

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Tuesday, 21<sup>st</sup> May, 2013**

*The Senate met at the Kenyatta International  
Conference Centre at 2.30 p.m.*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Mr. Ethuro): Order, Hon. Senators! Could we confirm if we have a quorum?

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have 19 hon. Senators present in the House. We have a quorum

**The Speaker** (Mr. Ethuro): Let us proceed.

### COMMUNICATION FROM THE CHAIR

#### CRITERIA FOR IDENTIFYING MARGINALIZED AREAS FOR PURPOSES OF THE EQUALISATION FUND

**The Speaker** (Mr. Ethuro): Hon. Senators, I have a communication to make on the criteria for identifying marginalized areas for purposes of the Equalisation Fund.

At the sitting of the Senate held on Tuesday 14<sup>th</sup> May, 2013, Sen. Musila rose on a point of order seeking a ruling of the Chair on matters concerning the Equalisation Fund. As hon. Senators are aware, the Equalisation Fund is established under Article 204 (1) of the Constitution. It says:-

“There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

Article 204(2) further provides that:-

“The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalized 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.”

Hon. Senators, as Sen. Musila observed, the Commission on Revenue Allocation (CRA) is mandated under Article 216(1) of the Constitution to make recommendations concerning the basis for the equitable sharing of revenue raised by national Government between the national and county governments; and among county governments.

In his point of order, he informed the Senate that the CRA had made some recommendations on the matter of the Equalisation Fund. However, these recommendations had not been received in the Senate. Sen. Musila further stated that the recommendations made related to the identification of the marginalized areas and amounts of money to be disbursed from the Equalisation Fund to each of the identified areas.

Hon. Senators, Article 216(4) of the Constitution says:-

“The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204 (2).”

In exercise of this mandate, on the 22<sup>nd</sup> February, 2013, the Commission published the criteria for identifying marginalized areas and sharing of the Equalisation Fund for the Financial Years 2011-2014.

Hon. Senators, it is important to distinguish the specific constitutional mandate of the Commission under Article 216(4) of the Constitution. Under this article, it sets out the criteria for determination as opposed to the general mandate of the Commission under Article 216(1) of the Constitution. Here, they make recommendations. Where the mandate extends to making recommendations pursuant to Article 216(5) of the Constitution, the Commission is required to submit their recommendations to the Senate as well as to the National Assembly, the national Executive, county assemblies and county executives. However, where the mandate is one of making a determination, the Commission is not required to submit its determination to any person or body for ratification. The determination as made by the Commission is, therefore, final.

Hon. Senators, it is, however, important to observe that although the mandate of the Commission under Article 216(5) of the Constitution extends to determining the criteria by which to identify the marginalized areas for purposes of Article 204(2) of the Constitution, the Senate, by its oversight role and, more so, as the institution charged with the mandate of protecting the interest of the counties, will be required to ensure and satisfy itself that, in making the determination, the Commission observed and remained faithful to the letter and spirit of the Constitution, including the requirements of the Constitution as to public participation. This oversight mandate may be exercised by the Senate in Plenary and also through its Committees, which are the more appropriate forum for detailed interrogation of such matters.

I would also wish to add that if Senators wanted further interrogation, it would have been easier if this Question was posed to the Chairs of the relevant Committees. But when you rise on a point of order to ask for the Speaker's Communication, unfortunately, you know the fate. Once the Speaker communicates, he may not entertain any other issues. So, you are at liberty to proceed if you needed further interrogation, but that is my finding.

Thank you.

*(Sen. Musila stood up in his place)*

What is it, Sen. Musila?

**Sen. Musila:** Thank you, Mr. Speaker, Sir. I stand here to thank you for the wise decision and communication that you have made to the Senate. You recall that I raised this matter in Mombasa and the Chair of the CRA actually said he has been waiting for the Senate, through the Committee, to call him so that he can generate discussion on this matter.

Mr. Speaker, Sir, arising from your ruling that the Senate has an oversight role in this matter and in view of the fact that the Equalisation Fund is to take care of counties that have been marginalized, will I be in order to ask that the Chair of the Devolution Committee takes up this matter immediately so that those Senators who may feel that their counties have been omitted and they have got grounds, they can air their view so that the CRA can further make another determination?

**The Speaker** (Mr. Ethuro): Indeed, it only follows, Sen. Musila, that from my communication, your next port of call is the Committees of the House. I, therefore, direct that this matter be considered by the Joint Committee of Finance, Commerce and Economic Affairs; and the Committee on Devolved Government and, further, that the Joint Committee reports its findings to the Senate within two weeks from today.

(Applause)

Next Order.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### APPROVAL OF MEMBERS TO THE PARLIAMENTARY SERVICE COMMISSION

**The Speaker** (Mr. Ethuro): Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No.40(3) and (4), the Clerk has delivered to me the following message from the National Assembly regarding the appointment of Members of the Parliamentary Service Commission (PSC). The subject of the Message is “Approval of Members to the Parliamentary Service Commission” and the content of the message is as follows.

Pursuant to the provisions of Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

THAT, pursuant to Article 127(2) of the Constitution, the National Assembly by resolution passed on Thursday 16<sup>th</sup> May, 2013, approves the appointment of the following Members of the National Assembly and Senators to the PSC.

(a) Under Sub-section (c)(i):-

1. Hon. Jimmy Angwenyi, M.P.
2. Hon. Regina Changorok Nyeris, M.P.
3. Sen. Beth Mugo, M.P.; and,
4. Sen. Sammy Leshore, M.P.

(b) Under Section (c)(ii):-

5. Hon. Adan Keynan, M.P.
6. Hon. Gladys Wanga, M.P.; and,
7. Sen. David Musila, M.G.H, M.P.

It is signed by Justin B.N. Muturi, Speaker of the National Assembly.

Hon. Senators, pursuant to Article 127(2)(c) of the Constitution, the seven nominees for the appointment to the PSC are to be appointed by Parliament, which means both Houses. Therefore, the approval of both Houses is required. The names of the seven nominees are now before the Senate for the consideration of the Senate.

Hon. Senators, indeed, the Senate has been waiting for that particular communication. Owing to the urgency of the matter, it is, therefore, necessary that it is disposed of without further delay.

Pursuant to Standing Order 40(6), I, therefore, direct that the Business be disposed of as set out in the Supplementary Order Paper which has been circulated.

Thank you.

*(Sen. (Prof.) Kindiki stood up in his place)*

What is it, Majority Leader?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I know you have just passed a message about the PSC. I just needed your clarification whether this is the right time for me to give the notice of Motion, or should I wait? This is because some of the requirements for notice were discussed at the Rules and Business Committee meeting where I was not able to attend. So, I need your clarification and guidance.

**The Speaker** (Mr. Ethuro): You are very right; go ahead and give notice of Motion.

## NOTICE OF MOTION

### APPROVAL OF MEMBERS TO THE PARLIAMENTARY SERVICE COMMISSION

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir.

I beg to give notice of the following Motion:-

THAT, pursuant to Article 127(2) of the Constitution, the Senate approves the appointment of the following Senators and Members of the National Assembly to the Parliamentary Service Commission:-

1. Sen. Sammy Leshore
2. Sen. Beth Mugo
3. Sen. David Musila
4. Hon. Jimmy Angwenyi
5. Hon. Regina Changorok Nyeris
6. Hon. Adan Keynan
7. Hon. Gladys Wanga

Thank you, Mr. Speaker, Sir.

**The Speaker** (Mr. Ethuro): Senators, as I said earlier, the Senators representing the Senate to the PSC were actually approved by the Rules and Business Committee at the same time when we approved debate on the Floor. You remember that you have debated and you have approved most of those Committees. You have even gone ahead to elect Chairs. So, they are up and running. We have dispensed with the requirements of giving notice and discussing the same Motion so that we prioritize and expedite this particular matter. So, that is why you have to look at the Supplementary Order Paper from that point henceforth.

Next Order.

## MOTION

### APPROVAL OF MEMBERS TO THE PARLIAMENTARY SERVICE COMMISSION

**The Leader of Majority** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move following Motion:-

THAT, pursuant to Article 127(2) of the Constitution, the Senate approves the appointment of the following Senators and Members of the National Assembly to the Parliamentary Service Commission:-

1. Sen. Sammy Leshore
2. Sen. Beth Mugo
3. Sen. David Musila
4. Hon. Jimmy Angwenyi
5. Hon. Regina Changorok Nyeris
6. Hon. Adan Keynan
7. Hon. Gladys Wanga

Mr. Speaker, Sir, as you have reminded the House, the PSC is not yet fully constituted. This House has already approved the membership of the other Committees. As you said, they are up and running. One of the most critical organs of this House, as Members would know, is the PSC, which is constitutionally mandated to take or, rather, to consider, determine and approve issues to do with the services and facilities available to Members of Parliament, either at the National Assembly or the Senate. So, we are happy that your counterpart at the National Assembly has forwarded to you the list that has come from that House. From this side, we already held discussions across the Majority and Minority parties and we have arrived at the names that I have just read out.

So, Mr. Speaker, Sir, without much ado, this is an appropriate time to speedily and quickly discuss and dispense with this Business so that the PSC, with all its representation, including the representatives of this House, can begin Business. This is coming at a time when the Senate is suffering tremendous disadvantage in terms of facilities, welfare, *et cetera*. So, putting in place or approving this composition, including the representatives of this House, will go a long way in making the Senate more efficient in terms of performing its constitutional functions.

Mr. Speaker, Sir, with those few remarks, I beg to move and request Sen. Kipchumba Murkomen to second me.

Thank you, Mr. Speaker, Sir.

**Sen. Murkomen:** Mr. Speaker, Sir, I stand to second this Motion. I think the seven hon. Members of Parliament, both of the Upper House and the Lower House, are men and women of tremendous capabilities. We know them as passionate people; they have passion to protect the interest of Members of Parliament. I believe that they bring in diverse representation, both in terms of gender, regional and ethnic balance.

Mr. Speaker, Sir, I do not want to spend more time because Senators really know that this institution needs to be up and running, particularly when it comes to the welfare of Senators. Senators are here, they do not have county offices or county facilities to enable them operate within the county. We are operating inside a makeshift building in the name of the Senate Chamber. Our offices are not yet ready. We are meeting our constituents or people from our counties in car parks and other places. So, I think it is only fair that we pass these names immediately and request our brothers and sisters who are going to serve us in the PSC to remember that they are our servants. Chapter Six of the Constitution says that they are going to serve us and the country.

So, Mr. Speaker, Sir, I beg to second this Motion.

*(Question proposed)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I support the Motion. The three distinguished hon. Senators proposed to join the team from the lower House, are men and a woman of great industry and integrity. They will join hon. Members nominated from the lower House. I have no doubt that hon. Musila, who has experience having served in the PSC before, will be able to articulate issues pertaining to the working capacities of hon. Senators. The three hon. Senators know the teething problems that we are experiencing. We have been unrepresented at the PSC since we started. We know our Clerk is the Secretary of the PSC. However, he is not there to represent the Senate. He is there to provide other services. Therefore, these three distinguished hon. Senators will carry forward our interests.

They know the physical sizes that hon. Senators represent and the facilities required for them to discharge their duties. There is need for the Senate to be empowered to discharge its functions as defined in the Constitution. We hope that the three colleagues will not be there as individual hon. Senators or representing their sides of this House. I believe they will be there representing the totality of the Senate and hon. Senators, so that we are able to function properly, effectively and to the satisfaction of the people of Kenya.

The PSC is our employer and is responsible for all manner of things that the Senate may require. We hope that their levels of advocacy will be to the best of their abilities and satisfaction of hon. Senators and the Senate.

Mr. Speaker, Sir, I beg to support.

**The Speaker** (Mr. Ethuro): The hon. Senator from Homa Bay County.

**Sen. Kajwang:** Mr. Speaker, Sir, ordinarily, this Motion is like a procedural Motion. Therefore, we should not be debating it much. However, I wish to utilize the chance you have given me to say one or two things. I wish to remind hon. Senators that the Senate and the entire House of Parliament is under attack from all corners of this

country. We expect that our employer, who looks after our welfare will protect us from onslaught, from some people who may not even know what we do here. Earlier, I talked to an outgoing member of the PSC. I asked him: “What is happening, we are being attacked from all over?” He told me: “Wait, because in a day or two, there will be a proper PSC and some of these things which worry us will be sorted out.” I am glad that this afternoon, we are in agreement that these ladies and gentlemen will defend and protect us, as any other employer would do. Nobody seems to speak for Parliament when we are attacked. We are being called “pigs” yet nobody seems to speak for us. We hope that the PSC will put in place an officer who can speak for us. If the hon. Speaker cannot speak for us, then somebody must do so. We cannot all speak for Parliament. We are over 400 hon. Members. I hope that we will get sufficient representation and defence from this august Commission.

I support, Mr. Speaker, Sir.

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

**The Speaker** (Mr. Ethuro): What is it, Senator for Laikipia County?

**Sen. G. G. Kariuki:** Mr. Speaker, Sir, I wish to seek clarification on the statement which has just been made by the two hon. Senators, that the PSC is our employer. This is not the case. We are approving the appointment of hon. Members to the PSC. The PSC then employs the workers. Therefore, we are not the employees of this Commission. I want you to clarify this matter.

*(Laughter)*

**The Speaker** (Mr. Ethuro): Order, Senator for Laikipia County! When you rise on a point of order, you do not do so to seek a clarification or address a matter. I was suspecting that maybe the Senator for Homa Bay County had breached some Standing Orders.

Secondly, you should have risen at the time when the one who actually made the statement, the Senator for Bungoma County, was on the Floor. So, on the basis of two accounts, you need to involve the appropriate procedure for us to deal with the matter. So, for now, it is disallowed.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir for giving me this opportunity to say one or two things on this Motion. I stand to support this Motion. I want to join my colleagues who have spoken earlier to say that it is high time that this particular Commission is up and about. It has been about three months since we were elected. Therefore, it is time that we formed this PSC, so that they can start their work.

