

PARLIAMEN^TOF KENYA

THE SENATE

THE HANSARD

Thursday, 12th February, 2015

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

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

PRAYERS

NOTICE OF MOTION

ESTABLISHMENT OF INDEPENDENT COMMISSION ON COUNTY BOUNDARIES

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, noting the constitutional role of the Senate in the protection of the interests of counties and their governments and in the implementation of the devolved system of Government pursuant to Article 96 of the Constitution; aware that the 47 counties are based on the delineation of administrative districts as created under the Provinces and Districts Act of 1992; further aware that there existed deep-rooted and historical boundary disputes between the districts which were inherited by the resultant counties; aware that there are existing boundary disputes between various counties, which raise questions on the exact boundaries between the counties; recognizing the provisions of Article 188 of the Constitution of Kenya that mandates Parliament to approve alteration of county boundaries on the recommendation of an independent commission set up for that purpose; the Senate urges the Sessional Committee on Devolved Government to initiate and prioritize the drafting of legislation within ninety days to provide for the establishment of an independent commission to inquire into, examine and identify the boundaries of counties, taking into account the criteria set out in Article 188(2) of the Constitution and to recommend appropriate changes to Parliament so as to comprehensively deal and resolve the inter-county boundary disputes to enhance national cohesion and stability.

Thank you.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

STATUS OF THE KWS COMMUNITY ENTERPRISE DEVELOPMENT

Sen. Wangari: Thank you Mr. Speaker, Sir. I rise to request for a Statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the Kenya Wildlife Service (KWS) Community Enterprise Development (KWS-CED) which is run by KWS under the implementation of the Wildlife Conservation and Management Act, 2013. In the Statement the Chairperson should address the following:-

(a) What is the status of the project in terms of annual budget, beneficiaries and structures of administration?

(b) What is the criterion of selecting communities to benefit from the programme?

(c) How has the community around Lake Nakuru national park benefited from this project considering it is one of the biggest national parks in the country?

(d) What is the current status of the County Wildlife Conservation and Compensation committees that are provided for by the Wildlife Conservation and Management Act, 2013?

Sen. Obure: Mr. Speaker, Sir, in the absence of the Chair of the Committee I wish to confirm that I have carefully listened to the various concerns expressed by Sen. Wangari. I confirm that this will be taken up with the relevant Ministry and that we will come back right here in two weeks' time with the various responses to the various issues.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, mine is the weekly Statement and ---

The Speaker (Hon. Ethuro): No, that can come later. Sen. Wangari, are you satisfied?

Sen. Wangari: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Good. Sen. Joy Gwendu!

IMPLEMENTATION STATUS OF THE REPORT OF THE PRESIDENTIAL TASKFORCE ON PARASTATAL REFORMS

Sen. Gwendu: Mr. Speaker, Sir, I rise to request a statement from the Chairperson of the Committee on Finance, Commerce and Budget with regard to the amalgamation of the Kenya Tourism Board, Kenya Tourism Development Authority and the loans that are supposed to be given to private developers in this sector.

My concern is about the delayed amalgamation which has caused a delay in distribution of loans that private developers have applied for.

The Speaker (Hon. Ethuro): Order, what are you attempting to do?

Sen. Gwendu: Mr. Speaker, Sir, I had requested for this Statement last year.

The Speaker (Hon. Ethuro): That is not the issue. Go ahead and seek the Statement. Do not argue. Nobody is contesting what you are saying.

Sen. Gwendo: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Committee on Finance, Commerce and Budget with regard to the amalgamation of the Kenya Tourism Development Authority and Kenya Tourism Development Board that was supposed to be done after the reports were done by the Presidential Committee. I asked for this Statement last year and the Chairperson was ready with the answer. However, he seemed not to have time to answer it.

The Speaker (Hon. Ethuro): Order, hon. Senator. You are completely out of order. There is no Statement you have sought. You are giving us history of last year which we are not interested in. We are in the year 2015.

Sen. Gwendo: Mr. Speaker, Sir, there was an answer.

The Speaker (Hon. Ethuro): Order, Senator! Get your act together. I am willing to give you another chance.

LIFTING OF THE MORATORIUM ON TIMBER HARVESTING
BY THE CS FOR ENVIRONMENT, WATER
AND NATURAL RESOURCES

Sen. Mutula Kilonzo Jr.: Mr. Speaker Sir, I rise to seek a Statement from the Chairperson of the Committee on Land and Natural Resources on the lifting of the moratorium on timber harvesting by the Cabinet Secretary for Environment, Water and Natural Resources via a press statement in the *Daily Nation* newspaper on 9th February, 2015.

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

1. Whether there exist regulations in the Forest Act on harvesting of mature plantation or thinning of trees;
2. State whether the felling plan 2012/2017 was approved by the Cabinet;
3. State whether the county Governments and the National Water Towers Agency were consulted on the felling plan and whether they approved the same.
4. Explain whether environmental impact assessment was carried out and whether the National Environmental Management Authority (NEMA) confirmed that the felling plan was consistent with the conservation of the environment or any other written law.
5. Explain whether the Cabinet Secretary is aware that the functions and management of forests was devolved to the county governments by the Senate.
6. Provide a data base on the number of mature trees in all forests in the country.
7. Explain the mechanisms including budgetary allocations that the national Government has put in place to increase afforestation of depleted forests.

Sen. Khalwale: On a point of order, Mr. Speaker, Sir. I would like you to indulge me so that the answer can include whether the Government is aware that the people who were removed from the Mau Forest have gone back and whether it is the policy of the Government to resettle those who were removed from the Mau back in the forest.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In addressing the Statement requested by the distinguished Senator for

Makueni, I would like the Chairman to tell this House, in addition to that, what the Government is doing to upscale our forest cover from the current paltry 1.7 per cent to the recommended 10 per cent by the African Union (AU) and the United Nations (UN) and even more than the 10 per cent and whether they will allow logging of trees and the rate they will be replenishing plantations that are being harvested. Will they adapt the sultanate theory of cut one, plant three or four or will they indulge into an orgy of destruction of public forests the way we have seen before?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Indulge me to further seek a clarification from the Chairperson to confirm that the people who are being resettled at the Mau were paid Kshs400,000 that had been offered for the relocation of the same and that they are resettling there with the permission, authority and awareness of the Jubilee Government.

