Floor, let me take this opportunity to introduce to the House two teachers and 23 students from Denmark who are on an exchange programme. They are accompanied by two teachers and eight students from Alliance High School. They are in the Speaker's Gallery.

*(Applause)*

Also, seated in the Public Gallery are pupils from Marurui Primary School in Kasarani Sub-county and Young Achievers Primary School from Nairobi County.

Welcome. Hon Makali Mulu.

**Hon. Mulu:** Thank you, hon. Speaker for giving me this chance to second this important Bill. I thank my Vice-Chairperson for moving this Bill. Last week, we finalised the Budget Policy Statement and it was passed by this House. As a follow up to that, we are now discussing the Division of Revenue Bill, which is normally a very important Bill, as has been said by my Vice-Chairperson, in determining the vertical distribution of the national resources.

I also need to thank the Members and the House leadership for discussing the Budget Policy Statement. That document informs the Division of Revenue Bill to almost 80 per cent in terms of content. One of the requirements is that the Division of Revenue Bill must provide an explanation where there is a deviation or a significant difference between what the Commission on Revenue Allocation (CRA) has proposed and what has been finally agreed. When you look at Page 176 of this Bill, the CRA had proposed that the county governments get Kshs282.4 billion.

What has been approved by this House falls far below the proposed amount. Therefore, this Bill has done what is required by the law, which is that they must provide the reasons for the division. That is very well captured in this Bill. We are within the law to explain where the differences are. Looking at this Bill, I realise that there is a bias to county governments in terms of resource allocation. Clause 5 says that if the actual revenue raised naturally in the financial year falls short of the expected revenue set out in the schedule, the shortfall shall be borne by the national Government. Where the revenue exists in terms of collection, then that money will be shared *pro rata*.

What this means is that the county governments are supposed to be given first priority in terms of resource allocation. At the same time, this Bill calls for serious financial management or prudent management of resources. We are being told in Clause 6 that if by any chance people go to court as a result of disagreement in discussing these allocations, and it is discovered that the same conflict would have been settled outside court, the person who makes the Government to incur that cost will be held responsible for the cost. All the managers charged with the responsibility of taking care of public resources in this country must ensure that these resources are used in a prudent manner so that we get value for money in order for the country to grow.

I want to focus more on conditional grants. On equal share of revenue, this Bill provides for Kshs258 billion to the counties. This is money that counties can use within their development priority needs. The national Government goes ahead and provides



conditional grants. To me, these conditional grants are what we really need to note, as a House. This is the money which has been allowed by the national Government to be spent at the county level. In total, the national Government has given Kshs25.7 billion to the county governments as conditional grants. Part of this money is expected to be spent on health sector, which takes a large share of this money. Free maternity services take Kshs4.2 billion and leasing of medical equipment takes Kshs4.5 billion. There is some money under loans and grants totalling Kshs1.4 billion, which will be provided by the World Bank. All this money will be used on the health sector to ensure that Kenyans have access to healthcare services.

I must draw the attention of this House to the issue of leasing medical equipment. In our last Division of Revenue Bill, we also indicated that there was need for the national Government to come up with a very clear policy and an implementation mechanism so that we do not see some of the things we are reading in the newspapers. There is conflict where governors are saying that they have not agreed with the issue of leasing of medical equipment while the national Government says that it is Government policy to do so. I propose that even as we move forward, if this is a Government policy as it has been said in some of the write-ups, then the national Government needs to come out very clearly on this policy and make sure that we have a very clear implementation mechanism so that we reduce the disagreement.

At page 173, the issue which is very important to me is that of the fiscal capacity and efficiency of the county governments. This Bill appreciates the fact that some of our county governments do not have the capacity to carry out proper fiscal management of their budgets. This is a worrying trend. It is important that the National Treasury sets aside resources for building the capacity of county governments so that the money we send there can be spent well. It is through spending the funds disbursed to counties that the wellbeing of Kenyans will be improved. In addition to that, this Bill appreciates the fact that the county governments are the drivers of development in this country. A lot of resources have been directed there. There is an appeal for the county governments to spend most of their resources on development. As the Budget and Appropriations Committee, what are we saying? We are saying that it is important that the managers at the county level set aside resources for development. We are going to grow our cake when we use our resources for development, and not on recurrent expenditure. A report by the World Bank released recently indicated that most of our counties are using more than 70 per cent of their resources on recurrent expenditure. This is a very worrying trend. As much as we continue wasting our resources on recurrent expenditure, we should not expect this country to grow. If the country does not grow, we will remain at the same level. Once this Bill becomes an Act of Parliament, the county governments should ensure that the resources that we are going to release to them are channelled to development activities.

This Bill also appreciates the second generation formula formulated by the Commission for Revenue Allocation, which is supposed to give money to the counties. As Members of Parliament, we need to note that the formula we are using currently will come to an end this year. It is important that this House takes time and approves the second level formula so that next year, we have a formula.

As I conclude, the other thing I want to talk about is the issue of monetary evaluation. It is important that as a House, we monitor how the funds we are releasing to the counties and to the national Government are being used. Unless we monitor, this House will continue appropriating resources but will never get to know what we are getting out of them. We have changed our budgeting process to programme-based budgeting, which has clear output targets. It is important that every year we are told about the targets we plan to achieve and if we have achieved the targets for the previous year. Otherwise, we will just continue releasing money to the counties and the national Government but, at the end of the day, we will not achieve much as a country.

With those remarks, I second the Bill and request hon. Members to approve it so that it paves way for the County Allocation of Revenue Bill, which is supposed to say how much each county gets.

Thank you.

*(Question proposed)*

**Hon. Speaker:** Hon. Members, let me take the opportunity to recognise, seated in the Public Gallery, students from Mbuinjeru Primary School from Mwea Constituency, Kirinyaga County and Kanju Catholic Church members from Gichugu Constituency.

Yes, Leader of the Majority Party!

**Hon. Gichigi:** On a point of order, hon. Speaker.

**Hon. Speaker:** What is your point of order?

**Hon. Gichigi:** Thank you, hon. Speaker. I have had a look at this Bill. It is a fairly small document. The areas that we are supposed to cover are not extensive. Under Standing Order 97, I suggest that we limit the time of contributions to five minutes.

**Hon. Speaker:** Hon. Members, you know what Standing Order 97 provides. For the guidance of the House, if any Member desires that time be limited in a manner different from the first resolution of the House, which is always attached at the back of the Order Paper, then you must move that Motion before the commencement of the debate of that business.

Commencement was when hon. Mary Emaase was moving because you must have seen that the Bill is small in the manner that you suggest and it may require enabling as many hon. Members as possible to comment on it. I quite agree with you and I have sympathies with that proposition but, nevertheless and as you know, I am a stickler to the rules. So, I must even decline to propose your request. This is for the general guidance of the House. We must follow the procedures that we have set for ourselves so that if we want to limit the time then we must make or put the request for consideration by the House before commencement of business. The House is perfectly in order to do that just exactly as it is provided for in that Standing Order No. 97. For now we will go with the resolutions of the House as passed.

You remember the first business we transact when every session begins? That is what guides the procedures. There is no way because it is never done that way. You must follow some procedure because you resolved in a particular way. For you to seek a resolution to the contrary now, especially if it is for limiting, it must be in accordance with that Standing Order No. 97 and not otherwise. It cannot be done midstream. This is

because at times it may look like it is getting to 5.00 p.m. then we say we want to limit it to three minutes or to two minutes. It makes the proceedings of the House look a bit interesting especially for those who read what happens in history later on. For now, let us proceed in the manner that is provided for.

Hon. Duale.

**Hon. A. B. Duale:** Thank you, hon. Speaker. Before I go to the Bill I want to notify the House that tomorrow being a date set for the Presidential Address on the State of the Nation, it means we shall be debating the Presidential Address on Tuesday, Wednesday and Thursday next week as per the Standing Orders. It will be very good if we conclude all the remaining stages of the Division of Revenue Bill today so that the Senate can start the process of debating the County Allocation Bill. Of course, that will affect the county assemblies to prepare their budgets.

Hon. Speaker, I beg to support the Division of Revenue Bill, Bill No. 11 of 2015. This Bill has an objective which is to provide for an equitable division of revenue raised nationally between the national Government and the county governments as far as the Financial Year 2015/2016 is concerned. This is in line with Article 218 of the Constitution. This Bill is supposed to promote an equitable society in the furtherance of the principle of public finance as set out in Article 201 (b) (ii) of the Constitution. It is the Kenyan people, in their quest for a new Constitution, who created a devolved system of Government. This Bill borrows from that principle that we must have an equitable society in our country.

I also want to state that this Bill went through a consultative process between all the stakeholders who were the county governments, the Council of Governors, International Programme on the Elimination of Child Labour (IPEC), the Budget and Appropriations Committee of this House, the Finance Committee of the Senate and the Commission on Revenue Allocation (CRA). That process is provided for both in the Constitution and in the Public Finance Management Act of 2012.

Article 202 (1) of the Constitution requires that all revenue raised nationally must be shared equitably between the two levels of Government and similar to that, Article 203 (1) of the Constitution again provides the criteria for sharing these resources. The factors that must be taken into consideration in sharing these resources are very key principles and are provided for in Article 202 (1). They are: The national interests, the public debts of our country, other national Government obligations and needs because we need roads, security and much more. Other needs of the county governments must be brought on board so that this will ensure a stable and more predictable allocation of revenues to counties and the national Government. The word “predictable” is very important, hon. Speaker, in terms of a more sustainable micro-economic environment.

Article 203(2) of the Constitution further provides that county equitable share of revenue raised shall not be less than 15 per cent of the last audited revenue collected by the national Government as approved by the National Assembly and not by Parliament. The allocation of this 2015/2016 Financial Year is Kshs258 billion. This is an increase of 13.8 per cent from the previous year. This allocation is more than twice the constitutional minimum of 15 per cent of the last audited revenue of Kshs776.9 billion for the Financial Year 2012/2013 which this House approved.

So, the equitable share of Kshs258 billion in this Bill is the unconditional allocation to be shared among the county governments in accordance with the formula for sharing which was presented to both the Senate and the National Assembly under Article 217 of the Constitution. This Kshs258 billion is based on the last audited accounts and the formula provided by CRA and the provisions of the Constitution. It is unconditional in the sense that the county governments will use the allocation to prepare their budget estimates which will be approved by their county assemblies. That tells us that the national Government, the National Assembly and the Senate have no business in micro-managing how those resources are budgeted by the county assemblies and the county governments.

I would like to bring it to the attention of the hon. Members that the equitable allocation takes into account the element of the cost of the devolved functions. These functions and their costs have been gazetted by the Transition Authority (TA) in three different Gazette notices. They are dated February 2013, August 2013 and there is the latest which is dated March 2014.

Article 202 (2) of the Constitution further provides that the county governments may be given additional allocations from the national Government's share of the revenue. So, the national Government can still allocate more resources to the county governments either as conditional or unconditional grants.

In this regard, an extra amount of Kshs15.6 billion has been allocated to the county governments to develop the health sector. For example, Kshs4.2 billion has been given to support the free maternal healthcare in the counties because healthcare is a devolved system. So for free maternal healthcare to thrive, an extra Kshs4.2 billion has been given to counties. A further Kshs4.5 billion has been given to counties in order to facilitate the leasing of the modern specialized medical equipment. The equipment will be distributed in two hospitals in every county. This will enable easy access to specialized healthcare service in our counties. An extra Kshs2 billion has been allocated to Level 5 hospitals. These hospitals play a very significant role in providing very specialized healthcare service to Kenyans. An extra Kshs900 million has been given to county governments to compensate for county health facilities for foregone user fees. It is the intention of the Government to sustain the Government policy of not charging user fees or subsidizing healthcare services. In this regard, the national Government has allocated Kshs900 million to compensate county governments for revenue foregone for not charging user fees in the county health facilities. In our dispensaries and health centers in the rural areas, these Kshs900 million will cushion our people from not paying money to access healthcare.

Finally, an extra Kshs3.3 billion has been given to the county governments from the Road Maintenance Levy Fund to enhance the county governments' capacity to repair and maintain county roads. This allocation is equivalent to 15 per cent of the Road Maintenance Fuel Levy Fund. The other balance is still with Kenya Rural Roads Authority (KERA) and it will still be channeled through the constituency development programmes.