I also join my colleagues in saying that the PSC is, indeed, our employer, doubling as our union. The hon. Senators that we are seconding to this Commission are like our unionists. They are the people who are supposed to defend our interests, to look into our welfare, remuneration, facilities and all the interests that we have. I had the privilege of being appointed to the task force that was appointed to look into the welfare of hon. Senators. We have had a series of meetings under the chairmanship of the Deputy Speaker, Sen. Kembi-Gitura. We have come up with many important proposals to enable hon. Senators to deliver effectively and adequately on their mandate.

It is unfortunate that the Salaries and Remuneration Commission (SRC) equated us to hon. Members of the National Assembly. We are trying to show that there is a difference between the hon. Senators and hon. Members. Our job description is not the same. Therefore, we cannot be equated to hon. Members.

We have come up with many recommendations which we will soon hand over to the Rules and Business Committee. I urge the three hon. Senators, who are joining the PSC, to find time and meet the task force, so that we take them through the recommendations that we have come up with and what informed the particular recommendations.

Mr. Speaker, Sir, I wish the hon. Senators well. I am a 100 per cent sure that we have picked a good team. Thank you.

**The Speaker** (Mr. Ethuro): Let us get the final contribution from Sen. Obure.

**Sen. Obure:** Mr. Speaker, Sir, I support this Motion. There was a time in this country when the work of Parliament could not be separated from that of the Executive. In fact, the Legislature and the Executive was one and the same thing. Since the establishment of the PSC, we have seen significant difference. The institution of the Legislature has become independent.

I have looked at the names of hon. Senators who have been proposed as listed in this Motion. These are quality people who will enhance the work of the Commission. I urge them, as we support them to join this Commission, to ensure that the Legislature becomes stronger, that the welfare of hon. Members and hon. Senators is taken care of, so that they are facilitated to perform effectively and represent the electorate. I am confident that there is quality and capacity in these hon. Members and hon. Senators. I wish them well.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Mr. Ethuro): Hon. Senators, I will now proceed to put the Question. Please take note that this is a matter where every hon. Senator, elected or nominated, has one vote. It is not a matter affecting counties. I will, therefore, put the question in the general way.

*(Question put and agreed to)*

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

**The Speaker** (Mr. Ethuro): What is it, Sen. Musila? As Sen. Musila raises his point of order, I want to agree with the suggestion by Sen. Khaniri. Indeed, the Deputy Speaker has already brought the report of the welfare committee to my office. We will invite the approved Commissioners to have a look at it. We will give them a mandate to take forward in addition to other actions that we will use for that report.

Proceed, Sen. Musila.

**Sen. Musila:** Mr. Speaker, Sir, on behalf of my colleagues, Sen. Mugo and Sen. Leshore, I stand here, with a lot of humility, to say that we accept the nomination that the Senate has given to us. On their behalf and my own behalf, we pledge that we will work to the expectations of the Senate. I do not want to say much, except to thank hon. Senators for bestowing this honour upon us. We know that it is an enormous responsibility, especially at this time. As Sen. Kajwang said, Parliament is under attack.



We will rely on hon. Senators as a group and as individuals, to give us the issues that they would like us to pursue and raise in the Commission. In this connection, we are willing and ready to receive the report from the welfare committee.

**The Speaker** (Mr. Ethuro): Sen. Musila, I wish to remind you, in the words of the Senator for Homa Bay County, that you should be “the protector, defender and advocate of the Senate.” In the words of the Senator for Bungoma County, that “you will be up to the task” That should be part of your brief.

Next Order!

## BILL

### *Second Reading*

#### THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.1 OF 2013)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move that the Division of Revenue Bill, (National Assembly Bill No.1 of 2013), be now read a Second Time.

This Bill was brought to this House after an agreement was struck between the National Treasury, the Commission for Revenue Allocation (CRA) and the Transition Authority (TA). After consultations, an allocation of an amount totaling to Kshs210 billion was arrived at. This amounts to 34.5 per cent of the most recent audited revenues. This allocation was given to the counties in accordance with the requirements of the Constitution.

Mr. Speaker, Sir, I wish to make a few comments regarding this Bill. Out of the Kshs210 billion that has been allocated to counties, Kshs190 billion constitutes the shareable revenue. This is equivalent to 31.2 per cent of the most recent audited revenues, approved by Parliament. These are revenues of 2010/2011, which was about Kshs608 billion. The Constitution requires that in allocating the shareable revenue, the most recent audited revenues approved by Parliament be used. That is why this was resorted to. This is more than twice the constitutional requirement of 15 per cent. As you can see this is a great effort by the Government to ensure that it discharges its obligations to support devolution, not just in theory, but also in practice. The Constitution says that “at least 15 per cent.” Here, we are talking about 31.2 per cent. This is something for hon. Senators to note and appreciate.

Mr. Speaker, Sir, there is a further Kshs20 billion that constitutes conditional allocations from the national Government. In accordance to Article 222 of the Constitution, the national Government may make conditional allocations. This has been done up to the tune of Kshs20 billion. This constitutes two segments; Kshs3.4 billion to support level five hospitals at the county level and a further Kshs16.6 billion in terms of loans and grants, which are commitments that the Government has entered into with donors for these purposes.

Mr. Speaker, Sir, secondly, the allocation of Kshs210 billion includes both Recurrent and Development Expenditures. Again, this House should note and appreciate that the Constitution requires that the balance between Recurrent and Development

Expenditures be in the ratio of 70 to 30 per cent. At least 30 per cent of the revenue should be used for development purposes. What the Jubilee Government has proposed, is to provide for this at a ratio of 50 to 50 per cent. The balance between Recurrent and Development Expenditure is almost equal. This, again, is way above the required legal threshold of a ratio of 70 to 30 per cent.

Mr. Speaker, Sir, thirdly, resources from the Constituencies Development Fund (CDF) that were financing functions devolved to county governments have been included in the Division of Revenue Bill as well as the County Allocation of Revenue Bill. I want to clarify that we already know that there is a 2.5 per cent allocation towards the CDF under the new CDF Act. The Government has proposed another allocation, over and above what is allocated to the regular CDF as stipulated in the Act, at a level of 2.5 per cent. If you total the allocation to the CDF from the national Government, it comes to five per cent. Of course, hon. Senators note that there is ongoing debate between constitutional organs and the national Assembly on the possibility of channeling the entire CDF component through the county governments.

The Commission for the Implementation of the Constitution (CIC) has already taken a position on this matter. As Government, we feel, subject to the approval of the relevant Houses of Parliament, that the entire CDF should be channeled through county governments. This is one point that the Chair of the CIC is totally correct on. The allocation in the CDF Act is made under Article 202 of the Constitution. That Article says that such conditional grants must be channeled through county governments. But that is something whose discussions are ongoing. However, over and above the regular 2.5 per cent to the CDF, the Jubilee Government is proposing an additional 2.5 per cent to be channeled through county governments.

Mr. Speaker, Sir, I also wish to bring to the attention of this House that, in the past, there were a bit of discussions between the CRA on one hand and the national Treasury on the other. These discussions were misunderstood by many Kenyans and even the Legislature. That difference has now been harmonized and they are now working together. They have agreed on the contentious issues that were separating them. If hon. Senators recall, the Deputy President organised a joint discussion between the two organs and an agreement has been arrived at to that effect.

Mr. Speaker, Sir, this Bill contains figures that have been arrived at after a lot of consensus. We are also talking about allocations which are way above the minimum requirements of the Constitution, both in terms of the money that goes to counties and also in terms of the CDF allocations, as I have mentioned. Therefore, the question to ask is: "Does the total county allocation of Kshs210 billion meet the constitutional or legal requirements? Yes, it does, for three reasons.

First, it should be noted that the proposed county equitable share of Kshs190 billion is 31.2 per cent of the most recent audited revenues approved by Parliament which is more than twice the constitutional minimum requirement of 15 per cent. Yes, this allocation meets the constitutional and legal requirements. The criteria with regard to the allocation of Kshs210 billion set out in Article 203(1) of the Constitution have been taken into account fully.

I want to provide information that one of the issues that have brought a bit of understanding between the Commission on Revenue Allocation (CRA) and the national

Treasury is that, the figures that the CRA was working on and their proposals may not have been in accordance with the criterion set out in Article 203(1) in terms of giving out allocations. That has been harmonized. I want to give an assurance to this House that the entire process of allocating funds between the national government and county governments provided for under Article 203(1) has been met fully.

Thirdly, the allocation of Kshs210 billion to the counties meets the constitutional and legal requirements because the allocation is consistent with the balanced fiscal framework as set out in the Budget Policy Statement submitted to Parliament in April 2013. Therefore, this complies with the fiscal responsibility principles set out in the Public Finance Management Act of 2012.

In a nutshell, we are presenting to this House a Bill which complies with the Constitution of our country, over and above what the Constitution requires. We are also bringing; before this House, a Bill which complies with other legislations, in particular, the Public Finance Management Act of 2012. We are also presenting to this House a Bill which is a product of extreme or absolute consensus even before arriving before the Senate. That does not mean that Senators will not have a job to do. They will have a job to do because this House is not a rubber stamp. This House is there to do justice. The only request I will make to hon. Senators is that whatever suggestions, amendments and variations we suggest must be governed by an understanding that the Jubilee Government has gone overboard, not only in creating consensus, but also in making very generous allocations.

Secondly, I think we should also be guided by the national interests because we are here to protect national interests. Therefore, as much as we provide input and debate on this Bill, we should be guided by the national interest.

I know that I have a lot of time, but I do not want to proceed further. I prefer that my time be taken up by a more qualified person in this subject matter because in the new order and scheme of doing things, Chairs of Committees are playing critical roles. When they come from the Majority side, we can say that technically, they are *defacto* Ministers because Cabinet Ministers no longer sit in the House. For the remaining time, I want the highlights be done by a more qualified person.

With those remarks, I beg to move this Bill and request Sen. Billow Kerrow, Senator for Mandera and Chair of the Finance, Commerce and Economic Affairs Committee of the Senate to second this Bill.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I stand to second the Division of Revenue Bill that is on the Floor of this House. This is the first such Bill that this Senate is dealing with since the promulgation of the new Constitution in 2010. It is a very important Bill because it lays the precedent for the future allocation of revenue between the national Government and the counties. This is one of the most important roles of the counties.

Indeed, in the Constitution, the single most important role of the Senate is to protect the interests of the counties. There is no greater way of protecting the interests of the counties than to review this Bill thoroughly and pass it, taking into consideration the interests of the counties. This Bill is, indeed, the lifeline of the counties because it is the one that provides the revenue. For most counties, the total revenue that they can generate is the national revenue that is being shared out by the national Government.

The national revenue being shared out is what is generated across the country. The national revenue is generated out of taxes like the Value Added Taxes (VAT), duties paid, income taxes and all other taxes paid by Kenyans across the country. As you take a bottle of water in this House, you will realise that some VAT has been paid on it. That is part of the national revenue that this Bill seeks to divide. Therefore, the Bill is very important because it seeks to divide that national revenue between the national and county governments.

After this Bill is agreed upon and passed, it will also form the basis of what will go out now to the counties and what will be given out to the counties under the subsequent Bill; the County Allocation of Revenue (CAR) Bill.

The Bill talks about three objects. One is the equitable division of revenue raised nationally. In other words, there is a shareable amount of revenue that will be shared out in accordance to Article 203 of the Constitution. The second part is about drawing of unconditional grants which the Constitution provides for. From the share of revenue of the national governments, there will be grants that the national government will give to the counties, conditionally and unconditionally.

The third aspect of the Bill is about financing of the continuing services that some counties have been providing in the past. Those services must continue to be provided. In other words, the fact that services have been devolved to the county governments does not mean that those services should cease to be financed and it is up to the county governments. What the national government should do, which this Bill seeks to provide, is for funding to ensure that all the services that residents of counties are enjoying now continue to be enjoyed in the future.

The basis for determining this revenue is provided for in the memorandum to the Bill. The memorandum to the Bill provides for a number of things which are very important for Senators to note. How is the county governments' equitable share arrived at? The memorandum gives the reasons. I will very briefly highlight that.

First, this is done by determining the costs of the outgoing functions which have been assigned to the county governments. We know that in the Fourth Schedule of the Constitution, a number of functions have been assigned to the county governments effective July this year. Those functions have been costed out by the Treasury. That is one of the factors that have been used in determining the revenue that the Senate Majority Leader referred to. The second item that they looked at is the cost of county governments' administration. This includes the cost of running the county administration; in other words, the personnel costs; the County Executive, the County Assembly Members and all the people who will be hired by those institutions.

Thirdly, it also looks at the cost of managing the County Public Finance. You will appreciate that the Transition Authority posted county treasurers and chief finance officers to the counties to look at the finances on interim basis. Those costs have also been included. The County Public Service Board finances have also been included. Lastly, as part of the conditional grants they have also provided for projects and programmes that have been financed by loans and grants as well as what is referred to as regional referral hospital.