Sen. Obure: Mr. Speaker, Sir, the information being sought by hon. Mutula Kilonzo Jnr. will require a lot of work since it is very detailed. The matter becomes worse by the very complex nature of the issues raised by Sen. (Dr.) Khalwale, Sen. Wetangula and Sen. (Dr.) Machage. We will need more time and request for four weeks to come up with a comprehensive answer regarding these issues.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I request that you direct the Committee to pull up its socks and come back with it a bit earlier. Over the last two weeks, I have been overflying the Mau Forest. Big tractors are busy ploughing the area. As you know, squatters cannot afford tractors. Since tractors are now attacking the forest, this means that some very rich people are behind this mess. The Committee should come up with an answer a bit earlier before they plant.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I will not be sympathetic to you. You are riding on somebody else's Statement in the first instance. I was originally inclined that you do a separate Statement. However, given the consideration you had already stated, I think all the matters should come at the same time. The issues you have raised are weighty matters. Four weeks is not too far. Let the Committee do this work in the four weeks. The Committee Members have heard the sentiments of hon. Senators. If the process can be expedited that will be better. However, we will hold them to account after the four weeks.

Sen. Keter: On a point of order, Mr. Speaker, Sir. As leaders, it is important to have records straight. I did not want to argue with my colleague, Sen. (Dr.) Khalwale. However, he said that he has been overflying the Mau and there are many tractors there. That is wrong information. This is wrong information because some of us who come from there and who fly around--- I know that Sen. (Dr.) Khalwale does not fly anywhere apart from when he is going to Kisumu. Would I be in order to request that the words he has mentioned be expunged because they are not true?

The Speaker (Hon. Ethuro): Order, Members! I will not allow any Senator, including the ones with certain capabilities to use the Floor of this House to confirm to the lesser mortals that they have such capabilities.

(Applause)

More fundamentally, I know Sen. Keter is the Senate Deputy Majority Leader and once in a blue moon, we call upon him to respond but only after the Chairs of Committees have failed. So far, the Committee required four weeks. It is up to the Committee to confirm the veracity of the Statement made to the Committee and being the Senate Deputy Majority Leader, he has all the opportunities to give the same information which the Chair will give to the House in a proper and neater manner rather than just an opportunity of an altercation on who flies and who does not fly which route.

Thank you.

TAXATION CHALLENGES IN TEA FARMING

Sen. (Prof.) Lesan: Thank you Mr. Speaker, Sir. In the last Session, I asked for a Statement from the Chairman of the Committee on Agriculture and there was an excellent answer on how to resolve the problem of the tea farmers. Indeed, there was a tea conference which was held to discuss the issue of the prices of tea. Since it came in the last Session, there is a report which is pending somewhere. I would like to ask the Chairman of that Committee what essentially will come out of that report. Since it was held in the last Session, it has very useful information and actually the Senate incurred some expenses to deal with it. What could be the consequence of the conference that we had on tea? I would also like to know how we will be able to use the information that was attained as a result of that conference.

Thank you.

The Speaker (Hon. Ethuro): Sen. Lesan, not everything should be prosecuted on the Floor of the House. That one you can seek your Chair and sort it out. The only person you will put on a point of order here in terms of explanations is the Speaker not the Chair.

Sen. Gwendu!

IMPLEMENTATION STATUS OF THE REPORT OF THE PRESIDENTIAL TASKFORCE ON PARASTATAL REFORMS

Sen. Gwendu: Thank you Mr. Speaker, Sir, for giving me another chance. I rise to seek a Statement from the Chairman of the standing ---

The Speaker (Hon. Ethuro): Order Senator! What did you say?

Sen. Gwendu: Mr. Speaker, Sir, thank you for giving me another chance.

The Speaker (Hon. Ethuro): I thought you would add that I have also helped you. I hope you will oblige.

Sen. Gwendu: Mr. Speaker, Sir, I appreciate. I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding a report by the presidential task force on parastatal reforms which was presented to His Excellency the President on 12th November, 2013. The report recommended the amalgamation of the Kenya Tourism Board with the Exports Promotion Council (EPC), the Kenya Investment Authority (KIA) and Brand Kenya into one agency called the Kenya Investments Authority (KIA).

In the Statement, the Chairperson explained why the amalgamation has not been done to date. The Chairperson should state whether he is aware that this has disrupted the operations of the Kenya Tourism Development Corporation because its Board of Management has not been in operation since then.

Lastly, the Statement should state whether eligible investors who are interested in hotel development could access development loans while the finalization of the amalgamation process is awaited.

Thank you.

The Speaker (Hon. Ethuro): Sen. Billow!

Sen. Billow: Mr. Speaker, Sir, as you can see, I was displaced from my usual seat. Nonetheless, I want to advise Members that I am on this corner of the House.

The Statement sought by Sen. Gwendu is a very important one especially given that it is actually disrupting the delay not only in this particular ones but I think many institutions. I will request – this is a renewal of the question; we were already pursuing it. I request for a week; may be Thursday next week to try and get the response from the CS.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Adan!

MANAGEMENT CRISIS, ALARMING DECLINING ACADEMIC
PERFORMANCE AND RAMPANT THEFT OF SCHOOL PROPERTY
IN GARBATULLAH HIGH SCHOOL, ISIOLO COUNTY

Sen. Adan: Mr. Speaker, Sir, I rise to ask for a Statement from the Chair of the Standing Committee of Education regarding the management crisis, alarming declining academic performance and rampant theft of school property at Garbatullah High School in Isiolo county.