In the memorandum appended to this Bill, it clearly demonstrates that in arriving at the total county allocations from sharable revenue of Kshs1.249 billion in 2015/2016, the national Government has taken into account the criteria set out in Article 203(1) of

the Constitution. Other sharable revenue in 2015/2016 includes the following: With regard to county government the conditional amount was Kshs258 billion. If you add the unconditional amount given by the national Government mainly in the health sector, the total county allocation comes to Kshs273.1 billion which is 21 per cent. For counties that fall within the Equalisation Fund bracket, an extra Kshs6 billion or 0.5 per cent will be accessed by those counties. So, what remains for the national Government? It is Kshs749 billion or 60 per cent of the sharable revenue allocated to the national interests. This translates to 60 per cent of the sharable revenue allocated to the national Government.

The national Government share is supposed to deal with matters of national interest such as security and infrastructure; public debt repayment and other national Government obligations and contingencies. This leaves the national Government with a paltry Kshs223.5 billion or 18 per cent for the other national Government needs. Infrastructure, that is, roads, railways, ports, energy, national security, defence, police, foreign affairs and international trade will have to share the paltry Kshs223.5 billion or 18 per cent of the national Government needs. This is a challenge to the Government and the Budget and Appropriations Committee which should look into it. Article 218(1)(a) provides that at least two months before the end of each financial year, there shall be introduced in Parliament a Division of Revenue Bill which shall divide revenue between the two levels of government. This House has, however, realized that in order to facilitate planning and budgeting at the national and the county levels, it is necessary to decide and do a determination on the Division of Revenue Bill early in the year so that the county governments and the Senate can do their bit. The Division of Revenue Bill has to be submitted by the 15<sup>th</sup> of February of each financial year. I urge this House to track this Bill in order to allow adequate time for the finalization of the Budget Estimates for both the national and the county governments.

Finally, Article 218(2) of the Constitution further provides that the Division of Revenue Bill shall be accompanied by a memorandum setting out the explanation of the revenue as proposed by this Bill. It also has an evaluation of the Bill in relation to the criteria set out by Article 203(1). The Bill has a summary of any significant deviation from the Commission. It is well, and I ask my colleagues that as we debate, we have in mind that time is not on our side and we deal with the two stages of the Bill before the end of today's session.

With those many remarks, I wish to request Members to support this Bill and provide the roadmap for the Senate to prepare the County Allocation of Revenue Bill. It is on that basis that the county assemblies will be in a position to prepare their Budget Policy Statement (BPS), Budget Estimates and finally submit their Budget to the Controller of Budget for the national Government. The Cabinet Secretary for National Treasury will then come to present his Estimates and his 2015/2016 Budget here in the National Assembly.

**Hon. Wakhungu:** Thank you, hon. Speaker. First and foremost, I want to thank the Budget and Appropriations Committee for the work well done. Just the other day, we were discussing the BPS and they have moved within a very strict timeframe and today we are discussing the Division of Revenue Bill. The Division of Revenue Bill is very critical as outlined in Article 218 where it provides a framework for the division of revenue between the national Government and the county government.

We have seen the money allocated to the counties rising. We have seen from the analysis that about Kshs283.7 billion is being allocated to the county governments. In percentage terms, this is 37 per cent. It is important that we follow up on how this money is going to be utilized at the county level. It is good that Kshs1 billion was given to the Senate in terms of their monitoring and evaluation role. Indeed, it will be important that, that report is brought here so that we discuss it. That way, we will be in a position to know how monitoring has been done. Last time, we had issues with the Senate when it came to the division of revenue. I want to salute your leadership because this time round both the Senate and the National Assembly were involved as far the issue of the division of revenue is concerned.

If you look at the recommendation of the Commission on Revenue Allocation, (CRA), the amount it had allocated of Kshs282.4 billion and the overall amount that is being given now, there is a convergence.

I want to talk about the money that is going to the county level as conditional grant in terms of healthcare. When His Excellency came here last time, he told us of free maternity services at the grassroots. We expect him to be here tomorrow and I have no doubt that he will mention this. In some healthcare facilities at the rural areas, free maternity services do not exist. I have spent a lot of money in my constituency because the local facilities claim that, that money does not reach them. We are told it is for the cars of the governor. I do not know, but we must follow up this conditional grant. I am sure the governors are listening. This amount of money should reach local dispensaries, so that when it comes to maternal cases, they can have safe deliveries.

I also want to talk about the issue of leasing of medical equipment. The Government has gone the way of leasing equipment and a lot of money is going to be spent. Up to now, we have not discussed any policy on hiring. It is, indeed, important for the Ministry in charge to move with speed to bring regulations or policy in terms of hiring of this equipment to this House, so that we can discuss them. If we do not look at the hiring policy, this is going to be room for corruption. We are worried, if we are going to let it go that way, this amount of money that is meant for hiring is going to be a big problem.

We have talked several times about the percentage that should go to the recurrent expenditure and how much should go to the development expenditure. We have seen in reports that in some counties, 80 or 90 per cent goes to the recurrent expenditure and zero per cent to development expenditure. It is important for us to follow up this money. We should do monitoring and evaluation, so that those reports can come here for us to establish the percentage of this amount that is going to development expenditure or recurrent expenditure. If we have 90 per cent going to recurrent expenditure, development is going to be very minimal.

We also have a lot of wastages. It is good to note that more money has been allocated to the Auditor-General. It is important that they establish their offices at the county level, so that cases of corruption are dealt with at that level. We devolved resources, but corruption was as well devolved. The Auditor-General should have forensic audits on timely basis. We saw the case of the Narok County when the matter was at the Senate. When the Senate demanded an audit from Narok, we saw what the Auditor-General said. It is important to note that more money has gone there. This is

going to play a very critical role as far as improving efficiency and effectiveness of the Auditor-General is concerned.

This is going to give room for the County Allocation of Revenue Bill. As they discuss different issues, my humble request is that they come up with county fiscal policy papers, which should be in line with Budget Policy Statement. Many times, when you look at the county fiscal policies, they are not aligned to the Budget Policy Statement. It becomes a mismatch. We cannot achieve our priority goals, for example, the Vision 2030. It is, indeed, important that as the counties come up with their county fiscal policies, they are aligned to the Budget Policy Statement which highlights the key priority areas when it comes to the issue of Government priorities.

Another issue that I wanted to mention is the money for the maintenance of roads. We know very well that there is a big conflict between KERRA and KURA at the county level. In many cases, the governors play smart and say that the money that is allocated to KURA and KERRA come in through them. This is very wrong. This money is going there as a conditional grant on the issue of roads. The county governments should come out clearly, so that there is no confusion. KERRA and KURA are under the constituency level. In many counties, you find governors parading KURA and KERRA, but in terms of the money that has gone there, we do not have any explanation about it. It is, indeed, important that Kenyans know all this. We need to know the limits.

Now that the percentage of the allocation to the counties has gone up, we want to see more projects on the ground. We want to see better facilities and service delivered to the *wananchi* at the grassroots. We have been saying that we want more money to be allocated to the counties and you see that 37 per cent is going to the counties. As time goes by, more money should be devolved to the county. This is the critical part that the *wananchi* need to know. The county governments should be held responsible and accountable. More money has now been devolved and we now expect more facilities and better service delivery. They should be accountable to what is going on.

I do not want to say much. I support and congratulate the Committee on Budget and Appropriations for the work well done.

I support.

**Hon. Speaker:** Hon. James Kimaru, Member for Kesses! Absent! Provision forfeited permanently.

*(Laughter)*

Hon. Member for Kipkelion East!

**Hon. Limo:** Thank you, hon. Speaker, for giving me a chance to contribute to this important Bill. I wish to recognise the good work done by the Budget and Appropriations Committee. This Bill is very important because it shows how the two levels of the Government will be sharing the country's revenue. According to the Constitution, it is squarely the responsibility of the National Assembly to share the revenue between the two levels of the Government.

If we look at the current division, there is a significant increase to the county governments. Last year, we had Kshs226 billion and now it has gone to Kshs258 billion, which is county equitable share. We expect that the county governments will ensure that

most of it, if not all the increment, will go to development. We encourage the counties not to add salaries or add more personnel. People at the county level require a lot of development.

The county allocation has been divided into two, namely, the county equitable share and the conditional allocation, which is very important. Last year, we had some allocation in the form of conditional grant which was changed the last minute. That was very important in terms of giving training to the youth. The allocation was for the purpose of building youth polytechnics in all the counties. The last minute change was a very serious weakness and most of the counties have not built youth polytechnics. We are not going to see that development soon because of the issue of sharing the money in small bits. We need a serious allocation to ensure that these youth polytechnics are built in the counties. The only way to achieve this was to put the allocation in conditional grant. Unfortunately, this allocation has done the same and the youths have not been considered.

Most of this conditional grant, which has been given to the counties of around Kshs25 billion is allocated to the health sector. This is important, but I wish we could also have put youth polytechnics as under conditional grant. This conditional grant is the only way to ensure that counties do not use the money for any other purpose other than the purpose that is indicated on the conditional grant.

On free maternal healthcare, although this has been implemented, it is not well implemented. Most of the health facilities are still charging for maternity services. We have allocated about Kshs4.3 billion for that. Therefore, our mothers and children will enjoy this service without being charged more.

On the leasing of equipment, this is a very noble idea by the national Government. This is because many people are forced to travel a lot. For instance, people from Kericho County have been travelling all the way to Eldoret or Nairobi to get medical services. Now that there is this provision given to national Government, it is important that this matter is handled very carefully. When counties asked to be given equipment, it is important for the governors to realise that the intention of this provision is to devolve the health sector from the national level to the county level so that people at the grassroots can access specialised medical services without struggling much, for example, being forced to travel long distances. Unfortunately, there is an impending dispute in the whole country. In most of the counties, governors have identified hospitals which are close by. There is no regional balance in terms of location of these health facilities. Therefore, it is important for the national Government, through the Ministry of Health, to ensure that there is proper consultation and due care in terms of identification of health facilities which will benefit.

In Kericho County we have three hospitals which qualify to get equipment. The requirement is that a hospital must have been a district level hospital. In Kericho County we have three hospitals namely; Kapkatet, Kericho and Londiani. I hope that the county government of Kericho is listening. It must comply with the requirements. This is a lot of money. We are talking about Kshs4.5billion. This money must benefit the members of our society in an equitable manner.

There is also conditional grant for Level 5 Hospitals. These hospitals have been assisting people because they have superior facilities. There have been plans by the



Government to increase the number of Level 5 hospitals so that more people benefit from this. I hope the Government will move with speed to set up more Level 5 Hospitals across the country in this financial year.

There is also another conditional grant of Kshs900million which is going to compensate the county governments to ensure that they do not charge members of the public for using health facilities. It is sorry that even though we have devolved health, most of our hospitals are still either charging people for health services or they do not provide drugs. Effectively, they are making the poor people to be poorer. When you ask people to buy drugs and yet we have allocated money for health services that is not a very good thing. It shows that the county governments have not organised themselves well to ensure that procurement of drugs is done in a consistent manner and in a way that people get drugs every time they go to hospital. We have never seen any hospital in our counties where there is continuous provision of drugs. Most times you only get the drugs by sheer luck. We want that trend to change because we have allocated enough money to ensure that no health facility cries foul that it did not have enough money.

I hope the counties will come up with a very good system where they have proper agreements with service providers in a way that even when they have not received money---They should move away from the system where they are operating on a cash basis. They should have a system where they have service providers who are able to provide them with drugs in a consistent manner. This is because we want to have our people get quality service.

The national Government has put in very good programmes. However, I am worried a bit about some of them. Most people listening to us are waiting to hear something about the payment for old people. I hope that allocation will be increased because we want these people to live good lives.

I thank you for giving me this chance. I support this Bill.

**Hon. Aden:** Thank you very much, hon. Speaker. Let me take this opportunity to also put in my word of supporting this particular Bill. As per Article 218, there is a requirement of this House that we pass this Bill. Indeed, it has been as a result of a lot of work from the Budget and Appropriations Committee. There are a number of very important issues as has been stated by the Mover, who is also the Vice-Chairperson of the Committee. Indeed, as years go by, we are increasing the allocations that we are giving to the counties. Right now, we have allocated Kshs283.7 billion to the counties being an increment of Kshs43.3billion over and above what we gave them the last financial year.

Indeed, the hope of Kenyans lies in the devolution process. This House has conducted various public hearings in very many counties. We have also received advice from various stakeholders. In that regard, we have been able to make decisions in favour of supporting the wishes of Kenyans that we avail more resources to the counties.