There is a matter that I need to talk about which is very important in determining this cost. The Transition Authority (TA) is required to carry out a very important exercise

of assessing the functions that have been devolved to the county governments. It is after that assessment of all those functions that the Treasury can also put numbers and costs to this function. We understand that the TA is still working hard to complete the functional assessments. However, the Treasury has gone ahead and done the cost of the functions based on what the functions cost in the past. So, it is very important to know that consequently, the Treasury has admitted that there is a possibility that some of the counties may not fully cover the entire services they are providing now from the money that will be allocated. This is because of the formula that is being used to allocate money to the counties. Owing to that, the initial Bill, not the one that has been submitted from the National Assembly, you will appreciate has a reference to holding counties harmless. In other words, some counties have services and functions which other counties do not have. For example, if you go to Kisumu, you will find the Ministry of Fisheries Development. You will not, probably, find the same Ministry in Mandera County. There are many examples of that nature. The national government has been financing those institutions in those departments in the past. Some of those functions have been devolved. So, there is likelihood that some of those counties may not get enough money based on that formula. Owing to that, they provided for some funds. After the discussions between the CRA, the Treasury and the National Assembly, the provision they originally made; funds for holding counties harmless or providing funds to ensure that residents continue to get services that they are getting were included in the shareable revenue and shared out.

In this regard, our Committee did, in fact, have a meeting with the Treasury and the Cabinet Secretary has undertaken to come back to us on this matter before this Bill is finalized tomorrow.

Mr. Speaker, Sir, the point that has been mentioned earlier by the Senate Majority Leader is that the total amount of money that this Bill seeks to allocate to the counties is Kshs210 billion, which represents 32 per cent of the national revenue. We also know that according to the Public Finance Management Act, this is based on the last audited accounts, which is, 2010/2011. That was a figure of around Kshs600 billion. We know that revenue today, in the estimated Budget for the coming financial year, is expected to be almost Kshs900 billion. This means that, going forward, whatever is going to be allocated to the counties is expected to increase annually. There is not a time that we expect that the revenues that will be allocated to the counties will go down. In this regard, we will, as a Committee, propose amendments to the Bill, specifically on Clause 5, that seeks to share any shortfall in revenues if they arise. This is because in our contemplation there should not be any shortfall.

Mr. Speaker, Sir, the other important point that I need to mention with regard to this Bill is that the Senate has the singular mandate of ensuring that the interests of the counties are served. But in serving those interests, we should also be concerned or alive to the fact that whatever money is approved here for the counties, when it gets to the counties, must be used properly. Now, the beginning of that will be the Budget preparation. We have raised concern with the Treasury, that the counties may not have been well prepared in terms of preparing the budgets for the next financial year, based on this. What is happening is that before we have even passed the Bill which will allocate the revenue for the counties, the county governments have already prepared budgets

based on this national revenue that we are allocating. So, you will find a situation where counties have already prepared their budgets and some forwarded them to their county assembly. The risk is that because the budget that they have prepared is based on the initial recommendation of the CRA, several of these counties will actually have a deficit in their budgets. In other words, the amount of money that they will actually get from national revenue will not be enough to finance the projects that they have planned for.

Mr. Speaker, Sir, again, the second point of concern is that some of the county governments are not conscious of the functions that have been devolved to them. So, you will find a situation where counties have budgeted for functions which are not within their mandate, but that of the national Government. This is fairly common. We read about it everyday in the newspapers. Unfortunately, because of the teething problems and time constraints in which all these things came up, there are questions of capacity. Therefore, some of the counties have not taken time to really appreciate that some of the provisions that they are making in their budgets, do not actually relate to the county. So, it is important for the Senators also to advise their county governments not to budget for anything outside their mandate. What is for the national Government is for the national Government. The money that is being allocated here is for the functions that are to be devolved, effective from 1<sup>st</sup> July, 2013 and provided for in Schedule Four of the Constitution.

Mr. Speaker, Sir, again, it is very important for these county governments, in addition to the issue of the budgets, to also appreciate that although the Constitution provides for county governments to borrow, there are specific criteria that are required within the Public Finance Management Act. That is not really easy for the counties. The CRA has, indeed, advised the county Governors in a recent meeting, that in the first three years of this county administration, counties are encouraged not to borrow loans to finance their programmes. This is because if you get into loans, the question of sustainability will come up and future revenue allocations will end up in loans.

Secondly, the capacity of managing those loan portfolios for counties that are still very young and do not even have the capacity is a challenge. So, again, that is a matter that we should be very conscious about. I know that there are a number of counties that are thinking of that and we should be very conscious.

Mr. Speaker, Sir, the CRA has also done a wonderful job. In fact, they stand to be commended. They have done the assessment and a very good recommendation on what, in fact, these county governments should get out of the national revenue. We are conscious of the fact that the total public expenditure in the next financial year is expected to be Kshs1.64 trillion. Out of that Kshs1.64 trillion, what the Bill recommends should go to the county governments is Kshs210 billion. So, it is not surprising that the very able Chairman, Mr. Cheserem, at every opportunity, has been urging the Members of the Senate to ensure that counties get their fair share of this revenue.

Mr. Speaker, Sir, it would be fair also to mention the concerns that have been raised by the national Government, specifically the Treasury when we had a meeting with them on this Bill, so that Members are also in the picture. The public expenditure of Kshs1.6 billion that I have referred to does include some of the national obligations that have to be paid. For example, servicing of the public debt, which in the next financial year is expected to be almost Kshs400 billion. This is the principal plus interest payments

for debts. One of the things that we have really impressed upon the Cabinet Secretary for Finance this morning is that following the assignment of the functions to the counties, we do not wish to see a Ministry that will retain those functions and, therefore, the money relating to those functions. We have examples. If you look at Schedule Four, you will find that the functions that have been assigned, particularly in the Ministry of Health, Ministry of Agriculture and several other Ministries, are very wide actually. So, when these functions have been assigned to the counties, we do not expect Ministries to try and retain those functions and the resources that are tied to those functions. So, we have urged the Treasury to sit with all the Ministries and find out which functions have actually been assigned and whether the resources relating to those functions have actually also been assigned, so that we do not have Ministries still retaining what is not theirs; the same way we do not expect counties to also do functions that are not theirs.

Mr. Speaker, Sir, I want to conclude by saying that this is a very important Bill. It marks a watershed in determining how revenues will be allocated between the county governments and the national Government. I appreciate that the Constitution talks of a minimum of 15 per cent. This Bill actually provides up to 32 per cent. We have challenges on the ground in our county governments. Indeed, we have to admit that capacity problems are there. The county governments may not have all the staff since the public service boards are just being set up and they have to recruit the whole team that will manage all these resources that are going to be sent after the financial year. But it is important that we protect the implementation of the Constitution. The Constitution requires that those county governments be given funds in the manner that is being recommended in this Bill. Therefore, I want to urge all Members of the Senate to, as much as possible support this Bill and ensure that our counties do not actually fail. If you are given functions without the commensurate resources, you are being set up to fail. If you are given resources and not the manpower, capacity and training, you are set up to fail. In fact, when we come to the allocations to the counties, we will be delving more into that subject. But it is important to note that we have to set the threshold. The threshold of 32 per cent, in my view, is not a bad beginning. However, we must fight to ensure that county governments are entrenched and get their allocations and the Constitution is respected. I think that this is a very important beginning and I want Members to support it.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**The Speaker** (Mr. Ethuro): Hon. Members, I just want to clarify that, yes, we are debating the Bill, but the format in which we are doing so, is through a Motion. So, we have a Motion before us.

**The Senate Minority Leader** (Mr. Wetangula): Mr. Speaker, Sir, I will be very brief. I support the Motion.

Mr. Speaker, Sir, one of the most difficult tasks to execute in meeting the expectations in devolution lies and will continue lying in how the revenues are divided. There will always be the tussle between the national Government to withhold more and the county governments to want more. In doing so, I think that the role of the CRA

becomes very critical. Listening to the Chairman of that CRA, I think that there is a lot of hope. I would urge that the CRA joins the Senate in being one of the defenders of the interests of devolution and giving devolved units sufficient funds. The Committee on Finance, Commerce and Economic Affairs has engaged several of these Commissions. It has come out quite clearly that, indeed, the proposed allocations need to be amended upwards. I am happy that the Chair of the Committee has already sounded notice that he will be moving an amendment that will be absolutely helpful; for the reason that the devolved units that we are trying to share revenues between the national Government and themselves, are in very early stages of infancy. The Constitution has offloaded quite heavy responsibilities to these units. I am happy that the Cheserem Commission did not limit themselves to the constitutional threshold at the lower level, but have gone much higher; almost doubling the threshold. However, we still think that, that is not enough.

Mr. Speaker, Sir, as we share out these revenues, one of the issues that I agree with the Chairman of the Committee on, is the need to very quickly build the capacities of the devolved units, so that they are able to discharge their responsibilities to the public fully.

Mr. Speaker, Sir, you will find that officers have been offloaded from the national government to the county governments. In many ways, the national government will not offload the very best they have. So, there is a risk of offloading persons who should actually be having an exit, to go and lord it over the county governments. It has been stated to the Committee, and I hope that as a House charged with oversight, we will continue reminding the county governments that those officers seconded to them are purely transitional. They reserve the right to competitively recruit staff of their own to be able to execute their mandate.

Mr. Speaker, Sir, I do not understand why conditional allocations to counties should be counted as county revenue because that money remains the money of the national government. It is given to the counties on conditions. If they cannot meet their needs, then they do not use the money. So, the funds being given to the county governments should exclude that figure that is a conditional allocation.

As we go through these primary stages of giving effect to counties, I was a bit disappointed by the casual manner in which a body called the TA is taking its duties. Money was set aside to help counties that do not have infrastructure start up. We were told very moving stories of the sorry state of Nyandarua County whose entire headquarters and county facilities are in Laikipia County. So, they need to have a start up, but the TA curiously decided that the money available, that is, Kshs3.2 billion, should be spent like this; it is not known how the Kshs300 million was spent, but the remaining Kshs2.9 billion was divided equally between counties. The needs of Homa Bay are not the needs of Nairobi. The needs of Mombasa are not the needs of Wajir or Mandera. You cannot just give across board Kshs2.9 billion. If you ask them how it was shared, they will tell you that Governors insisted. There is no provision in law for Governors to insist on anything. It is either being shared within the law or in violation of the law. When we have bodies like that which are not being run to our expectations, then the very revenues that are supposed to help the counties to start up, end up being misapplied, misallocated and eventually we shall have a county with enormous facilities like Nairobi here competing for the pittance that Nyandarua requires to liberate itself from Laikipia. This



is not an affront to Laikipia, but a historical anomaly and which everybody knows, I am sure.

Mr. Speaker, Sir, I also know that we are going to have the Bill on Revenue Allocation, but as we deal with division, I think our Committee should help the clownery of Senate in analyzing those functions that are with the national Government and have been transferred to the county government and are continuing retaining and attracting resources at the national Government and which must be rationalized. For example, agriculture, water services and so on are moving to the counties yet a casual look at the Budget indicates that the Ministry of Devolution is choking a whopping Kshs68billion. Even assuming that the Constituencies Development Fund (CDF) is part of that money and even assuming that each constituency is getting Kshs100 million on CDF, that is only Kshs20 billion. The rest of the money must be devolved to the counties. We do not want devolution where the centre continuous micro-managing the counties in service provision and delivery. The counties only stand to deliver services and show the public that devolution is, indeed, attractive and beneficial if they get enough resources. So, I want to urge Cheserem and his team and also the Senate to continue taking into account the interests of the counties by asking for more and more resources.

In this country, apart from security, education chokes a very heavy share of our revenue. Contrary to our expectations, you can see pre-primary education is still with the counties. There is a definition of roads as county roads. Nobody has ever sat down to say which is a national road and a county road. We have roads criss-crossing everywhere from one county to another. If we are talking about county roads, are we enabling counties with enough revenues to undertaken tarmac roads in their counties? The funds we are giving are not enough. So, we will rely very heavily on the work of the Committee when we go to the Committee stage to assist the Plenary to make sure that our counties are well catered for.

Mr. Speaker, Sir, lastly, even as we have a formulae that was approved by Parliament, a casual look again indicates that the formula is not being followed to the letter, but that is for the next Bill. I encourage hon. Senators to look particularly at their counties considering their special and unique features on population, size, levels of development and so on. You will find that some counties do not even need half of the revenues, but they are given more. Those ones which require much more are given very little. What we should not rubber stamp--- I am not talking about Mt. Kenya, Mr. Kembi-Gitura. I am talking about counties.

**Mr. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. You need to protect me from my friend, Sen. Wetangula. I did not refer to Mt. Kenya at all. We are discussing national issues here. We might lose track if we do not look at issues seriously. When you keep looking at Mt. Kenya and other regions instead of looking at real issues, that is where you miss the point.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I am sure you can protect me because I was not referring to any region. I was simply talking about the counties that may not be looked at favourably by those who are distributing funds. Even Sen. G.G. Kariuki here from Laikipia requires money to protect that county from the cattle rustling menace and so on.

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

**The Senate Minority Leader** (Sen. Wetangula): I am just making my final statement.

**The Speaker** (Mr. Ethuro): Order! You are seeking for protection and you not even willing to receive it. You are protected by the Chair because you never used anything against any county, including when the Senator for Murang'a talked about you facing Mt. Kenya. You have just been in this room and there is no---

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, you should be eternally blessed for protecting me. We have a saying in my language that says when there is a dog that steals, when you raise a stick, it starts crying before you do anything.

With those few remarks, I beg to support.

*(Laughter)*

**The Speaker** (Mr. Ethuro): Sen. Murkomen.

**Sen. Murkomen:** Mr. Speaker, Sir, I rise to support this Bill. This is a very important Bill, being the first Bill that we are debating since we became Senators and since the Senate was re-established. I want to comment the Jubilee Government for doing the best and showing their ambition in their manifesto that says that they will raise the revenue allocated to counties up to 40 per cent in the next five years. It is commendable that they have started with 31.2 per cent or thereabout. It is important to note that these resources are necessary to ensure that counties start with a big bang. The Constitution, in the Sixth Schedule provides that in devolution, there is a possibility of functions and resources being phased out, but this Government has gone out of its way to do a big bang devolution. That means that all the functions are being allocated to the counties at once and the resources necessary to ensure that those counties are performing their functions are being allocated. So, it is commendable that the Ministry of Finance or Treasury and the Jubilee Government are doing such a good job.