In the Statement, the Chairperson should:-

1. Clarify whether the ministry of education and the Teacher's Service Commission (TSC) have plans to overhaul the school board of governors.
2. Explain why the current principal of the school is still in office despite having attained retirement age.
3. State and explain disciplinary measures the Ministry of Education and TSC intend to take against the current and former school management boards for failure to secure school property.
4. State and explain measures the Ministry of Education plans to take to secure the school property and improve the performance in view of the school's re-elevation to national status.

Thank you.

(Sen. Karaba spoke off record)

The Speaker (Hon. Ethuro): Is that the Chair for the Committee on Education?

Sen. Karaba: Mr. Speaker, Sir, in two weeks' time.

The Speaker (Hon. Ethuro): Be on record, Chair. The microphone was not on.

Sen. Karaba: Mr. Speaker, Sir, I had discussed this issue with Sen. Adan and agreed that it is very serious and it requires a lot of groundwork information which I can give in two weeks' time.

The Speaker (Hon. Ethuro): Fine. Senate Majority Leader!

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 17TH FEBRUARY, 2015

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I rise under Standing Order No. 45 to give the business of the week for next week.

On Tuesday, 17th February, 2015 there will be a meeting of the Rules and Business Committee (RBC) in the afternoon to schedule the Business of the week and, subject to any directions that may be given by the RBC, the Senate will continue with the business that will not be concluded in today's Order Paper, especially concentrating on the Bills that are going through the Second Reading.

On Wednesday, 18th February, 2015, the Senate will continue with the Business not concluded on Tuesday and consider the following Business at the Committee of the Whole:-

- 1) The fertilizer and animal foodstuff amendment Bill, (National Assembly Bill No. 36 of 2013).
- 2) The Statute Law, Miscellaneous Amendment Bill No.2 (National Assembly Bill No. 33 of 2013).
- 3) The National Youth Service (NYS) Amendment Bill, 2014.
- 4) The National Police Service Amendment Bill, 2014.

At this juncture, I would just want to request hon. Senators to be present on Wednesday because normally, the Bills that are being considered for Third Reading require the necessary threshold. So, we need adequate delegations to be able to process those Bills.

On Thursday, 19th February, 2015, the Senate will consider Bills at Second Reading stage beside a Motion by Sen. Mutula Kilonzo Jnr., on initiation of legislation to provide for the establishment of an independent commission to inquire into the boundaries of counties.

(Applause)

Mr. Speaker, Sir, I can see there is a lot of interest in the Motion by Sen. Mutula Kilonzo Jnr. That interest is shared by very many Senators and many counties including Tharaka-Nithi County which is represented by the Senate Majority leader.

Mr. Speaker, Sir, with those remarks, I thank every Senator and once more kindly appeal to them to be here on Wednesday because we need to vote and process Bills. Kindly, if you have engagements, just set them aside or push them to Tuesday or Thursday so that on Wednesday we are able to process these Bills.

I take notice of what the Whips are doing. They could do even better by reminding us to come on Thursday, the same way they reminded us to come today, so that we can deal with the revenue sharing formula which equally requires a threshold.

Mr. Speaker, Sir, I thank you and I now lay this Statement on the Table of the House.

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

The Speaker (Hon. Ethuro): Order Senators. Before I call on the next Order, I would like to communicate on the presence of some visitors we have.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THE COMMISSION ON REVENUE ALLOCATION

Honourable Senators, I wish to acknowledge the presence of a delegation visiting us this afternoon. Allow me, therefore, to introduce to you a delegation of members from the Commission on Revenue Allocation who are seated at the Speaker's Gallery.

The delegation is led by the Chairman, Mr. Micah Cheserem. As I proceed to introduce the rest, I request that when a member is called, he or she should stand up to be acknowledged in the normal traditional way of Parliament.

- (i) Mr. Micah Cheserem – Chairman (CRS)
- (ii) Ms. Rose B. Osoro
- (iii) Ms. Amina Ahmed
- (iv) Mr. James Katule
- (v) Ms. Linet Oyugi
- (iv) Ms. Martha Maneno

(Applause)

On behalf of the Senate and on my own behalf, I extend a warm welcome to you and wish you enjoy our proceedings.

Next Order!

BILLS

First Readings

THE REGISTRATION AND IDENTIFICATION OF PERSONS BILL
(SENATE BILL NO. 39 OF 2014)

THE COUNTY GOVERNMENT DISASTER MANAGEMENT BILL
(SENATE BILL NO. 40 OF 2014)

THE REFUGEES BILL (SENATE BILL NO. 41 OF 2014)

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO.42 OF 2014)

*(Orders for First Readings read – Read the First
Time and ordered to be referred to the relevant
Departmental Committees)*

MOTIONS

APPROVAL OF NOMINATION OF MEMBERS
TO SERVE IN SENATE COMMITTEES

The Speaker (Hon. Ethuro): Senate Majority Leader, I can allow you one minute to consult with your counterparts.

(Sen. (Prof.) Kindiki consulted other Senators)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to move the following Motion in an amended form.

THAT, pursuant to Standing Order Nos. 177 and 210, the Senate approves the following Senators nominated by the Rules and Business Committee to serve in the respective Sessional Committees as indicated below:-

A. COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

1. Sen. Murkomen Kipchumba
2. Sen. Wamatangi Kimani
3. Sen. (Eng.) Karue Muriuki
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Wangari Martha
6. Sen. (Dr.) Khalwale Boni

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Order Senators. This is absolutely important to you. Do not assume because it is already printed, it depends on what goes on to the HANSARD.

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The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. For those who may not have heard, I had actually moved in an amended form because there are one or two amendments. I will move the Motion again.