Hon. Speaker, free maternal healthcare was allocated Kshs423million. Unfortunately, we are losing lives of very many mothers in this country because of poor maternal healthcare. We have now set it right. This is the opportunity for the Kenyan mothers to stop suffering. Here is the opportunity for the county governments to stand up and now invest in our health centres and hospitals and ensure that this very important service is made available to Kenyans.

The leasing of the equipment will transform the way many of the medical cases are examined in our country. In the entire north eastern region of Kenya, including the upper eastern region of Isiolo all the way to Tana River, we do not have a single Magnetic Resonance Imaging (MRI) machine. Now is the opportunity to say that each of the counties will have in any two of its hospitals, MRI machines and other very vital machines that can do very high level examination. This, indeed, is phenomenal. It is an issue that we need to benefit very much as Kenyans.

Hon. Speaker, out of the Kshs1.188 trillion, Kshs37 billion has been given to the county governments. The national Government needs to stand up and ensure that Kenyans access services that they have not had for a very long time.

Let us all remember that the money that we are appropriating is not freely collected, but money that has been paid by the sweat of Kenyans through diligent payment of taxes. For that reason, I want to urge the managers of these resources to ensure that they do all the due diligence. They should not fail Kenyans in implementing good policies with the money which we have passed.

Corruption has, unfortunately, caused leakage in our economy. Unfortunately, a number of cases are reported in all the counties. We are suffering because of projects not being done, money being misappropriated and projects being on record as having been done, but are not done. I want to give an example. Last night, I watched the *Citizen Television* showing a clip from my own county celebrating how the county government has done an elaborate health facility in Hulugho Centre in Garissa County. The entire report was false. Here is the area Member of Parliament seated next to me. All the county government did was to construct a kitchen. All the TV showed, if you cared to look, was just a wall written “Financed by the County Government of Garissa”. We were shown a tank and water, equivalent of which the Constituencies Development Fund (CDF) does for Kshs6 million, as having been done at Kshs38 million. This is a waste of resources. If we continue in that direction, some of these issues will challenge our conscience. I want to urge the governors that for God’s sake, Kenyans are looking up to them. More resources are being made available to them and they should not fail Kenyans.

As I conclude, the Ethics and Anti-Corruption Commission (EACC) is the organ that is supposed to oversee issues of corruption. We have availed many of those corruption issues to them. But they too, are involved in their own problems. It is time the EACC sorts out its issues. The Chairman should take charge and ensure that his house is in order, so that they can investigate these issues. I just mentioned a case from Garissa County. There are multiple similar cases in the various counties in this country. Let the EACC stand warned by this House.

I urge my fellow hon. Members to join me in looking for ways to ensure that, that organization is either transformed or we deal with it. We must do it. They must act on those enormous corruption issues that are happening in our counties.

If corruption is to happen at the rate that it is charged at and the 10 per cent that is alleged that almost every governor takes for every project that is done, this country will not move forward. This appears like a formula that the governors agreed upon as a Council, and I am sorry to say this: If they do that, we are losing huge amounts of money which would transform and change lives for Kenyans. We should not accept this. As the

oversight bodies on all levels of the Government, I urge my colleagues to ensure that this amount of money is utilised as is required.

With those few remarks, I support this Bill.

**Hon. Katoo:** Thank you, hon. Speaker. I rise to support this Bill. A lot has been said about this Bill. My main issue is mostly on one item, namely the Equalisation Fund. This Fund has been allocated Kshs6 billion in this Bill.

First of all, I support the proposal for the Equalisation Fund to remain under the national Government. My concern is what is in Article 204(2) of the Constitution which says:-

“(2). The national Government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible”.

These are very key issues. They are the basic needs of development. Water, roads, health and electricity need to be looked into. If you go to Sub-clause (3)(b), this is where I have a concern. It says that:-

“(3) The national government may use the Equalisation Fund—

(b) either directly or indirectly through conditional grants to counties in which marginalised communities exist”.

It talks about counties in which marginalised communities exist. My issue is with the Commission on Revenue Allocation (CRA). Their survey on which counties should benefit was not fair. If you look at the arid and semi-arid lands (ASAL), some of the counties are being left out. For instance, my Kajiado County was not included in the criteria used by the CRA. Many other counties have been left out, which is quite unfair. For instance, we always see counties like Baringo County being on relief food year in, year out and then the CRA says that they do not qualify to benefit from the Equalisation Fund.

Even if the Constitution provides, as I have quoted, that the Equalisation Fund will be used in counties where marginalised communities exist, it does not mean that you have to look at the overall setup of the county and then you generalize everything and exclude the entire county. If we narrow down to where the marginalised communities live, even Nairobi County, with 17 constituencies, I am sure not less than seven constituencies will qualify to benefit from the Equalisation Fund. If people living in Kibera, Mukuru kwa Njenga, Eastlands and Mathare in Nairobi County do not qualify to get the Equalisation Fund, then you are left to wonder what equalisation is for. Which areas are going to benefit?

If you take Kajiado County, other than the expansion of Nairobi that has reached Rongai, Kiserian and Ngong, 90 per cent of the area that is covered by the county is as bare as counties that are in areas which are benefitting. My concern is for the CRA to review the criteria they used, so that they do not leave out certain areas. For instance, Baringo County with Tiaty Constituency, and then you say that they should not benefit from the Equalisation Fund, is quite unfair. It is unconstitutional to take a county as a basis for qualification to get that Equalisation Fund.

As much as I support the position of the national Government that this Fund should be left as a national Government Fund and the national Executive should come up

with modalities on which this Fund should be disbursed, I want to ask the CRA to relook and review the criteria used. It should base the qualification on the smallest unit of development even if it is a ward or a constituency, but not to generalise on a county. Still on the ASAL areas, the issue of food security has been a national problem.

We have been experiencing below average rains, increased food prices and conflicts. These have contributed to about 15 per cent increase in the number of people requiring food assistance. In the coming financial year's Budget, it is good that we allocate enough money to the National Irrigation Board (NIB) that can assist it in creating ways of increasing food security, especially in the Arid and Semi-Arid Lands (ASALs). Recently, there was a food security assessment which was released by the National Drought Management Authority (NDMA). It estimated that about 1.5 million people are acutely food insecure. This information calls for additional resources to the NIB for them to do water pans and dams that can assist those areas in getting out of that food problem.

If you read the Bill, it is projected that the economic growth this coming Financial Year of 2015/2016 is going to be 6.9 per cent. I want to believe that this projection of economic growth will have an impact on job creation. This is because of the high rate of unemployment of our youth. Currently, about 40 per cent of our youth are unemployed. The projection in economic growth should result into job creation. We should expand the economy and the market so that we get our youth into the job sector. It is very alarming to have 40 per cent of our youth unemployed.

I want to applaud the recent proposal by His Excellency the President of rebranding the National Youth Service (NYS). It is very critical especially in ensuring that youth play a very critical role in the country's development agenda. What is happening now is that they are being used in building a security wall between Kenya and Somalia along the Mandera border but more specifically, is that such economic projection should result to job creation for our youth.

Finally, on the issue of enhancing security operation in the Bill which includes buying and leasing of police vehicles, I support the proposal by the Budget and Appropriations Committee that, that duty be transferred from the National Treasury to the Ministry of Interior and Coordination of National Government. That is when it will make an impact. They are the ones who are best placed to know which areas need police vehicles. Maybe, we just leave the National Treasury to do the oversight role. It is good that security service delivery be enhanced through more budget allocation. Police in Kenya over time operate with very limited resources. This has led to weak operational preparedness and lack of equipment and logistics in a modern country. I want to plead that as we do that in that Ministry, we should not forget the welfare of our police officers.

I beg to support. Thank you.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Speaker, for giving me this opportunity to support the Division of Revenue Bill of 2015. Reflecting back two years ago, we might be facing our challenges as a Parliament, but one of the key indicators that we have grown as a Parliament is the manner in which we are debating this Bill this year in comparison to how we have done it over the years. There is consensus. Now we have only come in to move it forward. I want to thank your leadership, the leadership of the Senate, the Budget and Appropriations Committee and all stakeholders for ensuring that consensus has been built on most of the issues in the Division of Revenue Bill.

**Hon. Langat:** On a point of order, hon. Speaker.

**Hon. Speaker:** Yes, what is your point of order? Sorry, hon. Wanga. There is an intervention.

**Hon. Langat:** Sorry, hon. Speaker. It is not in relation to what hon. Wanga is saying, but I am just borrowing from the words she has used. This is a relatively small Bill which has been discussed several times in the Budget and Appropriations Committee. This House has a lot of heavier agenda. Will I be in order to move that going by the mood of the House, we call the Mover to reply given that the same Bill is coming for Third Reading immediately after this?

**Hon. Members:** No.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, hon. Langat is not entirely without a point. If you look at the Order Paper, you are supposed to finish debate in the Second Reading of this Bill and proceed to the Committee of the whole House on the same Bill. There is a reason why that has to happen. Some of these Bills which have timelines, if you do not squeeze yourselves, you will find that you are the ones to be blamed as a House. Remember the business we have tomorrow: Address by the President. What does that entail? For another four sittings, that is what we shall be debating. So, if we do not complete this and do Committee of the whole House on the Public Audit Bill, which is also listed in the Order Paper--- Sometimes, even as you oppose, you must also be alive to what lies ahead.

You are due to go on the short recess after 2<sup>nd</sup> of April, which is Thursday next week. So, all these things if we must--- It is fair for us to speak till dusk, but we must also see the business ahead of us. I am sure hon. Langat's desire is not to curtail debate. He is just informed by what lies ahead. You failed to operate under Standing Order No. 97(3). That is when you should have limited the time within which every Member should contribute. Perhaps, we can appeal to the few of you who are going to get a chance to take the minimal time knowing, as hon. Langat has said, how this Bill has found its way here.

Indeed, hon. Wanga was on the right footing to say that a lot of consensus has been built among the key players in this process: the National Treasury, your own Budget and Appropriations Committee, the Commission on Revenue Allocation (CRA) and the Senate Standing Committee on Finance, Commerce and Budget. I am sure all of you are alive to all these facts. So, the idea is not to curtail debate but to appreciate what lies ahead and what is likely to happen in the event that we do not conclude this. It means you may have to go for the short recess before you have concluded some very key legislation which is time-bound.

Very well. Hon. Wanga, I know we have eaten into your three minutes, but proceed.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Speaker. The concerns are noted and in my contribution, I will also consider that other Members would like to contribute as we conclude this Division of Revenue Bill.

In the last couple of weeks, we have debated the Budget Policy Statement (BPS) which has largely informed the Division of Revenue Bill. The points that we raised during the BPS still hold. So, we are just adding onto what was already raised.

Increasing money going to the counties is a welcome move. We hope that we can even raise this further to 45 per cent, not just of the audited accounts, but of the Budget. We hope that we can have as much money as possible going to the counties. However, we also expect equal responsibility from the counties in terms of how they manage not just this share from the nationally raised revenue, but also monies that they raise from the counties themselves.

There is a concern that has been severally raised by the public and the Senate; that the revenues being declared by counties now have reduced in comparison to what they were when they were just county councils. Therefore, even as we support to have more revenue allocated to counties, we are looking not just at the county governments but also the national Government that we can deal with issues of corruption. It is good to commend the Budget Office because they have produced a very good publication called: *“The Rise of the African Tiger”*. It looks at us as an African Tiger rising but that being the case and the projections that they make, they raise issues of ensuring efficiency in public spending and enhancing our investment levels. These are issues that will make us rise. However, the issues of corruption that have been raised must be dealt with. I do not want to get there but as oversight bodies, Parliament, the Ethics and Anti-Corruption Commission (EACC) and all other oversight bodies must ensure that we are putting our resources to the best public use.

Let me spend a few minutes and talk about a major part of this Division of Revenue Bill particularly that which has been sent to counties as conditional grants in the area of healthcare. As a health management professional, and I am sure that health management professionals across this country are worried because we are staring at a crisis in the face, we are sitting on a time bomb as far as our healthcare system in this country is concerned. Healthcare is about access, costs and quality. Right now, we are facing no access, prohibitive costs and poor quality.