Mr. Speaker, Sir, it is also important to note that the amount of resources being allocated takes into cognizance the requirement that no county should be harmed as a result of devolution. As a result, an attempt was made to ensure that counties are held harmless. However, as we shall demonstrate tomorrow, as a Committee, that is, the Committee on Finance and the Committee on Devolution, there are still some counties which are going to be harmed if the process is going to be implemented. One of those counties is Elgeyo-Marakwet where I come from. There is a deficit in terms of allocation to ensure that the functions that are being performed by the county are achieved. The other counties are Mombasa, Nairobi, Nyeri, Kisumu, but I am not sure about Bungoma. I will cross-check.

It is important to note that although Treasury has said that it has done costing on the functions, there is still confusion in terms of how that costing was done. We, as a Committee, had a chance to interact with the Transition Authority officials on matters of devolved governments. One of the things we asked was the progress in terms of costing of functions. We realized that nothing much has been done by the TA. Treasury is using historical costs in terms of how functions used to be run in various districts compounding them together and getting a basis. It is important to have that historical basis, but it is not enough.

Mr. Speaker, Sir, I want to urge the Government to go further and support the TA by doing two things: First, the unbounding of functions. This means that there must be a clear definition in re-looking at the functions themselves and for the Government to tell us; when they say “referral hospitals” or when you allocate a function like the provincial hospitals to a county and give a grant to support that function, are you trying to say that that function should have been a function of national Government? What defines what a referral hospital is? What defines how to graduate a county hospital to a referral hospital? Does it depend on the person who built it or the size of the hospital? That is important because the Constitution provides that resources will follow functions.

If the functions are not defined well, we will have a situation which will be very difficult. Members of the public who came to talk to us were saying that it was even more difficult for them to interrogate the Budget because there is no clear basis of saying that this function is costing this much and this function has been allocated to this level. For example, when you look for money for disaster, there is no clear definition as to what is a county disaster. Is a landslide in Kerio Valley of Elegeyo-Marakwet County a county disaster or a national disaster? If there is drought in Turkana, at what magnitude can you say that, that is a county disaster or a national disaster and when do you require national intervention and when do you require county intervention?

So, it is important that this exercise is done and taken seriously. We also established that the TA, in its mandate to allocate resources for initial infrastructure for counties--- There are many counties which do not have the basic infrastructure for the county government to operate. I visited the county the other day and the Governor is operating in a small corner of a squeezed office. I was also looking for a small office for myself and I could not find it. So the Governor told me that anytime you come to the county, you can come and sit at one corner of my office. So the boardroom and the main office is in one place. We were told the same story about Tharaka-Nithi County. We were told the same of Nyandarua County which is administered from another county. To avoid such a situation, the county government has hired a church. So, they are sharing a church building with the Bishop.

Mr. Speaker, Sir, when we asked the TA how they shared out resources which were given to them, which were supposed to be shared out equitably, they were not able to tell us how they came up with Kshs61 million for every county. It is important going forward that, again, the structure and the process of allocation of such resources is defined. The question of un-bounding of resources is also important of staff. There are staff who were seconded to the national Government to work from the county like the Agriculture Extension Officers, health officers and nurses. A clear identification of those functions and resources and the resources allocated to the counties is important because we will be able to know how much will be Recurrent Expenditure in the county and how much is Development Expenditure.

Mr. Speaker, Sir, the other issue which is very critical is debt sustainability. I support this Bill to the extent that we also need to support counties to ensure that they are not going to travel out of this country to look for loans. We were told that in some of the counties, the Governor is out of the country looking for loans or persons to grant them loans without appreciation of the fact that loan management is a function of the national Government and is supposed to be guaranteed by the national Government. We might

find ourselves in a very awkward situation if you have a county that has a budget of Kshs15 billion and you only allocated it Kshs5 billion. The counties will borrow; but even if they do not borrow, they will be unable to deliver their services. When they are unable to do so, we will say that they have failed and, therefore, will now be managed by the national Government.

So, it is important to ensure that the resources that come from loans and grants are distributed across the country so that there is fairness and so that you have a project in Samburu County equivalent to a project being done, perhaps, in Nakuru County or any other county where loans have been allocated from foreign resources. It is unfortunate if Turkana County, for example, is to repay a loan that has only been used in Nairobi County. It will be important that that distribution is fair. That is what we have requested the Treasury to give us clear information on. Even going forward, we want to know the resources that are being administered by the national Government at the county and how they are being distributed across the country.

Mr. Speaker, Sir, we have a problem with capacity in the counties. Our counties have serious capacity problems when it comes to budgeting. The Treasury is expected to assist them in the process of building capacity. The counties are budgeting for functions that are not even allocated to them in Schedule Four. Without mentioning counties, we would find that the first priority of some counties is to build a Kshs1 billion airport. Some counties have allocated resources in building secondary and primary schools while we know that the resources given to them were not meant for that because education is a national function, except the ECD. There is a particular county that has put aside Kshs200 million to build secondary schools. Others have put Kshs50 million into health sector. So, these are serious capacity problems. You have projects that are planned by the Governor to take about five years, but the county executive has locked those resources for only one year. So, it means that instead of benefiting or pro-rating the budget over four or five years, they lock their money for the whole year. They say: "This year, we will build the airport and next year we will see how much we will allocate to health sector and other services."

So, I think these capacity problems are going to impede devolution. That is why in our two committees we agreed to have amendments which will ensure that the Senate will have the opportunity to look at all the budgets across the country. This will ensure that this House plays its important role.

Lastly, although I support the Government for allocating such necessary resources to the counties, I still think Kshs210 billion is little. That is where I disagree with the Senate Majority Leader. I believe that this House, being the guardian angel of devolution, must follow the recommendation of CRA and increase the allocation to the counties to Kshs238 billion. There is even a more ambitious proposal which was done by the Senator of Nyeri County. I am sure at the opportune time, he will say it. He is proposing about Kshs278 billion. We will have done two things if we do so. We will have played our role in protecting devolution. We will have ensured that the resources go where social economic functions are being performed under Article 43 of the Constitution. That will be the first priority.

The sum of Kshs210 billion is just a mere proposal by the Lower House. At this stage, it is important for this House to pronounce itself on the actual and necessary

resources that will protect devolution. We appreciate what the Lower House has done after they negotiated with the Executive. However, when the time comes for amendments, we must send a clear message that this House is ambitious because it is a protector of devolution. It will also assist the Jubilee Government to achieve its ambitious plan of going for 40 per cent and above within or even before the completion of the five year period.

Mr. Speaker, Sir, as a firm believer in the Jubilee governance and devolution, I propose that, at the opportune time, the resources be increased to ensure that devolution is well protected in this country.

With those few remarks, I support this Motion.

**Sen. Kanainza:** Thank you Mr. Speaker, Sir, for giving me this opportunity. I have gone through Article 202 of the Constitution and also the Bill that has been brought to the House. The matter before the House is a matter of constitutionalism. It is a matter of national importance. We, as the Senate, should be the people to advocate for the success of devolution. If there is failure, Kenyans will blame us for it.

To me, a sum of Kshs210 billion is not enough because we are dealing with livelihoods of the Kenyan people. It is a matter about provision of health services to our people at the county level. It is about the provision of food security, commerce and trade. It is about the commitment of leadership in the counties and the betterment of the lives of Kenyans.

We must all understand the functions and activities of the county governments as stipulated in the Constitution. As I said, the Kshs210 billion allocated to county governments is not enough to deliver services to our people at the grassroots level.

Mr. Speaker, Sir, the Constitution is clear that each functions must be funded. We all know at the county level, there is no delivery of services. For example, most roads are in pathetic condition. There is need to do classifications of all our roads. A lot of health facilities are non-functional.

Early Childhood Education (ECD) is a function that will be fully managed by the county governments. In the past, the national Government did not support it.

When I talk about the health function that has been brought down to the county government, Kakamega County has more than 261 health facilities. Kakamega Provincial General Hospital will function as a referral hospital. But it has only been allocated Kshs4 million. This money is not enough. It requires more than Kshs1.1 billion to be able to deliver its functions. The allocation for Kisii Level Five Hospital, Kiambu Level Five Hospital and Mama Lucy Hospital in Nairobi County is based on the current standards.

This money should be increased. I support the Motion with an amendment to replace the Kshs210 billion to Kshs238 billion.

**The Speaker** (Mr. Ethuro): Order! That is not the way we bring amendments.

**Sen. Kanainza:** Mr. Speaker, Sir, what the Treasury has allocated to county governments is paltry or token. We, as the Upper House, must demand for an increase. We must protect the devolved governments in this country because we have no choice, to the echo sentiments by His Excellency the President.

I would like to support the Motion with an amendment. I propose that where we have Kshs210 billion, it should be replaced to Kshs238 billion.

Thank you.

**The Speaker** (Mr. Ethuro): Sen. Daisy, your issues are valid. But in terms of procedure, you may need to consult Sen. (Dr.) Bonni.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. When you refer to Sen. (Dr.) Khalwale, you should not call him Sen. Bonni. She is also not Sen. Daisy. I think if you are on first name terms, it should apply generally then we know from which---

(Laughter)

**The Speaker** (Mr. Ethuro): Sen. Orengo, you are completely out of order. You need to appreciate that the Chair has a bit of limitations in appreciating the full names of the new Senators. But for the old bull fighter, I know his full names. I can use his surname. But I would rather use one name rather than saying: "That lady in some colour."

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I rise to support this Motion and to contribute to this discussion on the Division of Revenue Bill, 2013. First I must say that I am very happy that Jubilee has fully been converted to devolution and has new prophets of devolution. The epistles are quite convincing.

Secondly, I want to say that this Division of Revenue Bill, we will definitely see its effect much more appropriately when the Appropriation Bill hits us. When the Appropriation Bill comes we will see how these figures are translated into shillings and cents with respect to specific expenditures both at the national and at the county levels.

Having said that, I want to congratulate the Chairman of the Finance, Commerce and Economic Affairs Committee and the Chairman the Committee on Devolved Governments for the contributions they have made and the intentions they have given to the House. Now that they have discussed this matter with the Treasury and other bodies like the Commission on Revenue Allocation (CRA) among others, we are convinced that an amendment to the Bill will be important. The details of the figures will come before the House. This is what Sen. Kipchumba talked about.

We neither need say nor commend ourselves for being generous in any way. The Constitution says; very specifically, how public resources should be used. I can refer you to Article 187 of the Constitution as well as Article 203 before I come to the Fourth Schedule. Those two articles tell us very specifically that the Treasury has no option, but to make a budget in line with the provisions of the Constitution.

Indeed, if the Treasury turned to do anything outside what is laid down in this Constitution, then we, as a Senate would take the Treasury to account. I was surprised that even in the making of the Constitution, we talked about percentages. This was not really necessary because these provisions to the Constitution give us direction as to how the gross figures of the revenues that are earned by the Kenyan nation will be used between the national government and the county governments. The Constitution provides for this. It is only when that is applied that the Treasury can make a proposal that in a particular year because we are starved, we will reduce expenditures or allocations this way or that way. However, as long as revenues are there to be budgeted for, the Constitution must be followed.

Having said that, it is the obligation and, indeed, the duty of the Secretary to the Treasury and other relevant bodies to budget as provided for in the Constitution.

However, it is also important to understand that after very many years of Government since Independence, we finally succeeded in having devolution. It is at the county level or the devolved level that production takes place. It is at that devolved level that livelihoods of Kenyans are looked after. So, if any Government of Kenya will spend any money whatsoever, it has to spend these money where production takes place and where livelihoods are sustained and that is nowhere other than in devolved governments. Devolved governments constitute the whole nation; 47 of them. Outside the devolved governments, within the boundaries of Kenyan nation, you go nowhere.

Therefore, I must say that our responsibility, as the Senate, is to ensure that we look at the Constitution, the revenues of our nation and make sure that this is repatriated accordingly as laid down in the Constitution so that we can sustain proper production and maintain livelihoods. That is what is called development.

I want to make one reference which I think Sen. Kipchumba referred to and even Sen. Kanainza. In the Appropriation Bill, Clause 1(f) is typical to the kind of problems we will face in dealing with dividing resources between the national government and the county governments. Clause 1(f) calls upon us as Senators to realise that if we have to give proper direction to the Secretary, Treasury, in the future, we will need to pass the laws that the Constitution intended, that will make the Treasury divide the money properly. I will read it and tell you where problems are likely to occur. This has already been mentioned, but I also have a proposal on how we can deal with it.

Clause 1(f) says;

“Sixth, allocations to regional referral hospitals were also excluded from the county governments’ equitable share in order to arrive at a base that does not include the cost of operating institutions that provide services to a cluster of counties.”

This is from the original Bill because the Bill tabled in the House is much shorter. However, it refers to one thing. What do we define as referral hospitals? At the moment, the Constitution says that the national government will be responsible for national health facilities. That, at the moment, can be defined as two hospitals. These are the Kenyatta National Hospital (KNH) and the Moi Teaching and Referral Hospital (MTRH). This does not stop this Senate from providing for national referral health facilities through an Act of Parliament which will make healthcare much more realistic. Let me put it this way. The reason Level Five Hospitals or Provincial Government Hospitals have those titles is because they provide for people, not just within the counties where they are situated, but for Kenyans in general.