I beg to move the following Motion:-

THAT, pursuant to Standing Order Nos. 177 and 210, the Senate approves the following Senators nominated by the Rules and Business Committee to serve in the respective Sessional Committees as indicated below:-

B. COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

1. Sen. Murkomen Kipchumba
2. Sen. Wamatangi Kimani
3. Sen. (Eng.) Karue Muriuki
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Wangari Martha
6. Sen. (Dr.) Khalwale Boni
7. Sen. Omar Hassan
8. Sen. Sitswila Wako Amos
9. Sen. (Prof.) Anyang'-Nyong'o
10. Sen. Mong'are Okong'o Kennedy
11. Sen. George Khaniri

B. COMMITTEE ON DEVOLVED GOVERNMENT

1. Sen. Kipchumba Murkomen
2. Sen. Naisula Lesuuda
3. Sen. Billow Kerrow
4. Sen. Beatrice Elachi
5. Sen. Stephen ole Ntutu
6. Sen. Amos Sitswila Wako
7. Sen. Janet Ong'era
8. Sen. Hassan Omar
9. Sen. Henry Tiole Ndiema

C. COMMITTEE ON IMPLEMENTATION

1. Sen. Yusuf Haji
2. Sen. Bule Ali
3. Sen. Hosea Onchwang'i
4. Sen. Gertrude Emma Mbura
5. Sen. Godfrey Gitahi Kariuki
6. Sen. Abdirahman Hassan
7. Sen. James Orengo
8. Sen. Johnson Muthama

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9. Sen. Daisy Nyongesa Kanainza

D. COMMITTEE ON DELEGATED LEGISLATION

1. Sen. Stephen Sang
2. Sen. Gwendu Joy
3. Sen. Liza Chelule
4. Sen. Gertrude Emma Mbura
5. Sen. Karaba Daniel
6. Sen. Boy Juma Boy
7. Sen. Judith Sijeny
8. Sen. (Dr.) Boni Khalwale
9. Sen. Godliver Omondi Nanjira.

Sen. Leshore: On a point of order, Mr. Speaker, Sir. As much as I would like to appreciate what the Leader of Majority is talking about, I do not have the document he is reading. Is it available to all of us as amended? What I have shows Sen. Njoroge Paul and not Sen. Haji.

The Speaker (Hon. Ethuro): Order, Senator. That is why he is talking of an amended version. It is not a Supplementary Order Paper. It means that there are some minor amendments which might include what you are referring to. It means you just need to be more attentive than before.

Sen. Leshore: Mr. Speaker, Sir, I was very attentive and that is why I have come up with that.

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, as was the case with the RBC, we also consulted with the Senate Minority Leader with regard to the Sessional Committee that must be reconstituted every year. We were of the opinion generally that unless where Members had expressed direct intentions to move from one Committee to another, we will not “disturb” the list generally. This is because every time there is need to change Members from one Committee or the other, it is done during the Session. I remember in December last year, we made some minor changes especially on the Jubilee side. We felt that largely since Committees have been working well, we would retain the same people and if there are issues, they can be processed in the course of the Session as has happened before.

Mr. Speaker, Sir, I have moved this Motion in an amended form and I am going to explain the amendments that have been made. The amendments are due to the fact that either there was an error or some form of oversight. The amendments were subjected to consultations and I think even the Chair has been informed. The first change---

(Sen. Leshore consulted another Senator)

I am afraid the Senator for Samburu is not listening and he is the one who raised that issue. He is not listening and yet he is the one who asked for clarity.

The Speaker (Hon. Ethuro): Sen. Leshore, please be attentive.

The Senate Majority Leader complained to the Chair and so far the Chair is not the Senate Minority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. The Senate Minority Leader would aspire to be a chair in the year 2050.

The first change is in respect of the County Public Accounts and Investments Committee (CPAC). The name of Sen. (Dr.) Zani appears as number 11 in that Committee. Upon consulting and receiving instructions from that party through the Senate Minority Leader, I am told that the correct person is Sen. Khaniri because he has been in this Committee and nobody has complained about his performance. I think the name of Sen. (Dr.) Zani may have been included here by mistake. That is the position according to the Senate Minority Leader.

The Speaker (Hon. Ethuro): Except that there is no correct and wrong person. Both of them are correct.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I withdraw that part and amend it accordingly.

The next change has to do with the Implementation Committee. The first name in the Implementation Committee is that of Sen. Paul Njoroge. In the changes that were made in December and approved by this House, Sen. Njoroge was approved to sit in the Committee for Labour and Social Justice. If Sen. Njoroge remains in the Implementation Committee, he would be serving in four Committees. Therefore, he has already agreed to cede that position so that another Member from the Jubilee side who has a lighter workload can take up that position. Upon consultations, we have agreed that the position of Sen. Njoroge in the Implementation Committee be taken by our senior Senator here; Sen. Haji, the Senator for Garissa.

The other change is with regard to the Committee on Delegated Legislation. We just made one change with regard to serial number eight which reads as Sen. David Musila. Again the Minority side has confirmed that the name that should appear there is the name of Sen. (Dr.) Khalwale, the Senator for Kakamega.

Those are the only three changes done with the full consultations and full notice. We are seeking that this House approves this Motion so that these Committees can start their work immediately. There is a lot of work for each and every Committee. It is important that these Committees are not left behind by the Standing Committees which have already started their work. I do not intend to take a lot of time; these are subject to consultations between and within parties.

I beg to move and request the Senate Minority Leader, Sen. Wetangula, to second.

Sen. Leshore: On a point of order, Mr. Speaker, Sir. I know Sen. (Dr.) Khalwale has been a very active chairman, I do not understand why he was demoted as the Chair of the County Public Accounts and Investments Committee (CPAC).

The Speaker (Hon. Ethuro): Sen. Leshore, I think the recess must have taken a toll on you.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Whereas we appreciate the list read to us by the Senate Leader of Majority with amendments that have been hurriedly done on the Floor of this House, I expected at least one phrase at the end of his Statement that he is sorry for not taking due diligence for us to get real information instead of a haphazardly done list on the Floor of the House.