Let me speak on a final point in consideration of other Members. On the issue of leasing of equipment, we have seen in the last couple of weeks the kind of crisis that we had at the Kenyatta National Hospital (KNH) with regard to the cancer treatment equipment that broke down. The situation is dire. Everybody has to come from all over the country to access the radiotherapy machines at KNH. If you go now, you will be told that the next appointment available is in December 2016. You cannot live for that long waiting for 2016. If we are going to lease equipment, let us have a proper policy and a maintenance contract. Let us have a policy which will ensure that money is not going to people's pockets from the leasing of equipment. People will be pocketing money based on the deaths of people who cannot access equipment. Let us have this equipment in two hospitals per county and ensure that our healthcare system is working.

Finally, let me make a proposal to the Departmental Committee on Health of this House. You can take leadership. Can we have a major conference on healthcare in this country? Otherwise, we will be facing a time bomb and a collapsed healthcare system. Can you lead with the Cabinet Secretary for Health and bring all stakeholders on board? This is so that we can have a major healthcare conference so that we talk about healthcare

and where we are going with the healthcare policy, financing, access to medication and quality in this country.

Thank you.

**Hon. Speaker:** Let us have hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Thank you, hon. Speaker. I also take this opportunity to thank the Budget and Appropriations Committee for the good work that they have done. Considering that time is of essence, I will point out two things. Whereas the Division of Revenue Bill prepares everybody for the next financial year, it is important that the county governments work towards ensuring that there is efficiency in the use of money.

Funds go to the counties but it is not good to see that only 1 per cent has been used for development. We want to see as much money as possible going towards development. It is important in the formula which has come up, to put a ceiling for money allocated for recurrent expenditure. Most of the money should go towards development. I want to point out that the free maternal healthcare and the conditional grant towards free maternal healthcare have worked so far. The same case applies to cash transfers, but it should not be a one-off thing. I am glad that the Government is looking towards making sure that, that money is used to roll out the universal healthcare so that you do not just cover a woman when she is getting a baby but you cover the whole family. As time goes on, this money becomes useful as it is not just a one-off cash transfer.

On Level 5 hospitals, I believe that the Government policy is making sure that they increase in numbers so that each county can have one. I have seen that in the equipment that is being leased. I would want to ask the county governments to ensure that money meant for Level 5 hospitals reaches them and is not utilised for other purposes.

I beg to support.

**Hon. Speaker:** Let us have hon. Millie Odhaimbo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you. I beg to support. Because hon. Members have spoken a lot, I just want to add my voice to the concern that the fiscal capacity and efficiency of the county governments is wanting and there is no data on it.

Hon. Members have indicated that we are concerned even as we are increasing the monies to the counties and especially the conditional grants on the healthcare system which is a plus especially for women and children. My concern is that the way our counties are running is worrisome. Those of us who are representing constituencies, we know that the healthcare system is not about to collapse. It has collapsed. There is no medicine in hospitals. Virtually nothing works in the devolved systems. I would encourage that even as we are devolving more funds - and I am hoping that in future we can devolve more funds - we can provide a heavier and more efficient monitoring and evaluation mechanism for governors.

Borrowing from what happened in Nigeria, it is time that the national Government became more serious and took serious action against governors that are misusing county funds. Indeed, we will take the Government seriously only when we start seeing governors jailed for misusing public funds. If you look at the funds that are being given through Constituencies Development Fund (CDF) and the amount of work which Members of Parliament are able to do with the CDF--- I was looking at it the other day. In Mbita Constituency, the allocation that I am getting is about Kshs103 million. If I

were to equate it with what the Homa Bay County Government is getting, it is almost six times what I am getting in my constituency and yet, you cannot see evidence of what the Homa Bay County Government is doing that is comparable with the amount of work that we are doing as Members of Parliament.

Therefore, I will only take this Government seriously when we see it striking the whip on corrupt governors. Many of us have fought for many years for this devolved system of governance, and there are people who want to waste it. Look at the example that hon. Wamalwa gave - that you find what we are using in CDF as Kshs 600,000, county governments are spending almost five times as much.

Finally, I want to put a challenge to the Budget and Appropriations Committee on the issue of public participation which is a constitutional provision. My understanding of the issue of public participation is that it was not only meant to take the views of the members of the public but rather that in communities that are visited, the policy of the Government is to ensure some of the issues that are put before the Budget and Appropriations Committee find their way into the Budget. I would want to know from the Committee what happened to the views that were given to it in Mbita. The Committee promised Mbita people three items which they asking me to date. I am going to arrange, as they have requested, that we bring a Petition before the Budget and Appropriations Committee so that I know whether those funds were diverted to another constituency, or whether the members of the Committee misused those funds for their own means. That is because the Chairman promised through the Budget and Appropriations Committee that those funds were going to Mbita. I beg to support.

**Hon. Speaker:** Let us have hon. Priscilla Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker.

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker. Allow me to start by regretting that yesterday this House debated a Motion that was not helpful to Kenyans. The House was happy to spend three hours on the Censure Motion but when it comes to the Division of Revenue Bill, there are concerns that we have to move faster. It is time this House put as much time as is required on matters that are important to Kenyans. There is no matter that is as important as devolution to Kenyans right now.

As we discuss the Division of Revenue Bill today, we celebrate, as the National Assembly, the increased allocation to the county governments. With Kshs283 billion, we are sure that our counties will do the work that they need to do. A time has also come for this House to consider a ratio of sharing the money in the county governments. The county governments were created for two reasons: development and service delivery. There should be a 50 to 50 ratio in county allocations, with 50 per cent of the funds going to development and the other 50 per cent going to service delivery and, therefore, serving recurrent expenditure. It is regrettable that in the first year we gave the counties Kshs210 billion. In the second year, we gave them Kshs226 billion. We are now giving them Kshs283 billion yet there is not much to show for the funds going to the counties. The answer is obvious. All the counties are spending most of their money on recurrent expenditure. That must stop because recurrent expenditure has never developed countries.

Hon. Speaker, recurrent expenditure will not develop our counties. Our counties will develop on the amount of money that they put to development. If they use the larger part of the Kshs283 billion on development, they will see change. At the very minimum,



we would require that they follow the Public Finance Management Act and use the 70 to 30 ratio, which is what the national Government is using. Seventy per cent recurrent and 30 per cent development for counties is not good enough. What will be good enough for the counties is a 50 to 50 ratio. As we go to election of governors, it will be important for us to look for governors who are going to spend a lot of their money on development and less money on recurrent.

Employment at the county-level has reached a crisis level. We now have a staff at the county level on almost every imaginable job. That is not acceptable. Although jobs are important, it is more important to spend money on agriculture, healthcare, education, county roads and water.

Hon. Speaker, allow me, as a Jubilee coalition Member, to celebrate the steps that my coalition and Government has made in terms of devolution. It is extremely admirable for the Jubilee Administration to have put 37 per cent of the funding in the county government. That shows our commitment, belief and continued support for the new Constitution and the devolved governments. If the devolved governments could take up the challenge that they have been given by the national Government, we would see the strides that the country needs to make in terms of development. It is regrettable that even with the disbursement of all these monies, we may not see as much development as we want to see. That is the challenge that this House has. Today, we pass the Division of Revenue Bill. We give the allocation that will go to the counties but this National Assembly must continue to pass laws that guide devolution in our counties.

Hon. Speaker, as you know, the Health Bill is still pending. We cannot continue financing healthcare without the necessary legal framework. What we have are monies going to counties without sufficient legal framework and rules to guide the counties on how to spend them. A time has come for this House to stop entertaining the sort of Motions like the one on censure of the Speaker and every other matter that does not make sense, so that we can dedicate more time to passing the health Bill, which makes a lot more sense for our country.

On the question of the formula, I come from a county that has continued to receive lower levels of allocations. The first generation formula has served the country for two years. It is now time to allocate funding to the counties on the basis of the new formula. The second generation formula has taken lessons from the first generation formula. In particular, I celebrate the introduction of the Human Resource (HR) component of the second generation formula. The county governments have inherited former national Government personnel who were located at the former district headquarters. The Nyeri County Government is an example of one of those counties that have inherited staff that were working for the national Government within former Central Province. Those counties need to be cushioned with a HR component, which the second generation formula of revenue allocation has.

Hon. Speaker, even as we pass the Division of Revenue Bill, we should ask the Senate to hurry up the consideration of the second generation formula and bring the same to the National Assembly for consideration, so that the second generation formula can be applied in allocating resources to the counties.

Aware of what we have said previously, and aware that the Bill has to be disposed of today, I would like to request that in year three of devolution, with the funding that we

have given to the counties, and with the conditional allocations that the counties are going to get; that this House considers giving the counties even more conditional allocations. In the United States of America, where they have a federal government system, they give a lot more of their funding in conditional terms. Money for education is given as conditional allocation for, say early childhood education. We are in a country where we have abandoned early childhood education. The reason as to why our education system is suffering is because we have stopped paying attention to the stages of children development, the nursery school level. If you want education to go well, attention must be paid to the nursery school level. Following devolution, early childhood education was left to governors to do as they wish. That is not acceptable. In the next allocation, we have to consider giving a conditional allocation to the county governments specifically for early childhood education and polytechnics, which are also very important in terms of skills development amongst our youth.

Hon. Temporary Deputy Speaker, again, I celebrate the funding that has been earmarked for maternal healthcare. I agree with the First Lady as we continue to congratulate her on her Beyond-Zero initiative, which is focussed on ensuring that no mother loses her life as she gives life. The First Lady was able to share her programme with the world at the United Nations Commission on the Status of Women (CSW). Kenya was celebrated as a country that was making steps towards realising the Millennium Development Goals (MDGs). We are asking the country to continue with its efforts towards realising the MDGs regime that is intended to shape the new development goals for the world.

With those remarks I beg to support the Bill.

**Hon. (Dr.) Simiyu:** Thank you, hon. Speaker, for giving me this chance to add my voice in support of this Bill.

Hon. Speaker, we are allocating more money to the counties. As other hon. Members said, the percentage for the counties has gone up and, therefore, lowering the national Government's percentage. This tells us that we have to bake a bigger cake. The share increases when we bake a bigger cake. However, as we devolve these funds to the counties, I am getting worried: Will it improve service delivery? Will it improve development? I am worried because the courts have gagged the Senate on its oversight role. I am worried because many county assemblies are not up to the task of oversight. I happen to come from Bungoma County, which the World Bank has rated Number 43, in terms of development. The county was number five from the bottom despite the fact that it is one of the counties which receive the highest allocation. It has never received less than Kshs6 billion since the onset of devolution. The county is earmarked to receive Kshs8 billion in the next financial year yet in terms of development, it has been ranked Number 43 and number last, in terms of revenue collection. As a country, we have a problem. We need to tighten the laws on oversight for the county governments because that is the latest front of corruption in the country. We have talked of conditional grants for health.

I heard hon. Wanga say that the Departmental Committee on Health must rise to the occasion. That Committee rose to the occasion a year ago. It tabled a Report in this House on devolved healthcare and what needs to be done. That Report is the property of this House. If you read through that Report, you will get solutions there. The Constitution

says that the national Government will take care of national referral services. It does not say the national referral services will only be in Kenyatta National Hospital and Moi Referral Hospital. I am aware that the last Cabinet approved a national referral center in every county. If that were the case, there would be no need for this conditional grant. What the national Government will do is to improve the national referral facilities in every county. A lot of these problems we are having with personnel in healthcare would not be there. As we speak now, we are leasing equipment to those counties. However, do they have the personnel? I am talking about doctors, nurses and clinical officers who have all since gone into private practice. So, who will even run that equipment?

Hon. Speaker, I come from a county where hospitals are there but they are not functioning. In fact, we hired more security guards in the last three years to guard the hospitals than the number of health personnel. You, therefore, will find a hospital with only one clinical officer and seven security guards because the security guard company belongs to a relative of the governor who is paid a lot of money and which money he takes to *Harambees*. This is a very serious matter and unless we actually strengthen the oversight role in the counties, devolution is going down the drain and with all the hopes of Kenyans. This is because Kenyans look at devolution as the solution to their long-term development. That monitoring and evaluation role should be the next thing we should look at. We need to relook at the Public Finance Act and look at all those matters so that we ensure that there is proper monitoring and evaluation at the county level. It is all very well for us to sit and meet the timelines. We could pass this law in time because the law demands we do that.