Originally, these Kenyans were supposed to come from provinces, but the provinces are no longer there. Even when provinces were there, they were providing for Kenyans beyond those provinces. I can give you examples of Kitale District Hospital which is just a district hospital, but provides for people from as far as Sudan and Uganda. The Kakamega Provincial Hospital provides for people coming as far as Uganda and Busia among other areas. So, the reality of Kenya is that we have referral facilities in reality which should be defined by an Act of the Senate, so that the national government can provide resources for their running because they go beyond the counties. In any case, since we are trying very hard to raise resources for the counties, it is unfair to burden the counties with these big hospitals that require so many resources and provide services to

many people beyond the counties so that these hospitals are run by the counties when they are expected to produce resources.

Today, when we were having a discussion with the Treasury Secretary, he said something that I have to interrogate. He said that as a national government and as it is constitutionally provided, they will only raise resources for the two national facilities. They shall, however, unconditionally, give the counties some money to deal with the heavy volume hospitals, Level Fours and Fives which they have already identified.

What about the others? Last year, when I was the Minister for Medical Services under the previous Government, we framed a Bill to make 22 hospitals, nationally, referral facilities because of the amount of work they handle. If the Treasury will only support certain counties that hold 11 hospitals, what about the other 11? What about the other counties that will not get money to support the other 11? Where will they get money from? Let me give a solution. I will bring to the Senate a Bill, to define more robustly what referral hospitals are and, therefore, to make it possible for the Treasury to provide money for them so that the counties where they are do not need to have money for them or when they have money, the money is given conditionally.

When you look at the Kshs3.5 billion provided to the so-called referral hospitals, you will see that in reality, it is not enough. Health, usually, in all the Budgets since Independence, has always been relegated to the third, fourth and fifth categories of priorities. As human beings, issues of health come first. One of the reasons we have a high mortality rate, as Dr. Khalwale will confirm, is because we have never learnt to prioritise our health properly, both as a Government and as individuals. On an individual level, this is another issue. Nonetheless, now that we have a Senate that looks after concerns of counties where livelihoods are and where production takes place primarily, I think it is our responsibility to prioritise health in this Budget and in subsequent budgets.

In this budget, we may not do a very good job. First, this is so because we are all still on a learning curve. The Treasury and the county governments are on learning curves. We are also on learning curves. Each one of us will talk about this particular Bill with the little knowledge we have about budget making and how these figures were arrived at. It would require, if we must talk about this budget, much more details to understand how it relates to the Constitution and how it will eventually resolve itself into an Appropriation Authority. However, since this is the first Bill of its kind we are handling under this new constitutional dispensation, let us open ourselves to the possibility that we may not do our best.

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

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

We must provide a foundation for the counties to begin their work. But let us challenge the Treasury because it has all the technocrats and knowledge that it should actually do its best to make sure that the counties do not fall short of the resources that they need. This is because Article 187 is extremely categorical regarding the transfer of functions and powers between levels of Government. Article 187(1) reads:



“(1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if—

(a) the function or power would be more effectively performed or exercised by the receiving government; and

(b) the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.”

Mr. Deputy Speaker, Sir, I am afraid because some of these functions are so sensitive, particularly education and health, that it is really not enough for the Treasury to give money to counties conditionally, without, first and foremost, ascertaining this condition provided for in the Constitution; that the entity to which you are transferring this function will perform it effectively.

Mr. Deputy Speaker, Sir, some of the legislations that refer to some of these functions are yet to be developed. As you know, during the Tenth Parliament, we tried our best to pass many laws regarding the implementation of this Constitution, but we did not deal with all of them. A lot of legislations were left pending because of time and the volume of work that was to be done. Now, we are not quite sure whether some of the functions that the Treasury is hiving off to counties could be prohibited, if the necessary legislations had been enacted.

Mr. Deputy Speaker, Sir, the second thing in that particular Article which is important reads:-

“(2) If a function or power is transferred from a government at one level to a government at the other level—

(a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and

(b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.”

Mr. Deputy Speaker, Sir, one of things that we are trying to do is to fulfill the requirements of this Article, to make sure that whatever function has been assigned in this Constitution to county governments; resources are available for those functions. So, it would be a necessary exercise actually, while we are debating this Motion, for us to go through those functions, to find out whether, indeed, in this Appropriation Bill resources have been made available for all those functions. It is a very tedious exercise, but very necessary. But I do not think that it will be done successfully in debating this Bill. It will be done more successfully in debating the Appropriation Bill, because it is only then that we shall see how the money being appropriated is aligned to specific functions that are in this Constitution and the counties. These are important things that we need to do, but I am just wondering whether during this particular debate; we shall be able to do it, but that is the correct way to do it, if indeed we are going to interrogate this particular Bill properly. I do believe that the Committee on Finance, Commerce and Economic Affairs will guide the House in that regard, but I am just trying to enlighten the Members who are not in that Committee that, that is a necessary thing to do.

Mr. Deputy Speaker, Sir, the other issue that I want raise, which is equally important, is that we have been debating the Constituencies Development Fund (CDF)

and there has, indeed, been quite a lot of discussion in the media about what should be done and so on. We must understand that the CDF came in a context where there was no devolution and before county governments came in to do the kind of things that we feared were not being done during the authoritarian regime since Independence. When I was the Minister for Planning and National Development, we realized that if money is appropriated by the central Government all the time, and the manner in which the budgets were done then and having seen how these budgets were discussed in Parliament year in, year out, without making any difference; and knowing full well that once the budgets were passed the Treasury and central Government could re-organize them and spend the money as, indeed, they determined, it was necessary to give Members of Parliament some resources to respond to the pressure by the wananchi that there was no development going on in the grassroots. Also, to ease the pressure of Harambees, that was the only way in which the wananchi could get some resources for development. That was the context.

Mr. Deputy Speaker, Sir, we now have to deal with the following mischief. One, now that we are budgeting for all the money to go as constitutionally provided between the national Government and county governments, is the CDF Act in contravention to the Constitution? Could the kind of thing that the CDF was meant to do be now done effectively by the county governments? You can only answer that question if you abolish Harambees. This is because I see Harambees as being in contravention to the Constitution and county governments. If we leave Harambee, Members of Parliament and Senators, for that matter, will still be under pressure from wananchi to raise money for developments, which are not catered for either by the county governments or the national Government. We may find ourselves very soon, as Senators, also looking for our own CDF, because people want to see you doing some development in the grassroots.

Mr. Deputy Speaker, Sir, my very radical proposal is the following, and lawyers here will support me. Indeed, I do see that the context in which the CDF came is no longer applicable. Secondly, the work that the CDF was doing – providing monies for building dispensaries, water resources, hospitals, schools and so on – must be taken over effectively by both the county governments and the central Government. Thirdly, the need to do some other kinds of social work in the grassroots that usually counters Harambee, still will remain. If they still will remain, the elected leaders at whatever level will still need some resources to respond to this and the only way that we can do this is to take the bull by the horn and abolish Harambee. I think that this is something that both we, in the Senate, and those in the National Assembly must deal with. I know that it will be very unpopular but if, indeed, we are going to be truthful to the Constitution, you cannot leave Harambee and still say that elected leaders do not have some kind of resources by which they can respond to these pressures from the people, because I think that, that is important.

Mr. Deputy Speaker, Sir, finally, let me talk about this issue of counties' special needs and interests. I think that the previous contributors to this Motion did say that it was rather irrational for the Transition Authority to have met with Governors and decided that, that money – Kshs61 million or whatever it was – was to be shared equally among the counties. It did not make sense and still does not make sense. This is because we still have counties with special problems and every county that you go to will have some

unique problem. For example, the County of Homa Bay has a special problem of Mbita Causeway. That is something that should have been dealt with by the central Government a long time ago, but it is there today. If you are going to increase the fish intake on both sides of the causeway, you have to deal with that. If you are going to deal with the issue of the hyacinth, you have to deal with that. That is a specific problem in that area. If you go to Turkana, they have a specific problem of both security and floods. If you go to Kisumu County, Siaya County, Busia County and so on, we have this specific problem in the lake called hyacinth. It does not occur anywhere. It requires a specific response and some budget and technology. If you do not deal with it, the livelihoods of the people will be messed around with.

So, I think that when that money was before the Transition Authority, and it was dealing with specific problems of infrastructure, there should have also been some survey done by the Transition Authority regarding what are some of the specific urgent problems that need to be solved in certain counties that require special budgeting. A budget will be spent and the thing will be dealt with once and for all, and we go ahead. If we do not do this, we shall have things dragging on with us unnecessarily and burdening counties with issues which create political, economical and social problems for the people for no reason. This is the opportunity to grab the bull by the horn and deal with some of these specific problems, precisely because infrastructure had been noted as a special problem and money allocated to it. That was a good approach but poorly solved because the thing was equalized and, therefore, made no sense. It did not solve Nyandarua's problems, for that matter.

Mr. Deputy Speaker, Sir, while we are debating the Division of Revenue Bill, and waiting for the Appropriation Bill, this issue of special problems in every county, each Senator with their Governors should come out with specific issues that need specific attention and decide whether the money will come from the county government or the central Government, so that we deal with it once and for all, to sanitize this particular budget, so that these things do not become a burden for future budgets.

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

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, thank you for the opportunity. I want to concur with the speakers who have spoken earlier in saying that this is a very important Bill. It is going to ultimately determine the survival of our counties and their governments in this particular financial year.

Mr. Deputy Speaker, Sir, the county governments have very limited avenues of raising resources. Therefore, the bulk of the funding of the county governments comes from the national Budget. I want to believe that it is for this reason that the Senate was created; to ensure that these county governments get their equitable share of the national Budget as provided for in our Constitution. Article 6 of our Constitution is very explicit. It tells us of devolution and access to services. If I may quote, Article 6 says:-

“(1) The territory of Kenya is divided into the counties specified in the First Schedule.

(2) The governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and co-operation.

(3) A national state organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

Mr. Deputy Speaker, Sir, in formulating the division of the national Budget, it is important that we put this particular Article in mind; that the county governments have to be consultative. It is not just a formality that they make their county budgets and bring them to the Treasury and then the Treasury ignores them and goes ahead and shares the revenue as they please. It is important that they are seriously consulted in terms of formulation of this Budget and the division of revenue. This is provided for in Article 6.

Mr. Deputy Speaker, Sir, Article 186 which a colleague earlier referred to, sets out the functions of these two governments, that is, in the Fourth Schedule. When you compare the functions that have been set aside to be performed by the county governments *vis-à-vis* the functions that are supposed to be performed by the national Government, the difference is very small. The county governments have as many functions as the national Government. Therefore, I want to agree with Sen. (Dr.) Khalwale who said here at one time that he believes that it should either be 50/50 or if anything, then the county governments should end up with a bigger chunk of this Budget than the national Government.

Mr. Deputy Speaker, Sir, it is very disturbing to see, for example, the Ministry of Agriculture, when revenue is given to it, the head office in Nairobi getting the bulk of the money allocated to it, yet we know that---

At the national level we expect, the Cabinet Secretary to have one floor with his staff for the purposes of formulation of the Ministry policy. Otherwise, the bulk of the money should go to the county governments that offer real services to the people. This goes for many other Ministries. Sen. (Prof.) Anyang'-Nyong'o has just taken us through the Ministry of Health and their allocations. The national government remains only with Kenyatta National Hospital and probably Moi Referral Hospital. Most of the other health facilities, be they clinics, dispensaries or health centres, will be under the county governments. Therefore, the bulk of the allocation to this particular Ministry should be directed to the county governments rather than the Ministry headquarters. I am looking at this Division of Revenue Bill and it is mind-boggling to me to see the amount of money that is being allocated to the National Intelligence Service (NIS). I know the security of the country is paramount and I know that it is important that we invest in our security but what justification is there to allocate Kshs80 billion to NIS and yet this is the same institution that has failed us completely. They cannot detect---

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

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

**Sen. Haji:** Is the hon. Senator in order to say that NIS has failed us while he is here because of the eyes and ears which enable them to control whoever wants to hurt us here?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators. First of all, I am not ruling on that point of order, I will let it pass. I want to bring to the attention of Senators that the Bill that is actually before the House, I know you can refer to the one brought earlier where you can make reference if you wish to, but the actual Bill that we are discussing and debating is the one that came with the message from the National

Assembly, the one in cyclostyle and not the one printed. This is for the sake of good order so that you do not make any confusion on figures for HANSARD purposes. Unless you want to make a reference to the Bill that came earlier, otherwise, you can continue to contribute.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): On what, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, just some further clarification on what you have just ruled. If I understood the hon. Senator for Vihiga clearly, he was giving us a narrative as to why money which is now being locked in the national government could be unlocked and made available to the county governments. Therefore, when you tie us not to mention the money which is unfairly being locked at the national government---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! It means you did not listen to what I said. Indeed, the figure that Sen. Khaniri referred to, whether in the original Bill or in this one, is the same. I am not asking Sen. Khaniri not to mention or not to deal with the figures but I am just pointing out to him and to you, hon. Senators, that the Bill that is actually before the House is the one which came with the message from the National Assembly. I think you misconstrued me.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, Indeed, I want to confirm to you that the figure that I am mentioning is contained in the Bill that came from the National Assembly. In fact, it is not Kshs80 billion but Kshs83.5 billion. A whopping Kshs83.5 billion! With regard to the point of order raised by Sen. Haji, you will agree with me, it is a point of argument. I am expressing my opinion that for the national government with this kind of budget, it is incumbent upon the NIS to ensure that Kenyans get value for their money. We cannot be budgeting Kshs83.5 billion and yet NIS could not detect what happened in Tana River, Baragoi, Busia and Bungoma, just to cite but a few examples. Therefore, I am saying that this money could be utilized in a better way. We can cut on this Budget to ensure that we are adequately funding our county governments.

I also want to comment on the Equalisation Fund. I know there is that provision of the Equalisation Fund for the marginalized counties but some of us are still questioning how the marginalized counties have been identified. We would like to know the criteria that was used to come up with the 14 counties which are going to benefit from the Kshs44 billion that was set aside as the Equalisation Fund. It has to be above board. Some of us come from counties that we feel are marginalized. We feel that we need to get a share of this particular resource but we do not appear anywhere near there. If anything, I would propose that this Fund be increased so that it can accommodate more counties than the 14 counties which they did this year.