The Speaker (Hon. Ethuro): Order, Sen. (Dr) Machage. You are the one who owes this House an apology.

(Laughter)

The Standing Orders are abundantly clear and I know for a fact that you know them. Any Member can move a Motion in an amended form. There are no apologies to be made.

Proceed Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, congratulations for coming back rejuvenated and witty.

(Laughter)

I beg to second this Motion. In doing so, I want to urge the House that after wide consultations, we agreed that, all Members who served in various Committees had discharged their duties diligently and ably. We wanted to give every Member an opportunity to continue serving in those Committees to benefit from the capacity they have built and the levels of continuity.

Mr. Speaker, Sir, I want to congratulate each Member for having discharged their duties and responsibilities in the Committees. I want to single out our distinguished younger brother, Sen. Onchwang'i, who spoke here yesterday and we want to salute him and encourage him that these are your elder brothers, mothers, fathers and sisters, so, feel free to speak as frequently as you possibly can.

I also want to urge the House that this being a continuation of the Committees that we had in the last Session, we have more serious businesses to do. You should propose the Question and if possible, put the Question so that we go to more serious business of the House. I urge Members to attend regularly. Yesterday we could not vote because we could not raise enough delegations. Let us make a difference this Session so that we can channel out as much Business as we possibly can.

Lastly, I want to encourage the Committees that as you will elect your leaderships, again, give the House leaders that will guide and navigate Committees to do meaningful and positive work because as you know, the bulk of our work is done in Committees and then brought to plenary for endorsement and adoption. Members of the Committees must be committed. They should not just go to Committees to raise quorum and disappear to other businesses. Please do the work that we expect everyone to do.

With those few remarks, I beg to second.

The Speaker (Hon. Ethuro): Order Senators. Before I propose the Question, I want to bring your attention to Standing Order No.49, in particular reference to the issue raised by Sen. (Dr.) Machage: moving of Motions in an amended form.

It states that:-

“The Speaker may permit a Senator to move in amended form a Motion of which notice has been given if in the opinion of the Speaker the amendment does not materially alter any principle embodied in the Motion”.

So any time you want to ask that, you may ask whether in my opinion I thought so.

(Laughter)

My opinion on that matter is final. Just to bring us to speed, Standing Order No.179 on approval of nomination, states that:-

“The Rules and Business Committee shall, within Seven days upon nomination of Senators to serve in Select Committees, present the list of nominees to the Senate for approval”.

You remember you approved the Rules and Business Committee on Tuesday and so, yesterday, the notice was given and today the Motion is here.

It further states:-

2(b) “Whenever a Motion for approval of a list under paragraph (1) is moved in the Senate, no objection against the proposed membership of a Senator in a Select Committee shall be permitted and objections, if any, shall be formulated against the proposed membership as a whole”.

That is where the issue of bringing the Motion in an amended form is critical and after consultations.

(3) “A Senator shall not be a Member of Select Committee unless the Senate approves the nomination of such a Senator”.

Therefore, Sen. Leshore, your preferred Chair cannot continue chairing until you approve him to the Committee and then subsequently, you go ahead and propose him to be elected the Chairman.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like to support this Motion, with special regards for the County Public Accounts and Investment Committee (CPAIC). I want to report that we have never missed a sitting because of the challenge of quorum. Therefore, I want to thank the Senate Majority Leader and the Senate Minority Leader for returning the same Membership.

Lastly, in my support, I want to inform this House that as much as we have been Members of this Committee, we have been done a great de-service from the Judiciary. The Judiciary has tied our hands with injunctions upon injunctions. We have been unable to interrogate our governors and if the country thought that what we were doing by forming this Committee was a joke, they better see what is happening in the counties. The current turbulence that is being witnessed in Makueni is because the Governor has

not been invited here. What we are seeing in Narok, which led to the loss of lives, is because *wananchi* are not seeing anybody oversighting these Governors. I hope that the Judiciary is going to move with speed to unlock this very unfortunate and unacceptable state, so that what we saw in Nandi, Kisumu, Machakos and other counties can be sorted out by this Senate.

I beg to support.

Sen. Boy Juma Boy: Jambo la nidhamu, Bw. Spika. Nimekusikia ukisema: “Sen. Juma Boy Juma.” Hatuna Seneta huyo; tuko na Sen. Boy Juma Boy.

(Laughter)

The Speaker (Hon. Ethuro): Hiyo ni Kamati gani? Nakubaliana na wewe na ninaomba radhi. Waandishi ndio walikosea, lakini sisi sote tunajua kwamba---

(Sen. Wetangula consulted loudly)

Sen. Wetangula, hautanifunza lugha. Mimi huongea Kiswahili mufti.

Tunakuomba radhi kwa kutoandika jina lako vizuri, lakini kila mtu hapa na nchi nzima inajua kuwa wewe ni Boy Juma Boy. Mwanzo ni Boy na mwisho ni Boy.

(Laughter)

Sen. (Eng.) Muriuki!

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I stand to support the Motion. Allow me also to raise a matter which I think is pertinent at this time. It is with regard to the procedure that we have in the sittings of the Committees. I congratulate Sen. (Dr.) Khalwale for leading a Committee which never missed a sitting because of lack of quorum. Sometimes you will find Members travelling from all over to attend a meeting. The meeting does not take off because there is no quorum and there is no record at all, because the administrative procedures as we have now are such that the records are properly kept only if you have a *bona fide* Committee sitting as it were. The records are there only if a meeting took off and there are minutes.

I would suggest that the Rules and Business Committee considers an administrative way of recording who came to the meeting and at what time it was called off for lack of quorum. Sometimes we have reasons for enumerating who came how many times in the Committees, in relation to foreign trips and so on. You may find that out of 15 sittings or so that a Member is recorded as having attended, there may be three, four or five others which never took off.

I would propose that administrative measures be set, maybe in the Speaker’s Rules, so that whoever came and what time the meeting was adjourned for lack of quorum is properly documented.