However, are we really looking at where that money is going? This should be a lesson to many governors. Perhaps, they should borrow a leaf from the Kajiado by-election because money might not be the answer for their re-election. Service delivery could just be the answer. They need to use appropriately the billions they are being allocated. They should not use that money to hire non-essential staff; rather they should use it to hire essential staff. Much of the money we are allocating them is not going to development but rather, it is going to recurrent expenditure and administration. When you look at the administration functions that they are performing, you will realize that they conduct many seminars and many travels. That is where the money is going. That cannot help this country grow. That will not help us jump from the lower end of a middle income economy to the middle level and eventually to the higher level of middle income economy. The behavior of the county governments will not assist us move up. Perhaps, we should all realize that it is CDF that contributed to this country getting to the lower level of the middle income economy. We want to see what the county governments will do to propel this country to a higher level of the middle income economy. We cannot do that with the current type of financial management that we are seeing at the county level.

I support the Bill.

**Hon. Washiali:** On a point of order, hon. Speaker. I was very keen when you were guiding and advising us on how to go about this Bill and especially the timeliness of it. Even though Members have serious interests on this Bill, I want to assure them that they have an opportunity to also contribute to this during the Third Reading. I am also aware that there are a number of us who want to speak. However, given the timelines of this Bill, I want to request my colleagues that they look at the disadvantages of not

completing this Bill. As such, under Standing Order No. 95, I hope I will be in order to suggest that the Mover be called upon to reply.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, I have already explained to you what there is. Look at Order No. 10 so that you can see why--- Even when you say no, you should do so from a position of information and knowledge. I am pleading with you to, at least, deal with the Public Audit Bill in the Committee of the whole House. However, before doing that, you will have to do Committee of the whole House on this Bill. It is already 4.45 p.m. Hon. Wanga, in her contribution, reminded us that, indeed, what is in this Bill has already been considered by so many of you. If it was not for what has now come to be known as *Bonga Points* attraction---

Hon. Members, this is in the interest of this House.

**Hon. (Ms.) Mbarire:** I had the Floor hon. Speaker. I only need two minutes. Can I finish?

**Hon. Speaker:** Do I get the sense that I put the question?

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

**Hon. (Ms.) Otucho:** Thank you, hon. Speaker. With your permission, I request to donate one minute each to three Members. This being a straightforward Bill, honestly, I can reply in three minutes.

**Hon. Speaker:** I will grant you permission given that there are some Members who felt that they needed to get what I said earlier.

**Hon. (Ms.) Otucho:** I want to donate one minute each to the following Members: Cecily Mbarire, Gikaria, Midiwo, Waweru and Angwenyi.

**Hon. Speaker:** How many Members are those?

**Hon. (Ms.) Otucho:** I have given one minute each to five Members, that is, hon. Cecily Mbarire, hon. Gikaria, hon. Midiwo, hon. Denis Waweru and hon. Angwenyi. I think I must add hon. Mbadi who is a very able Member of the Budget and Appropriations Committee.

**Hon. Speaker:** One minute, hon. Mbarire!

**Hon. (Ms.) Mbarire:** Thank you, hon. Speaker. I will not waste my one minute. I will go straight to add my voice to that of my colleagues. We have a serious health crisis in this country. We have a challenge as a House. I hear that the Departmental Committee on Health has a Report, but I think we need to give adequate time to debate the issue of health in this country as a House. The reason I am saying that is this: In my constituency, a hospital that has been open 365 days a year has been shut down for about two weeks now because it lacks food and medicine. The hospital had not paid its staff for close to four months. In all the health centers, the complaint is the same. There are no drugs in those health centers.

**Hon. Gikaria:** Thank you hon. Speaker. I want to talk about a few things that we passed in the last Budget. I remember we allocated Kshs5million to the Economic Stimulus Programme.

To date, not even a penny has been spent in any of the three economic areas just because of corruption at the county level. I want to thank the Senate for putting ceilings and giving caution to counties against overspending on recurrent expenditure.

Lastly, in Nakuru County, we are paying almost Kshs1 billion to lawyers for court cases. The county assemblies are not passing any laws. In my county, the county assembly has not passed any law other than the Revenue Allocation Bill, which is mandatory.

**Hon. Speaker:** Hon. Dennis Waweru, you have one minute.

**Hon. Waweru:** Thank you, hon. Speaker. I am a Member of the Budget and Appropriations Committee. I support this Bill because of maternal healthcare. The safety of our mothers and children is safeguarded.

Secondly, leasing of medical equipment has been an issue. The other day, we had hospitals closed. I urge our governors, now that we have allocated money for leasing of medical equipment, to move fast and sign up with the relevant authorities so that our people can get the medical care that they deserve. I hear that only 35 governors have signed. I do not know why. We will start holding them accountable for the death of our people in the counties.

**Hon. Speaker:** Hon. Stephen Karani, you cannot be here when you are supposed to be making your contribution. What is this now? Who is the next Member? Hon. Midiwo! Hon. Members, please, do not waste time coming here. What did you want to say? You raised an intervention.

**Hon. Karani:** Thank you, hon. Speaker. I am preparing to contribute to this Bill, but I wanted some clarification. When you read about the conditional grant, it is to facilitate the leasing of equipment of Kshs4.5 billion. The next line reads that this grant is intended to facilitate the purchase of modern specialised equipment. The first statement is leasing of equipment while the second one is purchase of modern equipment. Which is which?

**Hon. Speaker:** Hon. Member, unfortunately, if you follow the procedures of this House, that question would come in the next Order when we are in the Committee. It is not during debate. This is debate. So, when on Committee, you can then ask the Mover for clarification. From whom are you seeking clarification now? We are not yet there. Hon. Karani, do not leave the Chamber, so that you can get the answer to the question that you are asking. Hon. Midiwo!

**Hon. Midiwo:** Thank you, hon. Speaker. Siaya health systems have collapsed. Rats are eating corpses in Siaya Mortuary. That is how bad it is. I do not know who will be my next governor, but I just know that the one sitting there now will not be. I oppose the idea of leasing medical equipment. Why can we not buy equipment to a few specialised hospitals so that our people can access medical care? I want to plead with the Budget and Appropriation Committee to buy medical equipment for the hospitals. The Kshs4.5 billion is a lot of money, which can even be used for training of personnel. This will ensure that we have adequate health facilities for our people.

I support.

**Hon. Speaker:** Hon. Mbadi!

**Hon. Ng'ongo:** Thank you, hon. Speaker. My one minute would allow me to say the following. One problem the counties face is the capacity in the Budget making process. I urge the Treasury to look into this matter. They have a responsibility both in the Constitution and in the Public Finance Management Act to ensure that this is done. The counties are not properly trained in budgeting. Secondly, the amount of money that is provided for the Strategic Grain Reserve of Kshs2.9 billion is too little. Right now, farmers in the North Rift are complaining that their maize cannot be bought. The Government needs to be sensitive to the maize farmers in the North Rift region to ensure that enough resources are provided.

Finally, there is the issue of the Fuel Levy Fund. We need to be clear who is going to be responsible for county roads.

**Hon. Speaker:** Hon. Jimmy Angwenyi.

**Hon. Angwenyi:** Hon. Speaker, I am an old timer and should be given three minutes. I would like to speak about health. A week ago, a constituent of mine, an old man, fell down and broke his foot. He was taken to a hospital where he stayed for a week without treatment because he could not pay in advance. That is how we have degraded our health system. The National Assembly must take the health sector from the counties and assign it to the national Government to take care of hospitals from Level 2 and above.

Every Budget must indicate to us how much employment it is going to create in every county.

**Hon. Speaker:** Let us have the Mover.

**Hon. (Ms.) Otucho:** Thank you, hon. Speaker. I take this opportunity to acknowledge all the Members who have contributed to this Bill. They have given invaluable input into the Bill, which will not only enrich it, but also benefit the policy makers. I believe they are listening to us.

A number of issues have been raised and it is needless to repeat them. Concerns have been raised with respect to some functions being performed by the county governments and, in particular, the issue of health. This is one of the sectors that have many challenges. Therefore, it begs the question whether allocations to the health sector are sufficient or whether the county governments have capacity to manage those institutions. In my constituency, I have more than four dispensaries that have never been operationalised. The other day, I got a call that a body was being buried which had decomposed. That means that there are no facilities in hospitals. This is a problem that is cross-cutting. It is an area that we need to relook into going forward in future Budgets.

I call upon oversight bodies, namely, the Budget and Appropriations Committee, the Public Accounts Committee, the Public Investments Committee, the Controller of Budget, the Auditor-General and the Ethics and Anti-Corruption Commission. Some of them are the biggest beneficiaries of this Budget. We shall be looking at that when we will be examining the Estimates of the National Government. We want to see the presence of the Controller of Budget in the counties. She should be aiding them in developing their budgets and supporting them in prioritising the needs of the people in those counties. They should also be ensuring that there are timely cash transfers to the counties to ensure there is implementation of the projects that have been budgeted for.

The Auditor-General has also been capacitated enough and the office needs to enhance the oversight mandate. We also want to see timely reports to this House. Members are concerned with issues of efficiency, transparency, effectiveness, appropriation and administration of those funds. We want to tell the governors that Kenyans want timely delivery. They want to see services closer to them.

Hon. Speaker, we have given them money. In the last financial year, the Budget and Appropriations Committee suffered the wrath of the people because information on the criteria and rationale of how the money was divided was distorted. We were at a loss even in trying to defend ourselves in some of the fora. I am impressed that this financial year, the allocation to the counties has been enhanced from Kshs226 billion to Kshs258 billion – an increase of Kshs43.3 billion or 17 per cent. We want governors to perform. We want to see tangible projects on the ground. We want people to feel them. Therefore, this calls for action from the Ethics and Anti-Corruption Commission (EACC). They need to rein in on thieves of public funds and corrupt individuals. We want to see people being jailed, irrespective of their status or position. If that is done, Kenyans will begin to have value for money.

I conclude by once more appreciating the Budget and Appropriations Committee for the good work. I also appreciate all hon. Members who have contributed. This is just a follow-up of the Budget Policy Statement. Every Departmental Committee had an opportunity to look at all these issues and make a submission to the Budget and Appropriations Committee.

With those remarks, I beg to reply.

*(Question put and agreed to)*

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

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*[The Temporary Deputy Chairman (Hon. Kajwang') took the Chair]*

## THE DIVISION OF REVENUE BILL

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, we are convened in the Committee of the whole House to consider the Division of Revenue Bill (National Assembly Bill No. 11 of 2015).

Let us begin.

*(Clauses 3, 4, 5, 6, 7, 8 and 9 agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Rarieda, you have the Floor.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, the Committee of the whole House is considering the Division of Revenue Bill and the Bill I have does not have those clauses. It only has up to Clause 6. Which is that Clause 9 we are talking about? We are running ahead of ourselves. The Bill we have only has up to Clause 6. Why are we talking of Clause 7, 8 and 9?

Hon. Temporary Deputy Chairman, if I could just---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Just hold on.

Hon. Members, courtesy of the Member for Rarieda for keeping awake, I apologise on behalf of the Chair and the Clerks-at-the-Table. We should have ended at Clause 6. It is said that it is only a fool who does not apologise for his mistakes. I am not one of them. Let us go to the Schedule.

*(Clauses 3, 4, 5 and 6 agreed to)*

#### *Schedule*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Balambala!

**Hon. Aden:** Hon. Temporary Deputy Chairman, I just wanted to say that it is the table and the memorandum which are required by law to accompany this clause. I am in agreement with the direction in which we are progressing. Mine was an intervention in relation to what hon. (Eng.) Gumbo has said, which I had noted.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Kitui Central!

**Hon. Mulu:** Thank you, hon. Temporary Deputy Chairman. I do not know whether procedurally I will be doing the right thing but the issue raised by the hon. Member in terms of the words “purchase or leasing”, I do not know at what point we will deal with it. It is just a typing error or something.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That one has to come by way of an amendment. You know that amending this Bill would require you to whip enough Members to raise a two-thirds majority.

**Hon. Mulu:** Even just a word?

**The Temporary Deputy Chairman** (Hon. Kajwang’): It must come by way of an amendment. You know that. You are in the Committee?

**Hon. Mulu:** Yes, hon. Temporary Deputy Chairman. That is why I am seeking your guidance.

I thought the Chairman of the Committee would be able to do it because it is just a word.

**The Temporary Deputy Chairman** (Hon. Kajwang’): We will not be able to remove even a full stop or a comma.

**Hon. Mulu:** Okay. Well guided, hon. Temporary Deputy Chairman.



**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Hon. Member for Nakuru Town East.

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, I do not know whether I will be in order just to understand the conditional allocation.