I want to agree with my colleagues who spoke earlier that, yes, the counties have not developed capacity in terms of capacity for budgeting, capacity to absorb even these resources that we are giving them, capacity to discharge their responsibilities and so forth. I want to propose that in the next financial year, it is important that we enhance the portion of the Budget that will go to the counties. At the Committee stage, I am going to be moving an amendment to increase this amount from Kshs220 billion that we have been allocated to Kshs248 billion, and I will give my justification for that.

As I come to conclusion, I just want to tell my colleagues that we as Senators being the custodians of the counties, we have to be careful to ensure that the counties are not just reduced into mere employment bureaus where we employ so many people and they just get enough to pay people their salaries and other benefits. We must ensure that devolution works. We must ensure that the counties are adequately funded for them to be able to perform the functions that are given to them in our new Constitution.

Mr. Deputy Speaker, Sir, Kenyans voted overwhelmingly for this new Constitution. I want to believe that one of the reasons why Kenyans came out in very large numbers to pass the Constitution was because of the issue of provision of devolution in this particular Constitution. Therefore, we must ensure that Kenyans realize their dream of getting equitable levels of development in wherever county that they are coming from. I want to remind my colleagues there that we are here to fight for the county governments and not the national government. I have seen so many of my colleagues make that mistake; that is, trying to defend the national government. We should collectively work hard and fight to ensure that the county governments are not deprived of resources to make devolution a success the way it is envisaged in our Constitution.

With those few remarks, I support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Catherine Mukiite.

**Sen. Nobwola:** Mr. Deputy Speaker, Sir, I want to thank you that I have been able to catch your eye. I rise to support the Bill. Devolution is a new thing in our country and it is a test for the Jubilee Government, whether they are committed to it or not. The Bill which is before us is a major step by the Government in an effort to fund the county governments so that they can be functional. I will comment on the figures in the Bill. When you look at the Budget, you will realize that the figures are based on historical figures for 2011/2012. When we plan, we would like to know where we are coming from and these figures should have been made available to the Senators so that they can make good decisions. In the absence of these figures, we do not know where we are coming from or where we are going. The way I see it is that most counties will not be able to raise the 85 per cent. Why do I say so? It is because in the first place, Treasury is willing to give Kshs210 billion to fund the counties. This money is not sufficient. We have been given information in the Committee on Finance, Commerce and Economic Affairs that there will be some counties which will not be able to get the allocation. This means we are going to end up with a deficit.

In our Constitution, it is very clear that it is the responsibility of the national government to make sure that counties are funded properly so that they can carry out the functions which they are meant to do. No county should be left to suffer because of policies or decisions made by the national government. In the papers which we were given today, there are counties being referred to as harmless. What the Committee decided this afternoon is that this amount being referred to as harmless or deficits in the Budget by certain counties should be taken over by the national government. So, part one and two of the Constitution talks about the functions of the national Government and the county government. When you look at the functions of the national Government, they have not let go some of their functions in view of the devolution. If you look at universities, for instance, the other day we sat here as Senators and passed a Motion to

establish universities in every county, but there is no allocation for that particular function at the county level. I think the amount which has been allocated is for the ECD and not for the universities. So, I think the county governments need to get involved in the development of their counties. How else are they going to generate revenue if the national Government is still hanging onto some of these functions?

I looked at devolution in the Budget Estimates and they are allocating about Kshs68 million and one of their objectives is to try and eradicate poverty in the rural areas. I think that objective has already been taken care of by Commission on Revenue Allocation (CRA) in their parameters on poverty allocation. It means that we are having a duplication of roles and that means that the Government is costing functions twice and that is why you find that the national Government is hoarding more money than devolving the funds to the county governments. As a Committee, we are going to sit down and look at that critically and see how we can switch the figures.

Mr. Deputy Speaker, Sir, thirdly, counties are being told that they cannot borrow in the first three years. How are they going to grow their income if they are not allowed to borrow the 85 per cent? They have to grow their income at 85 per cent of their revenue so that come next year, the national Government can be able to give them 15 per cent of the money that they have raised. If they are underfunded, I cannot foresee how some counties are going to make it.

If you talk of a Trans Nzoia County where I come from, when you look at the costing that has been done for agriculture, which is a key sector, you will realize that very little money has been allocated. Most of the money is being held by the national Government. Why is it so, when agriculture is based at the county level? Also, in their costing, they have not factored in fertilizer which is a major input by the farmers. If the Government cannot come up and clearly tell the counties how they are going to source for fertilizer, then we are going to have a problem. For example, Trans Nzoia borders with Uganda and we are under the Free Trade Zone where goods can move without attracting any tax. So it means Uganda will continue selling their maize to us at a cheaper prize, thereby making our farmers desperate and they will sell their maize at a throwaway price, then you find cartels coming in to buy the maize from the farmers at a throwaway price. I think the national Government needs to look at that critically because if we cannot have sufficient food to sustain our citizens and our economy, then we have a big problem.

Mr. Deputy Speaker, Sir, I will also talk about the Equalisation Fund of Kshs3.4 billion which is appearing in the Division of Revenue Bill. The CRA had given us statistics of how they had arrived at this amount and how the counties are going to share the amount. They talked about those counties that are poor and disadvantaged. But when you look at other counties like in my area, we do not have roads. There are slums like Kipsongo where people have no access to clean water and where we do not even have roads. This Equalisation Fund should be applied across all the counties because in one way or the other, you will find one county is advantaged and the other one is disadvantaged. So, we should not just say that those counties which are in the figures that the CRA had submitted should be allocated this Kshs3.4 billion.

Underfunding counties is going to lead to deficits in the budgets of the county governments. This afternoon we were given some figures which we have been told not to

refer to and these figures are referring to some counties as harmless and Kshs17 million has been allocated to take care of these harmless counties. How harmless are they because I do not know where this term “harmless” is coming from. It is not constitutional. I think as a Committee, we need to relook at it and see how we can reallocate this Kshs17 million across all the counties. I cannot see how one county will have a deficit and another has a surplus or another county is being told that the money you applied for is sufficient whereas the other one is being told that the money is not enough. How are they arriving at all these? Those counties that are being said not to have enough money are the counties that are actually well established. I do not know whether each one of you was given that paper.

Mr. Deputy Speaker, Sir, lastly, this money that is being retained at the national Government is colossal. Unless we know the schedule or the details behind this figure, we might be approving something that may not help us but work against the counties. So, in our Committee, we are going to ask either the Treasury or whoever has prepared these figures to give us a tabulation so that we can understand why the national Government is spending so much money but sending little money which is not enough to all the counties. We are told that if Kshs210 billion is given out, 21 counties will not be able to access the money. That is why they are setting aside Kshs17 billion to be able to cater for that shortfall. We are asking: Why should these counties have a shortfall if everybody did a budget? Does it mean that the budgets of some counties were okay or is it being applied in isolation?

Thank you.

**Sen. (Prof.) Lonyangapuo:** Thank you Mr. Deputy Speaker, Sir. I also rise to support this Bill and to interrogate it further to say that I think this is what we were anticipating to get and we should be able to look at the two levels of government as proposed in the Constitution.

The Fourth Schedule states that there exist two governments with distinct duties and roles. When you look at the way we are trying to bring up the costing of the items, what this Bill talks about is the cost of ongoing devolved functions.

In education, we talk about primary schools, secondary schools, colleges and universities. All of them are being served from the national Government but the national Government does not own land in the air. When we talk about schools, for example, I would want to see a case where we have physical money which is going to infrastructure for schools or colleges. Literally, is it being shown in the national Government as such or is it being shown in the county government as such? For example, we say that the TSC has been given almost Kshs240 plus billions when we know that we have a shortage of almost 80,000 teachers. Have we costed out the function and would we know the number of resource persons missing in the teaching sector in the counties to the extent that we will be convinced that this Kshs143 billion is enough to solve the problems of teachers in every county?

Mr. Deputy Speaker, Sir, in West Pokot County, we have a shortage of over 1,000 primary school teachers. I would want to know from this Budget, how many teachers will be employed in the next financial year so that the education level of our children in that county can be catered for. Secondly, what I discovered this morning when I went to look at the level of electrification in our county, I was told that electrification in West Pokot is



at 71 per cent. I am from the ground and when I asked them to give me the evidence, they said that there are only 300 nursery and primary schools combined and yet we have 600 primary schools alone and over 800 nursery schools. It means, therefore, that the computation for any budget at the national level may be erroneous. If the figures you are using are extremely historical like the ones I discovered today, then the counties may not be getting the attention that they require. Before any activity is budgeted for, let us be able to know the actual calculation in order to know the true position of each of these activities. When we talk about agriculture, many people have talked about it because it is the backbone of the Republic of Kenya. But you find that a lot of money is spent at the national level as opposed to the total amount of money spent in the counties on that same activity. When you talk about parastatals in the agricultural sector like the National Cereals and Produce Board (NCPB), what is it doing in Nairobi? There is no single farm of maize or beans or of wheat in Nairobi. Ideally, you would expect that kind of attention to be given in the area where we have a lot of these activities on going. What is the Agricultural Development Corporation (ADC) doing in Nairobi and yet there are no farms in Nairobi? But we are voting funds for the same institution at the national Government level. When these budgets are being done, we should look at the activities seriously.

Lastly, I heard my colleagues talking about the Equalisation Fund and everybody swallows saliva when they talk about the Equalisation Fund. They say that every county is marginalized. Let me read Article 204 in the Constitution:-

The national government shall use the Equalisation Fund only to provide for basic services. This includes water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring equity. When everybody comes here to talk about marginalisation, I do not know what that means.

**The Deputy Speaker** (Sen. Kembi-Gitura): The Bill says that it will use the Equalisation Fund to bring quality and not equity.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, it says that “the national government shall use the Equalisation Fund to provide only basic services including water, roads, health facilities, electricity to marginalised areas to the extent necessary to bring quality of those services in those areas to the level enjoyed by the rest of the nation as far as possible.”

There are areas where there is no inch of piped water. We also have no roads that we can use. So, when we are talking about this, let us look at the services we have in this country and what is required. How many road networks are required in West Pokot County? List everything that is required in Nairobi, Marsabit and everywhere else and bring the list here. Do the same for electrification. We should count our problems and budget according to that without looking at the counties. If you find that the most required kilometres of road are in a certain county, we will not have marginalised anybody by looking at that area. So, I want us to look at the activities or functions rather than talk about who are not marginalised and so on. I know that if we are to talk about whether our roads are good or bad now, 50 years later, the roads will have been spoilt since the weather is not always very good. However, you will have enjoyed certain quality of life before the roads are spoilt. We should look at the functions and the

activities first and then budget from that point. That is what I will propose. We should look at all these things instead of lumping them up together.

Last week, we talked about security. We have seen that there is some money which has been set aside for the National Police Service (NPS) among other things. We need to know that our security is guaranteed as everybody has said. So, whatever it takes and whatever amount of money required, we must put an appropriate amount of money to safeguard and give Kenyans a level comfort of security wherever they are. How should the central government decentralise security matters? There are people who have contributed a lot in ensuring that security is guaranteed in the estates and villages. The Government refers to those people as the Kenya Police Reservists (KPRs). These people are not paid any salaries. They are not given food or even any functional gears. If we must go in that line, I propose that in the areas where there have been constant cattle rustling, we set aside a vote so that the reservists are given salaries. The national and county governments should know how to run that. These can either be centralised or given to the county governments so that they can run them together with the police on the ground. When an issue like the one that erupted in Bungoma comes up, the villagers who are known to be in the Government's payroll can easily report the matters. In most cases, when a criminal is reported, many times, they are released.

We need to look at this budget critically. When the budget is critically looked at, there will have to be justification for the Kshs210 billion. Will it be covering everything that it was allocated? Are we satisfied? The figure is not far from what the CRA was going to propose and pass to us. It was talking about a figure higher than this. This is the right way to go. We will look at areas that we need to beef up and even other areas that may not require money under this Bill.

I support.

**Sen. Musila:** Thank you Mr. Deputy Speaker, Sir. I support this Motion fully and congratulate the Government for going beyond the 15 per cent as it is required. The allocation has been raised up to 32 per cent. I think this is a good start although I would wish that it was increased.

My friend, Sen. Murkomen, hinted that this is a credit to the Jubilee Government because it goes with the manifesto of the Jubilee Government. I want to remind my friend that, in fact, it is the policy of the CORD Government in waiting.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senator for Kitui to insinuate that there are two governments in this country, a Jubilee Government and a CORD Government? There is only one Government.

**The Deputy Speaker** (Sen. Kembi-Gitura): If Senator Musila suggested that there are two Governments, then that is out of order.

**Sen. Musila:** Mr. Deputy Speaker, Sir, the HANSARD will bear me witness. I said; "in waiting" and, indeed, we are waiting.

I just want to emphasise a point that the issue of devolution has been given more weight by CORD and even the Jubilee Government. Therefore, that is why I commend the Government for exceeding 15 per cent to 32 per cent. As I said, I want this to be more. Possibly, when we go to the Committee of the Whole, we will make recommendations to ensure that this amount is increased.

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

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

I have an issue with Kshs20 billion conditional allocations. We must have full disclosure so as to appear transparent with regard to which county will get the Kshs20 billion. Table 2 simply says that donor support is Kshs16.5 billion. Expenses related to regional referral hospitals have been allocated Kshs3.4 billion. I hope that in the next Bill, we will get an analysis of the Kshs20 billion so that we know where exactly it is going. I think we have agreed, as a Senate, that our major role is to ensure that county governments receive equitable distribution of resources. If the central governments had already decided to give certain counties certain projects at the expense of the others, it is only fair that the national government takes over that responsibility. The whole basket to be allocated to counties should be given equitably without talking about holding counties harmless.