The Speaker (Hon. Ethuro): I think that is a good suggestion. We will take it on board.

Sen. Abdirahman: Mr. Speaker, Sir, I support the list as moved this afternoon. But I have two comments to make, basically in relation to the Committee on Implementation that does a lot of good work, particularly in trying to follow up the Motions and Bills that we bring to this House. There is a serious gap in terms of ensuring enforcement. Whenever reports are provided to this House, it is important that we develop a mechanism to ensure that these things actually achieve the intended purposes.

I want to give two examples: First, this House has passed a Motion touching on the transfer of primary and secondary schools education to county governments. This could be done through an intergovernmental arrangement and it is still hanging. Secondly, we have done a little more work on environment, particularly on pollution of the Nairobi River. We must look for a mechanism of tracking the implementation of some of the resolutions of this House, whether it is through the main reports or Bills that have been brought, but have not actually become law finally.

Thank you very much.

(Several Senators requested to speak)

The Speaker (Hon. Ethuro): Order, Senators! I thought there was an understanding that this was going to be very brief. Let me allow two other interests and plead with them to be brief. I appreciate that some of you are looking forward to be proposed by Sen. Leshore, but we will still go ahead.

I will give the chance to Sen. Sang and then Sen. (Prof.) Lonyangapuo. Make it very brief.

Sen. Sang: Thank you, Mr. Speaker, Sir. I stand to support the Motion. Specifically, I want to appreciate the Members of the Sessional Committee on Delegated Legislation. In the last Session this Committee never had major issues with regard to quorum, as indicated by Sen. (Dr.) Khalwale with regard to his Committee. Our Sessional Committee on Delegated Legislation managed to host over 20 counterpart committees from the county assemblies within the last Session. I think that, that is a very important component that all the other Committees should borrow. We have money to build and enhance the capacity of our counterpart committees in the counties.

Mr. Speaker, Sir, within the last Session, also the Committee managed to visit over 12 counties in this country. I think this is very important. I want to join the other Members in welcoming one more Member---

The Speaker (Hon. Ethuro): Order! There is no Membership.
Just conclude.

Sen. Sang: I am sorry, Mr. Speaker, Sir. I want to note that whereas the proposed list seems to retain almost the entire Membership of the last Session, Sen. Boy Juma Boy, would be a new Member. I, therefore, want to take this opportunity to welcome him to the Committee. I am sure that he brings---

The Speaker (Hon. Ethuro): Order! Approve him first.

(Laughter)

Sen. Sang: Mr. Speaker, Sir, I support the Motion.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, one minute. Members, let us be sensitive to others.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to also join my colleagues in thanking the Senate Majority Leader for presenting nominees to these key Sessional Committees which touch on our work as Senators, especially in the devolved system.

Having been a Member of the Committee, as indicated here, in the previous Session, we had serious challenges, as Sen. (Dr.) Khalwale has said. But there are things that these Committees are going to dwell on. There are challenges emanating from the governors and their deputies, which this Committee on Devolved Government will really have to consider so that they come out clearly. So many requests are now coming from counties because of the challenges.

I would like to finish by saying that the arms of Government that work together with us in making sure that our work is delivered should not really be an obstacle, particularly where county funds are involved. People should see value for these devolved funds.

Mr. Speaker, Sir, I beg to support.

(Question put and agreed to)

The Speaker (Hon. Ethuro): Hon. Senators, I want to reiterate what the Senate Majority and Minority leaders as well as some of you have said. You have an opportunity to serve. Please let us be available when the Committee meetings are being convened to transact business. We expect that this year, the Senate will be on top of things because the country is waiting for your services. I wish to congratulate everybody who has been nominated to the Committees.

ADOPTION OF FINANCE COMMITTEE REPORT
ON CONSIDERATION OF SECOND GENERATION
CRITERIA FOR RESOURCE ALLOCATION

Sen. Billow: Thank you, Mr. Speaker, Sir. I beg to move the following Motion:-

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Consideration of the Second Generation Criteria for Resource Allocation for the three years for 2015/16, 2016/17 and 2017/18 laid on the Table of the House on Wednesday, 11th February, 2015.

Mr. Speaker, Sir, the Constitution is very clear. One of the key platforms on which devolution is based is resource allocation. In fact, some of us believe that resource allocation was the driver behind the reforms that led to the new Constitution. So, in this regard, the Constitution is very clear that the revenues which are raised nationally in this country must be shared equitably with the counties in the rest of the country. Specifically, Articles 201 to 204 are very clear that revenues raised nationally shall be shared equitably among the national and the county governments.

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I am sure that the Members are also aware that Article 203 is very specific. It provides the criterion that needs to be taken into account in determining the equitable sharing between the two levels of Government. It looks at a number of factors which are contained in our Report to ensure that county governments have adequate money to perform the functions that have been allocated to them and also to ensure that their developmental needs are addressed. There are also several other factors including the economic disparities, economic optimization of each county and all those factors that are contained in Article 203.

The Constitution in Article 217 also provides that:-

“Once every five years, the Senate shall, by resolution determine the basis for the allocation among the counties the share of national revenue that is annually allocated to the county level of government”

Mr. Speaker, Sir, however, in the transitional provisions in the Sixth Schedule, it provides that the first and the second determination of the basis of the Division of Revenue among the counties shall be for a period of three years. So, after 2017, it shall now be after every five years. However, the first one and the second one will be for a period of three years. This is why we now have to look at the second revenue sharing formula.

The Committee on Finance, Commerce and Budget has had the opportunity in accordance with the Constitution to address itself to that matter. The Committee had a consultative meeting with the Commission on Revenue Allocation (CRA), which is mandated in Article 216 to give recommendations in this regard. We have looked at the recommendation which was in fact tabled in the House. It is that recommendation which was referred to this Committee to have a look at. I am sure Members can get copies of the recommendations because they were tabled here in the last Session. I think that it is a very useful document for Members to look at, because it goes into detail to explain each of those parameters and the basis for the recommendations of those parameters.