**The Temporary Deputy Chairman** (Hon. Kajwang’): We are discussing the Schedule here.

**Hon. Gikaria:** Yes. That is where I am.

**The Temporary Deputy Chairman** (Hon. Kajwang’): What is the point of your discussion?

**Hon. Gikaria:** It is just a concern to understand how we can be able to follow it other than the Senate. I am saying this because we gave Kshs5 million for the Economic Stimulus Programme (ESP) to be done last year. I have been following with my county because it was going to a particular school called Menengai High School. To date, not even a penny has been used there. Am I in order to find out whether, as the National Assembly, we can follow the conditional grants and see whether they are spent for purposes of the condition they have been sent to? I am saying this because I am the Vice-Chairman of the Committee on Implementation and we have visited four counties regarding the health issue. What hon. Jakoyo has said is what we are finding out. Rats are eating corpses in morgues. What we found out in the medical services, they are forced to sign the Authority to Incur Expenditures (AIEs) and they never see the drugs or the equipment they sign for. So, hon. Temporary Deputy Chairman, do we have an obligation to follow up the conditional grants that are given through this allocation?

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Hon. Member for Teso South?

**Hon. (Ms.) Otucho:** Thank you, hon. Temporary Deputy Chairman. I just wanted to comment with respect to the point of order by hon. Makali Mulu. We noticed that, and I want to believe it must have been a typing error, because the Government policy is to lease equipment. However, I would also have wished that counties were allowed to purchase some of the equipment but, looking at the allocation, Kshs4.5 million per year is not sufficient to purchase equipment. Hospital equipment is very expensive. I think that amount must have been meant for leasing. It must have been a typing error.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Before the point of order, let us have the hon. Member for Ainamoi. Did I see the hon. Member for Taveta on my list? I thought I did. Hon. Member for Taveta, did I see you on the request list?

**Hon. (Dr.) Shaban:** No.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Hon. Member for Dagoretti South?

**Hon. Waweru:** I think it is important for us to recognise that we are in the Jubilee Government and we have a Jubilee policy and agenda and that is what we are implementing. If Jubilee feels that we should be going the leasing way for not only medical equipment but also vehicles, I think we should be fair enough to let the Jubilee Government implement its own policies and Manifesto. We should be able to grant that and see how it works once it is rolled out.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay. Hon. Member for Tongaren.

**Hon. (Dr.) Simiyu:** Thank you, hon. Temporary Deputy Chairman. Now that the Vice-Chairman of the Committee on Implementation is here and is wondering on how to follow up the issue of the conditional grants, actually, as the Committee on Implementation, you are mandated to ensure that things are implemented and I believe that in that same breath, you should be seized of the Committee Report from the Departmental Committee on Health on the issue of devolution of health services. That Report is available in Room 8 and we expect you to be following it up to implement that matter.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Member for Balambala Constituency.

**Hon. Aden:** Thank you, hon. Temporary Deputy Chairman. I just wanted to seek your guidance with regard to this Bill and its admissibility as a money Bill. I think under Article---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Where has that risen from? As far as I am concerned, has that arisen?

**Hon. Aden:** Yes. Probably a proposed amendment---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, I am asking because you are on intervention. I have not heard any hon. Member talk about a money Bill, have I?

**Hon. Aden:** No. I just wanted to think because we are seeing some---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. Do not draw me into a discussion which is still not live on the Floor of the House. Order, hon. Members! We are considering the Schedule. That is where I stopped to take intervention from the hon. Member for Kitui South. I think that is where we were. I allowed a few ventilations on issues which I think came more from Nakuru.

*(Hon. (Ms.) R.K. Nyamai stood up in her place)*

We need to go back to where we were so that we turn the radar back to where we should. I see a Member who is rising. What would you want us to do because I cannot see you from the request list nor can I see you on the intervention list, though you are standing on your feet and you are very agitated?

Hon. Chairlady of the Departmental Committee on Health, the hon. Temporary Deputy Chairman is unable to see you until you have requested.

All right you have the microphone.

**Hon. (Ms.) R.K. Nyamai:** Thank you very much, hon. Temporary Deputy Chairman. I would like to give a comment on the matter that was raised by hon. Makali and also make a contribution by providing information. Yes, the Government has made a decision to lease out medical equipment.

First, we do not have the funds to purchase medical equipment for the 94 hospitals that have been mentioned. The Departmental Committee on Health has been following this matter. We invited the Cabinet Secretary (CS) to share with us how this is

going to be implemented and, as an oversight Committee, what we would like to request the House is to let this budget line be supported by all of us. This is because our hospitals require medical equipment and as it is now, they are going to be leased because the Government cannot afford to purchase.

In terms of oversight, I would like to assure this House that the Departmental Committee on Health will offer the necessary oversight that is needed. That is the information that I wanted to give and that we cannot change from the word “leasing” to “purchasing” at this level.

Thank you very much, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. Thank you for that clarification. Now, I can easily put this to Question but because the hon. Member for Homa Bay County has intervened, I will allow her to ventilate herself.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Temporary Deputy Chairman for giving me this chance. I want to propose an amendment if this is allowable. Considering that the Division of Revenue Bill which is under Article 114 of the Constitution is not a money Bill in my opinion, and the amendment is not fundamentally changing anything in any way--- The amendment proposed was a small addition on page 170 of the Bill where it says conditional grants from the Road Maintenance Fuel Levy, a Fund of Kshs3.3 billion which is being moved to counties. I want to add “this money be distributed equally among constituencies.” That is because the Division of Revenue Bill is talking about equity. The equitability at this point ends just at the county level. But this small statement would ensure that the equity goes down beyond the county right to constituencies as well so that very little is left to their discretion at that point.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Before I express myself on it, you made a comment that in your interpretation, this is not a money Bill. Are you able to explain that properly? Hon. Member for Homa Bay, I am with you.

**Hon. Ng’ongo:** On a point of information, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am able to see what is happening there, but I have to go by order. The order is that it is the hon. Member for Homa Bay who has the Floor. Until information is sought, that is another matter; now I am dealing with the hon. Member for Homa Bay.

**Hon. (Ms.) Nyasuna:** There is a point of information from hon. Ng’ongo, which I accept.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Things will not be done that way. I am afraid they will not be done that way. If there is a point of information, the Member raises it and it is not the Member who gives that information. Hon. Member for Suba, will you allow me to do my work? Let us go by order. If there is--

**Hon. Ng’ongo:** On point of information, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. There is a point of information. Do you want information?

**Hon. (Ms.) Nyasuna:** Yes, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. Next time, hon. Member for Suba, make things easy, so that you do not control the House

from where you are seated. I feel much comfortable when I control the House from this other side.

Proceed.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, when I try to talk, the Chair has a problem. When I talk loudly, the Chair has a problem. Now I do not know how to handle the Chair.

I just wanted to say that according to the definition of money Bills found under Article 114, Division of Revenue Bill is not classified as money Bill. I want to take you to Article 114(3). Why we are raising this matter is that it is the only Bill that has to go through the Budget and Appropriations Committee. Any other Bill, you can bring an amendment without going to that Committee. Article 114 (3) says:-

“(3) In this Constitution, “a money Bill” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment, or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment;

or

(e) matters incidental to any of those matters.

So, any Bill other than those Bills specific under Article 218 that deals with the listed items is what is considered a money Bill but a Bill that is specified under Article 218 is not a money Bill. If you go to Article 218, the Bills mentioned there are two: the Division of Revenue Bill and the County Allocation of Revenue Bill. Those two Bills are not money Bills. They contain provisions touching on taxes, imposition of charges but the Constitution deliberately excluded them from the definition of money Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. I thank you for that clarification and information, but that does not take you out of--- Hon. Member for Homa Bay, I am now back to you. It does not take you out of the woods yet. In a Bill such as this, it is more preferable, as the Standing Orders envisage that it is in writing, so that we put it on the Order Paper. That way it will allow hon. Members to reflect on the amendment. It is a fairly substantial amendment. Without it being on the Order Paper, I will not allow it.

Hon. Member for kwanza.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, in the interest of my understanding this, this allocation of revenue, and before the Chair--- I wanted to find out the Kshs4.5 billion---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. Hon. Member for kwanza, I am about to put this to vote; I am only raising it because I can see that hon. Members have expressions on it. Can you be just relevant to where we are?

**Hon. F.K. Wanyonyi:** What I want to find out is that in both cases we have national and the county allocations. We have Kshs4.5 billion---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. You can move near to the Chair and ask that. We should not use parliamentary time on it. The reason I am

asking this is that I have seen that Members---Member for Kwanza please resume your seat. Cross over and talk to this Chair; you will get that information.

**Hon. (Dr.) Shaban:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Taveta, what is out of order?

*(Hon. F.K. Wanyonyi crossed the Floor)*

Member for kwanza, you are crossing back? This is serious. When I rule you to be out of order, you will find the Chair to have done things which need his conduct to be investigated!

*(Laughter)*

Hon. Member for Taveta. Proceed.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairman, it is a follow up to what was being discussed, and what hon. (Ms.) Nyasuna had raised and hon. Ng'ong'o gave information. Prior to that there was the issue of the purchasing and the leasing of equipment. It is important for you, hon. Temporary Deputy Chairman, to ask the Chair to put in an amendment in terms of 8(b), so that it is very clear. There is no confusion between "leasing" and "purchasing".

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, we had moved away from "leasing" and "purchasing" because even the Chairperson of the Departmental Committee on Health was comfortable with it. Where hon. Member for Homa Bay is coming from is a different thing. Chairperson, can you discuss across the aisle so that the hon. Member for--- Have you discussed? Hon. Member for Taveta what you are referring to is in the Memorandum of the Bill. So, it is not consequential to the legislation, is that so?

**Hon. (Dr.) Shaban:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. hon. Member for Gem.

**Hon. Midiwo:** Thank you, hon. Temporary Deputy Chairman. We would like to move together, especially regarding your last communication to us. Hon. (Dr.) Shaban has expressed herself on the issue which hon. Speaker even talked about; the issue is leasing versus purchasing. If you look at the Bill page 169, it talks about leasing and purchasing. We want to plead with you to be a bit patient with Members, because of the way we ended the debate; we could come here and the speaker said---

**The Temporary Deputy Chairman** (Hon. Kajwang'): Absolutely; you will have a lot of patience from this Chair; but the Speaker's decision must be relevant to the issues also.

**Hon. Midiwo:** Exactly, but the substantive Speaker indicated that we could canvass this issue about leasing versus purchasing during the Third Reading.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Yes, I remember that and I was in the Chamber; but the hon. Speaker was informed by the fact that we were in the Second Reading. Now we in the Committee of the whole House.

**Hon. Midiwo:** It is not a debate.

**The Temporary Deputy Chairman** (Hon. Kajwang’): It is not a debate but it is--

**Hon. Midiwo:** All that we are asking is to be guided properly on how to do the amendment; if you then rule that it cannot come from Members, then we need to be guided. Let me tell you one that affects you directly. This is particular issue in equipment leasing; it is just like the issue in the maintenance fuel levy. If you take Kshs3.3 billion and give it to the governors in a blanket manner, so many constituencies in this country that have been getting this money hitherto will have a high likelihood of missing it; use of it will become subject to the discretion of a governor, who looks after a whole county.

This condition has to go with the fact that it has to devolve down to the constituency. It should be understood that it will not only protect us from corrupt engineers, but also from jumping from fire to fire by giving it to the governors to marginalize constituencies.

**The Temporary Deputy Chairman** (Hon. Kajwang’): But Member for Gem, will you, please, help the Chamber? The point is really not a matter of debate, but how you actualise it. You are looking at Page 164 of the Bill, but this is in the Schedule. The words that you are having are “leasing of medical equipment”. Is that the problem? Leasing of medical equipment in the Schedule?

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I am talking about two issues. The first one is the leasing of medical equipment. We want it to be purchase of medical equipment and not leasing.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The second issue is?

**Hon. Midiwo:** The second issue is Fuel Levy Fund on Page 170, which says “Conditional Grant from the Road Maintenance Fuel Levy Fund”. We want it to be conditional, but divided among the constituencies; that is what has been going on for the last couple of decades.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Midiwo, let us go step by step. First of all, the one that you prefer or suggest to be amended involves an amendment. It cannot be a Floor amendment. The second one that you are talking about is in the Memorandum and Objects of the Bill. So, it is not consequential to the legislation itself. The explanatory notes that you are referring to--- I am very sympathetic about the issues you are raising, but as a ranking Member, help me to understand how we are going to entertain a Floor amendment when the Standing Orders do not allow us to do so? That is a beautiful thing that should have come before the House on the Order Paper.