That phrase of “holding some counties harmless” is another way of marginalizing the already marginalized counties by continuing to give revenue or more money to counties that were favoured by past practices. I am advocating that the Kshs20 billion be added to the Kshs190 billion and the Kshs210 billion is shared equitably among the 47 counties without talking about certain counties having projects that must continue. We want those projects to continue but we want these to be undertaken by the national government. These funds should be equitably distributed to the county governments.

Madam Temporary Speaker, last time I raised an issue of the Transition Authority offloading national government staff to counties. This is a matter that is causing problems to counties. I do not know whether the attention of my colleagues has not been brought to this matter. Some counties are receiving as many as 3,000 staff. Kitui County, for example, has been given over 2,000 staff members by the Transition Authority. We are told that these staff belong to you and you should put them in your payroll. What is happening? The money we are giving will go to pay staff from the national government. Therefore, I want us to send a very clear signal to the Transition Authority that county governments will not take the staff they are transferring. Let them remain in the national government payroll because the government employed them. They know their terms and they have their pensions. They should not be taken to counties.

My advice to the Governor is that he should reject the list that has been submitted to him. If we move together with regard to this matter, I am sure that we will go far. I am appealing to my colleagues, Senators, to take this matter seriously because if we do not, all the money we are talking about and giving to county governments will be taken by salaries and there will be no money being left for development. I hope that the Chair of the Devolution Committee is listening – I thank him for being here – so that he ensures that the Transition Authority does not transfer the burden of staff to county governments.

This afternoon, Mr. Speaker ruled on the issue of the Equalisation Fund. I want, even before the Chairs of the two Committees bring their Reports to the Senate, to say that this is a Fund created under Article 204 of the Constitution to equalise what the Senator for West Pokot has just said. I agree with him that this is to equalize services. However, looking at the criteria by the Commission on Revenue Allocation (CRA)---

## QUORUM

**Sen. Okong'o:** On a point of order, Madam Temporary Speaker. There is no quorum.

**The Temporary Speaker (Sen. Ongoro):** Serjeant-at-Arms, can you confirm that?

**The Temporary Speaker (Sen. Ongoro):** Hon. Senators, I have confirmed that there is no quorum. So, I order the Serjeant-at-Arms to ring the Division Bell.

*(The Division Bell was rung)*

Hon. Senators, we now have a quorum and can proceed.

**Sen. Musila:** Thank you, Madam Temporary Speaker. I was talking about the Equalization Fund and pleading that when the Committee on Devolution and Committee on Finance, Commerce and Economic Affairs sit finally, as directed by the Speaker, I hope that they will look at the criteria which has been shown, which identifies actually 20 counties which are marginalized. But because the Chair says that the funds are less, he has to cut them to 14. If that is allowed to happen, it will mean that counties like Bomet, Baringo, Kitui, Homa Bay and others which have already been identified as marginalized will be marginalized further for another 20 years, because they will miss out on this Fund. So, I am appealing that even as we wait for the report of the joint Committees, we should kindly look at the counties that have been left out after being identified as marginalized in accordance with Article 204 of the Constitution.

Madam Temporary Speaker, I want to end by saying that it is so important that we be transparent and approach these issues in a bipartisan manner. Where funds are to be given to a county, we want it to be clearly shown which county it is, what services and how much money. But preferably, this Senate should insist that the national Government takes over this responsibility and the total amount of money that is to be shared among counties is shared without deducting other funds, particularly what they are calling conditional allocation.

Madam Temporary Speaker, with those remarks, I beg to support.

**Sen. Elachi:** Madam Temporary Speaker, I also stand to support the Bill.

Madam Temporary Speaker, I would like to start by also thanking the Jubilee Government – our Government. Indeed, we have started on a good slate and I believe that it is because the President is committed to the principle of devolution. But I know also that when you look at the Treasury, we still have those who believe in the central Government. Therefore, we will always have challenges that come in, as much as we would wish to move on the right slate.

Madam Temporary Speaker, I concur with, the Senator for Kisumu, Prof. Anyang'-Nyong'o. Indeed, when you look at Article 187, that should be our base of fighting for more resources to the county governments. Article 187 (2)(a) is very clear that when you devolve a function, you must ensure that arrangements are put in place, to ensure that the resources necessary for the performance of the function or exercise of the

power are transferred. Therefore, we would want to see the same happen when we look at the Bill.

Madam Temporary Speaker, in budgets, people look at money. When you look at what they have allocated – the Kshs210 billion – it means that 18 counties will have a deficit. It also means that the development that they saw in 2011/2012 financial year will go down, instead of all counties starting on a slate where we are now in devolved governments and, therefore, need Kshs238 billion, to see that there is no county in deficit.

Madam Temporary Speaker, the Public Finance Management Act is very clear also in Section 15 that 30 per cent of what is allocated from the national budget should go to projects. Therefore, it is important for also the Senate to look at what we have been given and interrogate each line Ministry. For example, when you look at the Ministry of Devolution and Planning, it has been merged with seven Ministries. The youth department, for example, takes a whopping Kshs25 billion, but they have not given a description in terms of when you give this to the youth, how much goes to the Youth Enterprise Development Fund or vocational training for the youth. Therefore, if we are not careful then we will find ourselves giving a smile to the youth; that here is Kshs25 billion, but at the end of the year, find that the youth were not able even to access some of those funds. If you look at the former Ministry of Gender, it has now been put under the Ministry of Devolution and Planning. It has been given Kshs5 billion and has to take care of disabilities and women. I think that this is an insult to women.

**An hon. Senator:** By the Jubilee!

**Sen. Elachi:** I will not say that it is Jubilee, but there are those technocrats who think that women have no value in this country, yet we pay tax.

Madam Temporary Speaker, indeed, I am pleading with the President that as much as we are pushing for the Kshs238 billion, we have to look at what has been devolved to the counties that will serve the women also in those counties. As we push, I would urge the whole House to interrogate the expenditures of each line Ministry. When you look at some Ministries, you will find that in the next financial year, instead of the funds going down, they are still going up, yet we are saying that we are devolving power to the devolved governments. I think that it is an insult also in the eyes of Kenyans who believe in the same.

Madam Temporary Speaker, about the Constituencies Development Fund (CDF), I think that it is time that the Senate should fight for the women in Parliament to also get CDF. I do not think that it is fair for the Members of Parliament who were elected in single constituencies to say that CDF is only for them, yet in the whole House, the women representatives are part and parcel of the business of Parliament. Therefore, if we are talking of Members of Parliament, women are also part of them. Therefore they should be given CDF money as any other Member of Parliament in that House. They were not nominated but elected. I support fully their fight to get something to make them visible within their counties.

Madam Temporary Speaker, I want to look at the education sector. There is one important sector that we have always forgotten in this country and yet, it is the foundation of a child as she grows up to become a Kenyan who will be of service to this country. When you look at the early childhood education that has now been devolved to the county governments, it is important to devolve the function, but also give powers and

money for the same function. There is as nothing sad as finding that the early childhood education sector has never had any teacher from the Teachers Service Commission. They will always have to employ from outside, yet now we are saying that it is a devolved government function. We want to see also the Government taking care of the early childhood education teachers and giving facilities. We need to see the foundation of the child grow from nursery, pre-unit, baby class to Standard One, the same way a child in an academy grows. That is how we will put levels of ensuring that we have closed that gap for any child in this country of pursuing her education.

Madam Temporary Speaker, finally, it is important for the House to look at all the Acts that have been passed by Parliament, that are within our jurisdiction and determine what we can amend. This is because you will find that most of the financial Bills were borrowed from the Public Finance Management Act and many other Acts. Therefore, it leaves us more confused on how we are to work around. That is why even up to now, we do not know how much any county government has passed in terms of their budgets, so that we are able to help them and say: “The national Government is bringing in X and, therefore, you have to work within Y, so that you come to one equation.”

Madam Temporary Speaker, I beg to support.

**Sen. Muthama:** Madam Temporary Speaker, Sir, I want to start by saying that I agree with those who have contributed before me. I just want to look at the Constitution and see what it tells me when it comes to the issue of allocation of funds. Article 96(3) says that the Senate determines the allocation of national revenue among counties as provided for in Article 217 and exercises oversight over national revenue allocated to the county governments. I just want to contain myself within this Article. The shareable total revenue in our country is Kshs920.4 billion. Out of this, what was proposed was Kshs154.8 billion. Then after pulling strings with a lot of pain, it was brought to Kshs190 billion. Looking at the allocation itself, it was supposed to be Kshs198.7 billion. Those who have spoken in support of the Government have indicated that the allocation is Kshs210 billion. That is not true. It is Kshs190 billion. Kshs20 billion are conditional funds that will remain with the Government.

Madam Temporary Speaker, we must be law abiding citizens no matter what position we hold in this country. The Commission on Revenue Allocation was put in place within the laws of this country but the same commission is spending public funds to come up with Kshs238 billion. How it was sliced to Kshs190 billion nobody can tell. Any Government in the world that would want to be seen leading its citizens properly will consider and think about what the Government gives its citizens. So, when we went to the devolved system of government, every Kenyan believed that there will be equality. But if we have to go with Kshs190 billion, I want to assure you that 50 per cent of the counties will get less than what they have been expecting to get.

Madam Temporary Speaker, the Jubilee Government is an amazing government. It is being indicated that Kshs317.2 billion of the Equalisation Fund has been allocated to 14 “marginalized counties” but they are not known. They have never been mentioned here. We are not being told if the 14 counties are Turkana or Lamu. It is blindly within the cover of a curtain. I think the Kshs317.2 billion Equalisation Fund has also been diverted to energy. Again, it is to the most marginalized counties which are 14 but they have never been mentioned. For the last 50 years of our Independence, what has killed

development projects in this country is this kind of allocation. You will hear that roads have been allocated so many billions but you are not told where that money will go. Even the little that has been given to the Ministry of Roads, is not indicated which roads are to be constructed. So, you will find that money is taken to one side of the country, few roads are built there and that is the end. So, the next day you will be told that the money has been used to construct roads in this country. I want to say enough is enough and with the mandate that I have been given by the people of Machakos, to make sure that distribution of resources is done equally, I want to stand by that and I do not think I will be moved.

Madam Temporary Speaker, if the Commission on Revenue Allocation recommended that Kshs238 billion should be given to the counties, I do not see why the tune should be changed. The song should not change. The perception of Kenyans must be maintained. So, the Kshs238 billion should be given to Kenyans. If the Kshs20 billion is being kept in a conditional account and remaining with the central government, how will it be shared equally when at that particular point, the decision will be made by a few people, as it was before. We are saying no. We want to know that Kshs238 billion is available and will be given to the counties.

I agree with my co-whip that truly women who have been elected in the counties, that is, 47 women representatives are floating in the air. Other than going to the National Assembly and sitting there, they have no duties to perform. So, for them to be seen that they are working, and if the Constituencies Development Fund (CDF) is going to be managed by Members of Parliament, it is equally important that the Women Representatives are also included. What the Senate was asking, and I want to put this record very straight, is not to go and manage funds in the constituencies--- When we say we want involvement it is because we were elected. I received 298,000 votes in Machakos County. That is a clear indication that the people of Machakos have great trust in me. What we are asking is that we should be involved in the issues taking place in our counties. If the money is being misused, we want to be involved by making sure that the record is put straight. We cannot stand aside and watch public funds being misused and at the end of the day, the only place they can lodge their complaints is through County Governors, Parliament and the Senate. We want to be squarely involved in that.

Madam Temporary Speaker, for us to change the face of this country, we want proper allocation of funds according to the criteria set by Commission of Revenue Allocation as it is mandated by the law.

I am a man of few words. I rest my case and I support.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now 6.00 p.m. and I have to interrupt debate to allow Sen. Hassan under Standing Order No.42(2) to make a Statement of topical concern on Mariakani Weighbridge. Sen. Hassan, you have five minutes after which we shall resume debate.

## SENATORS' GENERAL STATEMENTS

### EASING TRAFFIC JAM AT MARIAKANI WEIGHBRIDGE

**Sen. Hassan:** Madam Temporary Speaker, thank you for granting my request. When I made this request this afternoon to the Speaker, I had been reliably informed that

truck drivers were on strike, they were demonstrating against the regulations that have been put in place. These regulations are cumbersome in terms of how the trucks will be vetted as they pass by Mariakani Weighbridge. What has happened since is that it has created a cumulative jam for both commercial and private vehicles. The reason I rise on this matter of topical concern is the fact that this road, the Mombasa-Nairobi Road, is undoubtedly the artery of the economy of this country. This is the road that transfers whatever is imported into Kenya to other parts of the country and other parts of the region. I believe that it is time the Cabinet Secretary in charge of Transportation and the Committee of this House in charge of transport addresses themselves in terms of improving the efficiency and unlocking this grid of inconvenience where millions of shillings are lost through delays and a lot of time is wasted. I was just informed by a Senator that the last time he tried to drive to Nairobi, he spent about six hours at the Mariakani Weighbridge. I think it is time for us to deal with this matter conclusively. The Nairobi-Mombasa Road is what River Nile is to Egypt. It is therefore inherent for us as the Senate and as political leaders that we must address this issue conclusively in a manner that offers real resolution so that this endless traffic jams, endless strikes and endless capacity issues are no longer the mainstay of Mariakani Weighbridge.