The Committee has looked at that and also had an opportunity to engage the public. We had a public hearing and received views from other institutions as well in this regard. Therefore, based on that, we have given a recommendation as a Committee. Our recommendation is very clearly provided for in page 4 of our Report. From the deliberations and considerations of the recommendations by the CRA and representations from other members of the public, the Committee recommends that the House approves formula which includes the following parameters.

There is a comparison between the previous one, which is ending this year, and the one that is being proposed. I want to mention them. The first parameter is population. Last year, population had a weight of 45 per cent and we have retained the same weight of 45 per cent in this financial year in this particular formula. The basic share – I will be explaining each of these parameters shortly – had 25 per cent and we have retained the same 25 per cent. Then poverty had 20 per cent and we have reduced that to 18 per cent in this recommendation. The fourth parameter is the land area or the size of the land mass of the county, which we have retained at 8 per cent. Then we have the fiscal responsibility, which we have reduced from 2 per cent to 1 per cent, and we will explain why we reduced it.

We have introduced two new parameters; the development factor, which we have recommended the weight of 1 per cent; and personnel emoluments, where we have recommended 2 per cent, bringing the total to 100 per cent. Those were the parameters and the weights that we have recommended. Of course, Members of Parliament (MPs) can get the details of the formula, the computations and whatever else in the report.

Mr. Speaker, Sir, I want to take the opportunity to explain what those parameters are so that Members are very clear on what exactly informed our decision. From the outset, I want to say that the formula we recommended here is a formula that we have agreed upon with the Commission for Revenue Allocation (CRA) at the consultative stage. It is very important for Members to know that for any formula that must be used here, it must be a simple formula that can be understood; not only by Members of this House or the other House, but also by the users of this formula; those who are going to allocate money. The public needs to know that this is a very simple formula that people can relate to.

Secondly, it must be measurable; we must have data on which we can measure those parameters. That is also a very important thing. It must also minimize inequalities because the main thing that underpins sharing of resources is the equitability. So, it must minimize inequalities among the counties and, of course, the other principles provided for in the chapter of the Constitution dealing with public finance.

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

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

Mr. Temporary Speaker, Sir, let me now take Members very briefly through those parameters. The first one is population. Why is population important? It is important because it is based on facts that are easily available. The data on population is easily available because this country conducts a census every 10 years and, so, it ensures predictability. Number two is the transparent figure; it is very clearly objective because services are provided on *per capita* basis and it is something that you can measure. It also ensures equality because when you deal with population---

(Loud consultations)

Mr. Speaker, Sir, it also ensures equal *per capita* transfers to all the counties and population, therefore, is a very important parameter. However, when the CRA was collecting this information or when it was collecting views from across the country – they did consult with all stakeholders, including the public – some of the counties that are highly populated, like Nairobi, Kakamega, Kiambu, Bungoma, Meru and so on, and so forth, they had recommended that the weight assigned be increased. It is obvious because then the more the weight, the more money they get. But at the same time, nearly 36 of the counties – which are really most of the counties – did not want population to be increased or factors as had been recommended by some of the counties, like population densities, to be used and so on, and so forth. The reasons are pretty clear.

Some of these counties that we have mentioned already have good infrastructure. Similarly, in terms of their potential for more revenue collection locally, because of the high population density, populations which are mostly concentrated in small areas thus making it cheaper to provide services. So, in view of the facts that there is need, therefore, to balance with the needs of all the others, the population factor has been retained. We felt it was necessary to retain the population factor at 45 per cent and not to reduce it.

The second parameter which I want to look at, is the one on the basic equal share. This is also a very important parameter. When funds are transferred, we have to ensure that each of the counties can provide certain basic services. There are certain costs that are fixed; for instance, every county has a Governor, every county has an assembly. They must have County Executive Officers (CECs) and a minimum level of service provision like health facilities which they have taken over, and so on, and so forth. So, there is a basic service that has to be provided and, therefore, this basic equal share is intended to ensure that every county at least has adequate money to cover those basic services that they must provide.

Mr. Temporary Speaker, Sir, the issue that has been raised by some Members even at the Committee level and which I think even members of the public had raised is that the basic equal share does not ensure fairness. They also said that they were just giving every county 25 per cent equally and yet the counties are not the same. The counties have different needs; they have different levels of development and different challenges. So, it is not a measure that ensures fairness; it is not a measure that enhances efficiency because you are just giving everyone the same amount.

So, those are some of the challenges that I think come with that principle, which some also say violates the basic principle of democracy, which is that *per capita* income. So, those issues have been raised. However, I think the overriding factor and the reason why we retained it is that these counties must provide for those basic services. They have an establishment to pay for and they have services to deliver. So, that basic minimum will ensure that everyone at least has to come to a certain level and it is useful for particularly those counties that have smaller populations, which are quite a sizeable number. So, that is why we retained it at that figure.

Mr. Temporary Speaker, Sir, the third parameter that I want to look at is poverty. The poverty gap, which is what is recommended here, is a measure of the depth of poverty and the extent to which individuals of a household fall below the poverty line. The figures on poverty are based on the Kenya Integrated Household Survey that was conducted by the Kenya National Bureau of Statistics (KNBS). The figures are provided for in this document by the Commission for Revenue Allocation, I think on the last two pages, where you will find the actual poverty figures for each of the counties based on the poverty gap. Members can look at it. I do not want to go into those details.

Based on that, it is very important because it is not just about poverty, but the extent or the depth – how much resources or funding is required to help because at the end of the day, resources are about helping those who are in need and I think we have to. In that regard there is need to ensure that we provide for those resources with those who are in need and that is very clear in Article 203. We have provided for that, however, we

have adjusted that figure a bit downwards to 18 per cent so that we can also allow some other parameters which I will be addressing shortly, which are essential to some of the counties. The figure provided for poverty is 18 per cent.