**Hon. Midiwo:** Hon. Temporary Chairman, the same Standing Orders allow us to plead with the House, especially on these ones that are affecting our constituencies.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Midiwo, just guide me on that Standing Order. Can you just get me there, so that we can do things according to the rules?

Member for Kajiado South looks like he has information for hon. Midiwo, which hon. Midiwo looks like he is accepting. Member for Kajiado South!

**Hon. Katoo:** Thank you, hon. Temporary Deputy Chairman. I really sympathise with my good friend, hon. Midiwo. He is a ranking hon. Member of this House. His concerns are very important; unfortunately, the procedure has really taken us to the other

side. Amendments must be on the Order Paper two hours before we go to the Bill. However, I have a suggestion, especially on the one for purchasing instead of leasing. It was also a concern to the Mover. If it is the wish of the Committee that it should be leasing and not purchasing, it is only the Mover who can move an amendment without giving a two hours' notice. If it is in the interest of the Committee, maybe you could allow the Chair of the Budget and Appropriations Committee to move that amendment on purchasing instead of leasing. Otherwise, as it is now, we do not have amendments to this Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is not even on the Mover. Even the Mover would have to give a notice. The only thing the Mover can do without notice is a further amendment.

**Hon. Member:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, do not give me so many points of order here. Let us look at the Standing Order. I am looking at Page 70. Can we all take our Standing Orders and look at Page 70? If it is not the same one, then we are looking at Standing Order 133(2).

"No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk twenty four hours before the commencement of the sitting at which that part of the Bill is to be considered in Committee".

This is something that we have discussed before.

*(Loud consultations)*

Member for Teso South!

**Hon. (Ms.) Otucho:** Thank you, hon. Temporary Deputy Chairman for this opportunity. I would like to propose a further amendment to 8(b) on conditional grant to facilitate the leasing of medical equipment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Amendment to which clause?

**Hon. (Ms.) Otucho:** Hon. Temporary Deputy Chairman, Clause 8(b).

**The Temporary Deputy Chairman** (Hon. Kajwang'): I am trying to look for Clause 8(b) and I am unable to find it. Can you take me to the page that you are looking at?

**Hon. (Ms.) Otucho:** Hon. Temporary Deputy Chairman, it is the Memorandum at Page 169.

**The Temporary Deputy Chairman** (Hon. Kajwang'): The Memorandum is not consequential to us at all. It is not part of the legislation and I have to do things according to the law.

**Hon. (Ms.) Otucho:** Hon. Temporary Deputy Chairman, it is page 169.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, hon. Members! You can have many ideas in the Assembly. I respect them and they are good. Some of them are out of experience, but I know that page 169 has explanatory notes. It has a Memorandum to the Bill and there are no consequential amendments at all to the Bill. The Bill ends at Clause 6, with the Schedule. All these other explanations are to give you background information. Why are we being tossed about by experienced hon. Members?

*(Schedule agreed to)*

*(Clause 2 agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): There is a point of order from hon. Ng’ongo.

**Hon. Ng’ongo:** On a point of order, hon. Temporary Deputy Chairman. I really appreciate your ruling on the Memorandum, that it is inconsequential even if we do not amend it. This is a very special Memorandum. The Division of Revenue Bill, it is a requirement in law that you do not just bring the Bill, but with a Memorandum. It is clearly spelt out what that Memorandum needs to contain. Therefore, the law makes the Memorandum part of the Bill; that law is the Public Finance Management Act.

So, we need to get the Memorandum right. I do not see why we are being told that because it is just Memorandum, it is wrong. In fact, if you bring the Bill without the Memorandum in the prescribed format in Public Finance Management Act, the Bill will not qualify to be the Division of Revenue Bill.

So, I would urge you to rescind your decision and allow amendments to the Memorandum, so that we capture the correct position in this House.

**The Temporary Deputy Chairman** (Hon. Kajwang’): We have heard that before. This is not the first time. If I had an opportunity, I would bring the HANSARD on the Division of Revenue Bill, 2014, in which we considered the exact issue that the Member for Suba is raising as to whether in the Division of Revenue Bill, to the extent that the Constitution requires a Memorandum annexed to it, the Memorandum is a legislative instrument that can be amended. There was a ruling that although the law requires it to be attached, in itself, it is not the instrument of legislation that is amenable to amendment or otherwise. Therefore, I rule you out of order.

Hon. Vice Chairman, do I hear your intervention?

**Hon. (Ms.) Otucho:** No.

*(Title agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Mover, do I hear you on intervention? Mover, be on your feet, please? I can see you are intervening.

**Hon. (Ms.) Otucho:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Division of Revenue Bill (National Assembly Bill No.11 of 2015) and its approval thereof without amendments.



*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(Hon. Deputy Speaker in the Chair)*

## REPORT AND THIRD READING

### THE DIVISION OF REVENUE BILL, 2015

**Hon. Kajwang’:** Hon. Deputy Speaker, I beg to report that the Committee of the Whole House has considered the Division of Revenue Bill (National Assembly Bill No. 11 of 2015) and approved the same without amendments.

**Hon. (Ms.) Otucho:** Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I also request hon. Makali Mulu to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Mulu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. (Ms.) Otucho:** Hon. Deputy Speaker, I beg to move that the Division of Revenue Bill, (National Assembly Bill No.11 of 2015) be now read a Third Time.

I also request hon. Makali Mulu to second.

**Hon. Mulu** seconded.

*(Question proposed)*

**Hon. Deputy Speaker:** I will give a few Members chances to contribute. I see hon. Gumbo is the first one here. This is not a debate. Therefore, make just one or two remarks.

**Hon.( Eng.) Gumbo:** Hon. Deputy Speaker, you have become too harsh these days. What has happened?

**Hon. Deputy Speaker:** No; that is what it is.

**Hon.( Eng.) Gumbo:** I am crying for the days---

**Hon. Deputy Speaker:** You know that it is Third Reading. So, we are not coming here to debate. You are an old Member, hon. (Eng.) Gumbo.

**Hon. (Eng.) Gumbo:** Thank you. I am not going to debate, but I would wish the Chairman of the Committee just to note the following---

**Hon. Deputy Speaker:** The Chairman of the Committee, please, take note.

**Hon. (Eng.) Gumbo:** Yes, please. Hon. Deputy Speaker, every year we pass some allocation here called “contingency”. From what I remember, the Cabinet Secretary is supposed to give us a Report on how that money is spent every year. In the seven years that I have been here, it has not happened. We would like to know more about it.

With regard to the money for Social Safety Net Programme, I know that it is going to different groups. However, have we not reached a point where we should know what is going to each constituency after we take out all the other groups? If you divide this money roughly the way it is, then approximately 1,500 people per constituency should have it. However, the last time I checked, only about 300 people are getting it in my constituency. It is important, in the interest of equity and fairness, that this money be broken down, so that we know what is going to the urban poor and offices in our constituencies. They need to open up these expenses so that we get to know them.

I thank you, hon. Deputy Speaker.

**Hon. Gikaria:** Thank you, hon. Deputy Speaker. I am the Vice-Chairman of the Implementation Committee. I am seeking your guidance about this conditional allocation that is given by the Budget and Appropriations Committee. Recently, we visited a few counties. If you look at the allocations which have been given for the conditional allocation, most of them are for devolved functions. So, when we asked questions as the National Assembly, one of the governors was very rude and told us that, that was not our business. So, we want guidance, so that we know whether or not money for conditional allocation is used for the intended purpose. How do we go about it where we have to oversee implementation of a devolved function? We are not getting so many answers from the Cabinet Secretaries, because they are telling us that they will avail information to us once they get it from the counties. We are a little bit stuck. Last weekend we visited three counties and the answers that we got were not very good. So, we want your guidance and the direction that we need to take regarding this money.

**Hon. Deputy Speaker:** That is a very valid issue and the Budget and Appropriations Committee needs to look into it. When you start oversight of a devolved function, who is supposed to be in charge? Is it the Members of the County Assemblies or the Members of Parliament, particularly if a condition has been given as to how the money is going to be used? Do we still leave it to the Members of the County Assemblies, or do we do it at this level to ensure that the conditions are met?

**Hon. (Ms.) Otucho:** Hon. Deputy Speaker, I want to comment with respect to that issue. It is an issue that, as the Budget and Appropriations Committee, we have consulted over. We were advised that our responsibility should end at the point of dividing or sharing out, this revenue. Attempting to decide for the county governments how to spend and what priorities they should have, having in mind that these counties---

**Hon. Member:** Conditional!

**Hon. (Ms.) Otucho:** Conditional, yes, but if we decide for them how they are going to appropriate it, that will be tantamount to micromanaging the county governments.

**Hon. Members:** No! No!

*(Loud consultations)*

**Hon. (Ms.) Otucho:** Hon. Deputy Speaker, allow me to say what I wanted to say. The money has to go to hospitals. It is conditionally for hospitals. It is up to the county assemblies, as they do their budgets, to ensure that this money goes to hospitals. We should see whether this money was appropriated to hospitals. It cannot be used on any other function besides hospitals. We cannot begin to decide for them how much to put to which hospital. They need to decide on their priorities. That is what we were advised and that should be the right thing to do.

**Hon. Deputy Speaker:** Our oversight is just as far as that money was appropriated to hospitals. What they do with it in hospitals is the responsibility of the county assemblies.

Hon. Members, I can see overwhelming support for putting the Question. I have confirmed that we have quorum.

*(Question put and agreed to)*

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

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Deputy Speaker (Hon. (Dr.) Laboso)  
left the Chair]*

### IN THE COMMITTEE

*(The Temporary Deputy Chairman  
(Hon. Kajwang') took the Chair)*

### THE PUBLIC AUDIT BILL

**The Temporary Deputy Chairman (Hon. Kajwang')**: Hon. Members, this is Committee of the whole House convened to consider The Public Audit Bill (National Assembly Bill No.38 of 2014). Let us start on a clean slate. You can be sure that the discussions on the Division of Revenue Bill will not extend to, or be reflected at all in the consideration of the Bill at hand.

We begin with the clauses.

*(Clause 3 agreed to)*

#### *Clause 4*

**The Temporary Deputy Chairman (Hon. Kajwang')**: There are several amendments to this. You have seen them on the Order Paper. We intend to be fairly thorough as we deal with this. You must follow closely what is on the Order Paper. A lot of Members have proposed amendments, namely the Members for Rarieda, Tongaren and

Ugenya. The sequence is that we should start with the Chair because if the Chair's amendment carries the day, it will mean that the rest of the proposed amendments will be dropped.

The Chair may be proposing a deletion. If he is proposing a deletion and insertion, then the rest of the amendments will be similar to that type of amendment. Let us come to that when we come to the amendments. Please, Chair, take very little time. We are not debating this Bill. When you think you have made your point, just keep it very simple, so that we can move fast.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended—

(a) in subclause (1) (c) by deleting the word “things” and substituting therefor the word “duties”;

(b) in subclause (2) by deleting the expression “subject to Article 234(5) of the Constitution”;

(c) in subclause (3) by deleting the words “as far as it is appropriate to do so” appearing immediately after the words “the Republic”.

Basically, I want to clean up the Bill. This is to improve the independence of the Auditor-General rather than subject him to the Public Service Commission, which is an independent commission. Those are the two reasons for that amendment. Many of the proposed amendments to this clause are almost similar to mine.

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, as you have rightly put it, I just wanted to alert you that I have a further amendment to what he has proposed, which is just enrichment. It is a deletion.

**The Temporary Deputy Chairman** (Hon. Kajwang’): A further amendment to what the Chair is proposing? If it is the one on the Order Paper, then we will come to you. Member for Suba, it is good you were not on the microphone. Proceed!

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I want to support this amendment, especially (b), which was subjecting the appointment to delegated authority by the Public Service Commission. That is putting unnecessary control on the Office of the Auditor-General, which should be independent. It even audits the Public Service Commission.

I support the amendment.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof  
be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Rarieda, we will hear you on part (b) of the amendment.