Madam Temporary Speaker, I think we need to also propose certain important suggestions to the Government so that they can effect these recommendations. I believe it is incumbent upon the new Cabinet Secretary to immediately look into this matter because it deals with the economy of this country and the transportation systems of this country. I have just been advised by the engineers in this House, that there is need to multiply the capacity. I think the capacity at the weighbridge is far less than the kind of traffic that we are handling in terms of transfer of goods. What you need to address yourself to even as we debate this matter, is the fact that our counter parts from Uganda and Rwanda are constantly trying to explore creative ways of avoiding the Mombasa Port. This has a direct impact on Mombasa and the economy of Kenya in general. The entire country wants efficiency in terms of the transfer of goods from the port to their destination. Therefore, I am asking this Senate to assert itself and resolve this matter which appears to be endemic and unending so that a resolution of this Senate can address effectively matters around the weighbridge and which touch on the economy.

By way of conclusion, I also propose that part of this Senate leadership together with the leadership of Kilifi, Kwale and Mombasa Counties which are directly affected in terms of the transport system to come up with effective ways of solving the problem. They should visit the scene and have a fact finding mission that can better advise this Senate on the way forward. This should also culminate in the actual initiative which we can undertake with the Cabinet Secretary now in charge of transportation. Lastly, sooner rather than later, Kenyans must also be given recourse to seek compensation from their Government on matters of this nature. Until and unless these matters are made punitive, we will never find a resolution. I have been hinging on this point since day one in this Senate that there should be accountability on the part of those who have to bear responsibility. Today, I was also informed that the power of the civil society joined striking truck drivers to protest part of the oppressive regulations that have been put in place and again the heavy hand of the Government security apparatus was seen in breaking the demonstration. I think the protestors' demands are genuine because they



affect not only the truck drivers but the economic lifeline. The more we delay these processes, the more we open avenues for corruption and other forms of excesses that go towards bad governments.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): We now resume debate on the Motion on the Floor of the House.

*(Debate on the Motion resumed)*

**Sen. Ong'era:** Thank you, Madam Temporary Speaker, for giving me this opportunity so that I can also make my contribution on the Motion before the House. I rise to support this Motion. As I support it, first of all, I would like to thank the Jubilee Government for implementing CORD's very big vision of ensuring that devolution becomes a reality. I say this with a lot of passion because devolution has been a baby that has been supported by many people in this country who wanted to see a reality of taking facilities to where they belong; that is to our people at the grassroots.

As I look at this Budget in terms of the division of revenue, the amount that has been given is not sufficient. I want to join my colleagues who said that this amount should actually be raised. I have heard that there is a proposal to raise it to 40 per cent in the next five years. The real funds are not needed at the Central Government but where they belong; the grassroots. I feel that the Division of Revenue Bill as was presented by the Commission should have been accepted and we raise that figure rather than bringing it down.

Madam Temporary Speaker, as you are aware, in terms of infrastructure in the counties, it is really in a deplorable state. Many of our counties do not have the requisite infrastructure. There are no roads and other facilities including even the seconded civil servants who have been taken there to take office. Because of this, there is a real genuine need to jumpstart these counties so that they can start offering the very services that they should have already started offering.

In terms of the division of revenue, I hope that when these counties settle down and get the necessary revenue, they shall be able to establish programmes that will be able to cater for women and youth. I hope there will be a fund for women and another fund for the youth. That can be able to take care of the needs of these very important constituencies. I will be tabling a Motion here for that fund to be established in the counties.

Finally, as I look at this Division of Revenue Bill, I am looking at the provision to the Police Services. It has been put under the national interest Vote. Police services are really community based services and I do not see the need to put them under the national interest Vote. Instead it should be put under county interest, because as you are aware, there is high insecurity in the country as we speak simply because there is a lot of confusion in the counties where we do not know who is in charge; whether it is the Governor or the County Commissioner. Because of this state of insecurity, we do not know which hand is doing what in terms of security. Things are just flying haywire. I, therefore, feel that, that budget for the Police Service should go to the county and not to the national interest.

Madam Temporary Speaker, I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Sen. Ndiema.

**Sen. Ndiema:** Thank you, Madam Temporary Speaker. I stand to support this Motion, which is an important Motion which will ensure that devolution takes effect. The amount of money that will be allocated to the counties is really what will determine whether devolution will succeed or not. Looking at the functions that have been devolved, I see that it is quite substantive in accordance with the Constitution, and this is quite in order.

Madam Temporary Speaker, it has been mentioned here, that the Government's wish is to gradually increase the allocation up to 40 per cent of the revenue, but you cannot do that if you have already devolved the functions up to 100 per cent. Actually, the increase should automatically be to 40 per cent in order to match with the functions which have been devolved. You cannot talk of gradually increasing the allocation while you have devolved all the functions.

Madam Temporary Speaker, when you look at the functions that have been devolved, these are the ones which have a lot of impact on the productive capacity of this country. We are talking about agriculture, fisheries; we are also talking about the areas that are of major concern in terms of welfare, health and so forth. So, these are really important and as we devolve funds to the counties, it should not be seen as a measure of generosity – that the national Government is doing the counties a favour – it is a right; it is in the Constitution and it is going to very important areas of concern and of production. If we invest in counties, we are sure we are investing the proper way because that is where even the national revenue is being raised. It is in the counties where we collect taxes; it is in the counties that the level of our Gross Domestic Product (GDP) will be determined, not at the headquarters.

Madam Temporary Speaker, when we look at how revenue has been proposed to be divided, we really do not have a basis on which we can judge the functions. The functions have not been costed and itemized properly and it is likely that a lot of money has remained in the Ministries; monies that were supposed to be devolved. It would appear that the Ministries have been given discretion to devolve whatever funds they want to devolve and retain others. If you look at agriculture, for instance, the funds that are likely to be available to the Ministry of Agriculture, Livestock and Fisheries in all counties are much less than what still is being retained in the Ministry headquarters at the national level. Why is that so, when all functions of the Ministry of Agriculture, Livestock and Fisheries have been devolved? If you look at the Ministry concerned with devolved governments, you will still find that it is holding some funds to the level of Kshs68 billion while the counties do not have anything. A function like Children Services and child care is a function that is being devolved, but I have seen some estimates where you still find Children Services being given Kshs7 billion at the national level in the Ministry of Devolution and Planning, which is concerned with county governments. Surely, this is money that should already have been devolved.

Madam Temporary Speaker, there is also the issue of borrowing, and this is an area that really needs to be looked at critically. Governments borrow for certain functions or reasons; sometimes it is the issue of cash flow – you do not have the money immediately to pay salaries – so, you get Treasury Bills, float them and you get the

money to pay salaries. Now, the county governments do not have this facility and it is unlikely that they will have it. So, as we implement devolution, it is important to know; in circumstances where county governments find that they are cash strapped in terms of cash flow, how will they survive? It is important that whatever funds are allocated are disbursed as early as possible without failure by the Treasury to the county governments to enable them continue, otherwise borrowing will become a necessity at that level.

Madam Temporary Speaker, with those few remarks, I support the funding of county governments to the level that was recommended by the Commission for Revenue Allocation (CRA) because in other countries which have devolution, the allocation is much more. A case like Germany funds to the level of 60 per cent to their devolved governments; the national Government retains only 40 per cent. So, I think that 40 per cent will not be too high a figure to ask for the county governments.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. Mositet.

**Sen. Mositet:** Thank you, Madam Temporary Speaker, for granting me this opportunity. This Motion is quite important to us because actually the creation of the Senate was purely because of the devolved systems. I am very sure many institutions are fighting to be seen to be working so that, at least, the *mwanaanchi* on the ground can really feel that the results of devolution are going to be felt. I thank my fellow Senators because of the way we are working in this House and even in the Committees; we are really working to make sure that, at least, devolution is realized.

Madam Temporary Speaker, the Bill which actually came to our House is a great success to *wanaanchi* who voted for the new Constitution, which actually has allowed even this Senate to function and, specifically, to the Jubilee Government, which has really come in to implement its manifesto.

Madam Temporary Speaker, we know that the threshold is about 15 per cent, and we can see that the Jubilee Government is really generous because it has come up with 32 per cent right from the start. We know very well that even on the ground, we may not have sufficient structures to help in the implementation or even to make sure that the funds which go there are well utilized or they have planned well for them. But despite all that, at least the first impression we are getting is that we are getting some good funds. But all said and done, it is quite good if all of us can focus to make sure that the structures which are going to allow capacity building at our counties are really put in place so that by the end of maybe two or three years or by the time that the transitional period ends, which has been set in our Constitution, we make sure that all the devolved functions have been achieved and, at least, that capacity has been achieved on the ground in all counties.

Let me just note that in my county, I know and I believe also that in other counties, the capacity which is there is still low, but I believe we are still building it. Still on that, I know we have a body we are calling the Transition Authority (TA) which is mandated to make sure that the functions are well devolved down there, including the funding. When we talk, particularly of infrastructure, to make sure that when this budget goes through, the infrastructure has been put in place, the TA went round to make sure that, at least, they have done some needs assessment in every county, and they were allocated some funds. But at the Committee on Finance, Commerce and Economic

Affairs, we were told later that they were able to use only Kshs300 million to do those structures. But after that, they ended up sitting down with the Governors and I do not know which other people. I do not know whether they were manipulated or they just said they decided they are going now to share the amounts equally. This House should not allow that to happen simply because the needs assessment had been done. If we allow that to happen, we will be setting or allowing bad precedence to take place; that we can even today pass a Revenue Bill here, set aside some funds which are going to go to the county, and later the Governor can decide he is going to re-allocate these funds from, may be, this particular project to another project of their own use. So, for that, even at the Committee level, I think we are working on that and we will make sure that, that will not happen.

Madam Temporary Speaker, I support this Bill; it is a very nice Bill and I believe we will not be choking the Government when we ask for more funds, although we know very well that, at least, they have tried. But at the Committee level, I know there are a lot of negotiations which are going on and I can even tell this august House that the Committee Members who are representing you there are doing a good job, and we will make sure that, that figure will not be at Kshs210 billion. We fully concur with the Senators who have said that the non-conditional grants are not supposed to be shareable equity. Also, the same is true for the Equalisation Fund and the allocation to hold the counties harmless.

When we also look at how the Ministries have projected their Recurrent Expenditure for 2013/2014 and also 2014/2015 financial years, instead of it descending, because definitely we expect that the functions will have been devolved into the counties, we find that, that expenditure is going up. It is ascending which means that there is something that those who are in charge of making the Budget have not looked at. But I believe that with our Committee, we will try to put a lot of input and tell them that, at least, that we do not agree with that. I believe there are quite a lot of savings we can make because I remember that the Presidential Speech was quite good and elaborate. Our President said that in his Government, he will make sure that no overlapping services are going to be found again. He spoke very well and said that he will want an effective and efficient Government. But when you still find the Metropolitan Department in the Ministry of Lands and Housing, then definitely something is not right because we believe that the Metropolitan Department should really be devolved into the counties straight away. What were they doing? You know very well the services they provided; water, access roads, may be street lighting. That one can purely be handled by the county governments. We saw some gross capital amounts of Kshs5 billion which had been set aside for that. So, I am sure that if we get savings or we take that particular capital expenditure into the shareable equity, then the counties are going to gain.

Madam Temporary Speaker, without really making this House feel that I have talked a lot, let me just say that this Bill is the best Bill to us, because this is the first one we are receiving. But let us make sure that we panel beat it and make sure that the entire country will have the best out of it without choking the Government.

So, Madam Temporary Speaker, with those few remarks, I beg to support the Bill.

**Sen. Sang:** Thank you, Madam Temporary Speaker. From the outset, I rise to support the Bill. The responsibility of this House is to protect and to serve the interest of

the counties. Looking at the engagements that we have had in this House since the start of the first Session, I think that we are being presented with the real opportunity for us to show our protectiveness towards the county governments by ensuring that the county governments have the required resources.

Madam Temporary Speaker, looking at the Bill, I want to address a few issues that arise. One, that we need to have a proper understanding and an agreement as a House that we have two Funds created under this Bill; the first one is the aspect of the Equalisation Fund. If you look at Article 204 of the Constitution of Kenya, the Equalisation Fund is a separate fund from the equitable share of revenue being directed or channeled to the county governments. So, I find that in this Bill, we have a problem because the Bill seems to suggest that the Equalisation Fund is part of the revenue that the national Government is allocating to the county governments. We need to ensure that the Equalisation Fund is separate because if you look at the Constitution, that is coming as a separate fund. So, we need to separate the Equalisation Fund from other resources.

The other issue being raised under this Bill, Madam Temporary Speaker, is the conditional allocation. I want to agree with my colleagues that the conditional allocation under this Bill need not appear as part of the resources that are going to the county governments. Those resources should be shouldered by the national revenue so that we do not need to reflect and lie to ourselves that we have given county governments Kshs210 billion while actually, we are giving them Kshs190 billion. I know that at an appropriate time, as mentioned by my colleagues, we will introduce an amendment to this Bill to enable us to raise those resources beyond Kshs210 billion that the Bill has provided.

However, Madam Temporary Speaker, I think I want to raise an issue regarding the costing of functions. If you look at the Division of Revenue Bill, it suggests that there is already some costing which was done by the national Treasury. We need to ask ourselves; we already have the Transitional Authority whose legal mandate was to look into this particular issue to ensure that we are able to cost the functions. If we are unable to have the proper costing of functions, we will be in a more difficult position because we may be talking about funds, looking at Kshs210 billion and thinking that these are resources that can facilitate us to run county governments, while actually, this is what we need for the entire running cost of county governments. So, we must ask ourselves: How much is it going to cost us to run the various functions of county governments?

## ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now 6.30 p.m., and the Senate stands adjourned until tomorrow, Wednesday 22<sup>nd</sup> May, 2013, at 9.00 a.m.

Sen. Sang, you still have 25 minutes if you still wish to continue tomorrow.

The Senate rose at 6.30 p.m.