**Hon. (Eng.) Gumbo:** Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 4 of the Bill be further amended—

- (a) in subclause (2) by deleting the phrase “subject to Article 234(5) of the Constitution” and substituting therefor the words “to be recruited through an open, transparent and competitive process which promotes fair competition and merit and observes all the values and principles of public service as contemplated in Article 232 of the Constitution”
- (b) in subclause (3) by inserting the words “and shall have a presence in all counties” immediately after the words “appropriate to do so”

I am proposing a further amendment to sub-clause (2). This is just in addition to the deletion that the Chairman of the Departmental Committee on Finance, Planning and Trade has proposed. I am proposing a further amendment which reinforces the fact that the recruitment is to be done in an open, transparent and competitive process, which promotes fair competition and merit and observes all the values and principles of public service as contemplated under Article 232 of the Constitution” under part (a). Under part (b), after the deletion---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order. Just a minute. Did you address me on paragraph (a) of your amendment?

**Hon. (Eng.) Gumbo:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Member, you see that the Chairman deleted the phrase “subject to Article 234(5) of the Constitution.” So, if that was deleted, there is nothing which you can substitute. Are we together on paragraph (a)?

*(Hon. (Eng.) Gumbo spoke off the record)*

Let him be on the microphone.

**Hon. (Eng.) Gumbo:** If you look at my amendment, I have also proposed the deletion of the phrase “subject to Article 234(5) of the Constitution”. However, I am adding some words to enrich it. In other words, from where the Chairman left, I am adding the words “to be recruited through an open, transparent and competitive process, which promotes fair competition and merit and observes all the values and principles of public service as contemplated in Article 232 of the Constitution.” I am just giving---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, I understand you. However, go back to what the Chairman did, so that we are together in this. On page 169 of the Order Paper, the Chairman proposed, and we carried the Question, “that Clause 4 of the Bill be amended in subclause (2) by deleting the expression “subject to Article 234(5) of the Constitution”. Do you see that phrase?

**Hon. (Eng.) Gumbo:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Instead of that, your amendment seeks to insert some words.

**Hon. (Eng.) Gumbo:** No. My amendment---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yours is also to delete.

**Hon. (Eng.) Gumbo:** It is to delete, but also add and enrich it. I am enriching the process of recruitment. I am just saying that the recruitment should be done in accordance with the Constitution. It is not a contradiction at all. It is enriching it. I am only saying that, that recruitment is going to be done “through an open, transparent and competitive process, which promotes fair competition and merit and observes all the values and principles of public service as contemplated in Article 232 of the Constitution.” It is just enrichment. It is just a further amendment, which is allowed.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Sorry, the Chairman was consulting and reflecting on himself with the able help of the Clerks-at-the-Table. What has happened is that both of you are deleting, but you have an insertion. In other words, you prefer a few words to be inserted. Since the action you are doing is the same, I rule that you prefer a further amendment to paragraph (a) of subclause (2) because the deletion has been acted upon by the House. So, what we can do is only to propose a further amendment. Let us hear you on it.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, my amendment is to enrich what the Chairman of the Committee has done. In other words, the amended Clause 4(2) of the Bill will now read as follows:

“The office shall comprise the Auditor-General as its statutory head and all staff, including the staff appointed by the Auditor-General to be recruited through an open, transparent and competitive process which promotes fair competition and merit, and observes all the values and principles of public service as contemplated in Article 232 of the Constitution.”

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will allow you to have a go at that, Member for Ainamoi.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I have seen the amendment. It seems to improve the Bill. It talks about what is actually provided for in the Constitution, which is “fair, competitive and transparent process.” So, I support the further amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Rarieda, can we hear you on part (b)?

**Hon. (Eng.) Gumbo:** Thank you, hon. Temporary Deputy Chairman. What I am proposing in part (b) is to insert the words “and shall have a presence in all counties” after the word “Republic” since the amendment by the Chairman deleted the words “as far as it is appropriate to do so.” In recognition of the monies that we are sending to the counties, I am proposing that the office of the Auditor-General should have a presence in all the counties.

*(The Temporary Deputy Chairman  
(Hon. Kajwang’) spoke off record)*

**Hon. (Eng.) Gumbo:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. . The way your amendments have come is very complicated and we are trying to get through the maze. What the Chairman has done is to remove the words “as far as it is appropriate to do so,” yet your amendment is to include some words immediately after the words which have already been deleted. So, there are no words before which you are able to insert.

*(Hon. (Eng.) Gumbo spoke off the record)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, do not explain. We have to move on. The solution will be that you propose a further amendment.

*(Hon. (Eng.) Gumbo spoke off the record)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, without explaining. Just go to it and do a further amendment.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, the further amendment is as follows: that the Chairman of the Committee has deleted---

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. Speak to the HANSARD and speak straight to what you want to amend. So, read to us what exactly you want us to insert.

**Hon. (Eng.) Gumbo:** I am now trying to tell you how the subclause will read. It will read as follows:

“The Office of the Auditor-General shall ensure reasonable access to its services in all parts of the Republic and shall have a presence in all the counties.”

That is all I am saying.

*(An hon. Member spoke off the record)*

Yes, that is what it is because he has deleted “as far as it is appropriate to do so”. Why do you want to oppose it? How are you going to audit all those guys?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order!

**Hon. (Eng.) Gumbo:** Sorry.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That should not go on the HANSARD at all.

Hon. Member for Rarieda, can you just go on HANSARD as inserting those words after the word “Republic”? I do not want to be the one to propose it for you. Can you speak to the HANSARD?

**Hon. (Eng.) Gumbo:** Further to my amendment, sub-clause 3 will read as follows “The office of the Auditor-General shall ensure reasonable access to its services in all parts of the Republic and shall have a presence in all counties.” That is all.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Let me have hon. Member for Tongaren before I recognise the Chairman.

**Hon. (Dr.) Simiyu:** I hope you will accept my intervention. The difficulty that you are having right now is because your Clerks did not order the amendments properly.

If they had let hon. (Eng.) Gumbo to give his amendments before the Chairman, then you would not have had a problem. That is the problem that you are having right now. I hope that in the other amendments that are coming, they will follow the order so that it does not muddle up everybody's thinking.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Well, you need to be sympathise with my Clerks because this is a very complicated Bill. Members have preferred several amendments to several issues, which seem to be referring to different parts of clauses. Hon. Member for Tongaren, you know that the Standing Order says that we begin with a deletion. We have that Standing Order and we are trying to do the best. We are trying to be as practical as possible. The Constitution says that we should not prefer technicality to substance. We are trying our best to order all these things. We have proposed, have we not?

Chairman, what do you have to say before I put the Question?

**Hon. Langat:** You know outreach is done on assignment basis. It would be very expensive to have offices in every county. It will be wastage of resources of Kenya. We should be the last people to waste resources. There will be no point in, for example, having stations of auditors in Kericho or Bomet. It will be wasteful to hire officers. Auditing is done on an annual basis and this House must be efficient in the way we use resources. Even my good friend, the hon. Member for Wundanyi is a private auditor. He has clients all the way in Kericho, but he does not have a presence there.

We use staff on assignment basis. So, I propose that this matter be left as it is in order for it to be dealt with administratively, so that the auditor decides that in the blank areas; we can have presence to cover a region. That way, we can use our resources properly.

With those remarks, I beg to oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you.

Hon. Wanga, is something out of order? I can see that you are on an intervention.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, I want to make a contribution.

I agreed a lot with my brother, hon. (Eng) Gumbo, before the Chair clarified. If it is a matter of assigning auditors to conduct external audit every so often, then the presence in a particular county does not necessarily change the fact. What my brother, hon. Gumbo, wanted was to ensure that the audit needs at the county level are met. There is big need for auditing services in the counties. When you have presence in an area, even people who have information will want to reach you, so that they can give it to you. So, I am a bit divided here. I am actually not helping.

**Hon. Ng'ongo:** I can help, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Suba, please, proceed.

**Hon. Ng'ongo:** Thank you, hon. Temporary Deputy Chairman. I want to persuade my good friend, the very intelligent Member for Rarieda; that really, these are external auditors. The Auditor-General is an external auditor to an organization. We are not hiring internal auditors. What we need to work on, as a House, is to give the Auditor-General more resources to have more staff. The presence of auditors in the counties



compromises the external auditors. We need to keep them as far away as possible from the county governments.

I oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. You have not addressed the issue that I am dealing with. I can see that it is tough in all the counties. For me, that is a charge on the Exchequer. It raises the question of whether we are dealing with a money Bill to that extent. Those are the issues that I have not heard you discuss. I want to recognise the Chief Whip, but I do not see you on my list. Therefore, I will allow the Member for Magarini.

**Hon. Kombe:** Thank you, hon. Temporary Deputy Chairman. It is very important that we have the presence of the Auditor-General’s Office in every county. The mess we currently have in all the counties, in terms of misappropriation of public funds, is due to the absence of the Auditor-General’s Office in the counties. Therefore, it is very important for us to consider this amendment.

I support it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Chief Whip of the Minority Party, I cannot recognise you. You are not on my request list at all. You need to approach the Clerks-at-the-Table.

Proceed, Member for Kwanza.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, I quite agree with what hon. Ng’ongo and the Chair have said – that the presence of auditors at the county level will compromise the audit. What we may want to reinforce is the internal audit at the county level. I can tell you for a fact that when you have the auditors there, there will be no point of auditing. One could be there but be compromised a lot. I want to request my brother, whom I respect so much, that we drop the idea of having the presence of Auditor-General’s Office at the county level. The biggest problem is that they will be dancing to the tunes of the governors. Therefore, the auditors will have problems checking on the governors.

I quite agree; let us stop there.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right that has been understood.

**Hon. Mwadeghu:** Thank you, hon. Temporary Deputy Chairman. Let us agree on something. The Auditor-General is an external auditor; he is not expected to be stationed in a particular county, or station. For that matter, what he requires is adequate staff to go round once the audit begins and complete the audit within a time frame that is stated in law. He needs not have his presence in every county. This will be an expensive affair, and for that matter I tend to think that this will become a money Bill. That is what I am trying to avoid. With due respect to my dear friend, who is also my competitor in other areas, I beg to request him to stand down the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Very briefly Member for Rarieda. In fact, I will give you just a minute.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I have to listen. They are qualified professionals themselves.

*(An hon. Member made a remark against hon. Gumbo)*

Please, you are also a cow herdsman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No! Do not hear anything which does not come from the Chair.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, but he is also a camel herdsman and I have never told him so!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! Order! Camel herders and engineers live together and they make our country proud.

**Hon. (Eng.) Gumbo:** I stand advised.

However, even as I withdraw, I think it should be understood that the waste in the counties is something that this House must pronounce itself on. It is so much that even as we withdraw; let us find a way to reinforce the internal audit at the counties because the waste is just too much. You all know that the projects that we do with CDF at Kshs1 million these fellows are doing them with Kshs10 million. It is just too much. I, therefore, withdraw my amendment in Clause 4(b).

*(Proposed amendment to clause 4(b) by  
hon. Eng. Gumbo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Tongaren, you have listened to the contributions and you now know. Can I hear you on the HANSARD as therefore, dropping your amendment or acceding to the fact that the amendment has been taken care of.

**Hon. (Dr.) Simyu:** My amendment was covered by the Chair of the Departmental Committee on Finance, Planning and Trade.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Ugenya. He is not in the Chamber, though wishing to pursue the amendment. His amendment is dropped.

*(Proposed amendment by hon. Ochieng dropped)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 4 as amended agreed to)*

Hon. Members, this is the right time to recognize our visitors in the Gallery. I have the honour to introduce Kanini Kega Women Group. We also have Ngashiatira Women Group from South Imenti Constituency. We are unable to see these people. Unfortunately, Kanini Kega Group is seated behind the Temporary Deputy Chairman and I am unable to see my back.

*(Hon. A.B. Duale spoke off record)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): We are not going to do that, Leader of the Majority Party. Mover, do I hear you on intervention? Hon. Members, you look like you need a recess.

## PROGRESS REPORTED

### THE PUBLIC AUDIT BILL

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairman, we are tired.  
Hon. Temporary Deputy Chairman, the Committee of the whole House is considering the Public Audit Bill and has instructed me to report progress and seek leave to sit again on another day.

*(Question proposed)*

*(Question put and agreed to)*

*(House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Kajwang’) in the Chair]*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House is considering the Public Audit Bill (National Assembly Bill No.38 of 2014) and as instructed me to report progress and seek leave to sit again on another day.

**Hon. Ng’ongo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, the time being 6.30 p.m. the House stands adjourned until tomorrow, Thursday, 26<sup>th</sup> March, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.