Then we have the land area. Land area, is also significant for a good number of the counties for obvious reasons. Services that are provided for in these counties which have a large land surface area are expensive. The cost of delivery of services is expensive. If you are moving from Marsabit town, for example, where Sen. Hargura comes from, if you have to go to Ileret, it is 600 kilometres away. If there is an ambulance that is picking somebody from Ileret to Marsabit, it is not the same as some of the counties that have a land mass of less than even 500 square kilometres. There are counties that are that small.

So, we are looking at counties which have 75,000 square kilometres like Turkana and many others. So, land is critical in terms of the cost of delivery of service because of the large area that needs to be covered. We are not saying that the small areas also do not have problems. That is why in the computation even the small areas have got concerns about their terrain and so forth. So, more than half of the counties had recommended that the weight on this parameter of land be increased. However, we have agreed with the Commission on Revenue Allocation (CRA) that we retain it at that level of 8 per cent. So, that is on land.

The next one is on fiscal responsibility. Fiscal responsibility is important because we need to know how county governments address issues of financial management. The principles on fiscal responsibility are provided for in the Constitution very clearly ---

(Sen. Boy Juma Boy stood up in his place)

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

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, our Standing Orders are very clear that two Members cannot be on their feet at the same time. Have you noticed that Sen. Boy Juma Boy is continuously on his feet when the Member is moving the Motion?

The Temporary Speaker (Sen. Murkomen): Thank you Sen. (Dr.) Machage. I have actually noticed, particularly when you brought to my attention that Sen. Boy Juma Boy, or as sometimes is known as "Man Juma Man" was standing and I hope from there he will follow the Standing Orders accordingly.

Yes, Sen. Haji?

Sen. Haji: Mr. Speaker, Sir, I think we have business to do here. Some people should stop doing the work of the Speaker. Why would we talk about a Senator standing when somebody is already on his feet? We should save time ---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Haji! You are completely out of order. The Standing Orders are very clear that any Member can stand on a point of order if the Standing Orders have been breached. Sen. (Dr.) Machage was within the Standing Orders.

Proceed, Chairman.

Sen. Haji: Mr. Temporary Speaker, Sir,---

The Temporary Speaker (Sen. Murkomen): Order! Sen. Haji. That is not how to communicate. You do not just stand up; there are procedures here. I actually appreciate your point that this is a very serious discussion and so we must minimize interruptions. From now henceforth, we must minimize interruptions but the Member was not out of order.

Proceed, Chairman.

Sen. Haji: Wewe fanya haraka Bwana!

Sen. Billow: Mr. Speaker, Sir, I think it is important for Members to understand what we are presenting because it is a very important responsibility and they need to go and explain it in their counties. Sometimes they will be asked to explain to their own counties, so they need to appreciate and pay attention. I agree with Sen. (Dr.) Machage that they need to do so, so that we can be on the same page.

So, I was looking at the fiscal responsibility.

(Loud consultations)

The Temporary Speaker (Sen. Murkomen): Order Senators! The Senate Minority Whip, Senator for Embu, Sen. Lenny Kivuti, the Senator for Nyeri; you are allowed to consult by the rules, but let us make ---

(Sen. Muthama consulted loudly)

Senator for Machakos, even before I complete what I am saying you are already back to being noisy. As much as possible, the consultations, can go on, but make it as low as possible to allow other Members to follow the Chairman's presentation. As the Chair has said, it is very important because many questions will be asked when you go back home to your county.

Sen. Billow: Mr. Temporary Speaker, Sir, fiscal responsibility is a very important parameter which addresses the issue of prudent financial management. Some of the principles on fiscal responsibility are already provided for in the Public Finance Management (PFM) Act, which looks at the level of recurrent expenditures, and so on. But I think in this particular one, what the formula looks at here in terms of the factors that are being used, is very specific. It looks at the counties own revenue; how much revenue - the fiscal revenue that has been collected, the counties own revenue as a proportion of the counties total expenditure. This is important.

The idea is to encourage counties to collect more revenue. But because the counties are still new, we are still in a transition phase, we do not have a lot of information and data on how counties manage because audits are still not being done. This is an area that we need to develop more intensely maybe at the next revenue. At present, it is not very easy to look at how efficient counties are in terms of managing their finances, revenue collection and so on. So, we decided not to put in a lot of weight on this and we have adjusted the weight down just to 1 per cent because the revenue collection still forms a significantly small amount relative to the total amount of revenue that the counties get from the national Government.

The other two parameters that have been introduced, one is the development factor which has a weight of 1 per cent. The development factor is important because it looks at those parameters that will help us to take into account the socio-economic dimensions into this matter. This is important because one of the challenges we have in this country is inequitable resource allocation over many years. When you look at the socio-economic and development indices in these counties, you will find that there are the “y” disparities. When you look at infrastructure, sanitation, water and electricity connection, there is a lot of disparity in all those factors because of the skewed allocation of resources in the past. This factor is based on a number of factors that address the issue of prudent financial management. Some of the principles on fiscal responsibilities are provided for in the Public Finance Management (PFM) Act which looks at the levels of recurrent expenditures among other things. However, in this particular one, the formula looks at something that is very specific. It looks at the county’s own revenue. It looks at how much revenue; the fiscal revenue that has been collected. This is the county’s own revenue as a proportion of the county’s total expenditure. This is important. The idea is to encourage counties to collect more revenue.

Mr. Temporary Speaker, Sir, since the counties are new and we are still in the transition phase, we do not have a lot of information and data on how counties are managed. Audits are still not being done and this is an area that we need to develop intensely at the next Revenue Allocation Bill. At present, it is not easy to look at the efficiency of counties in terms of managing their finances in terms of revenue collection. We decided not to put in a lot of weight on this. In fact, we have adjusted the weight to just 1 per cent. The revenue collections still form a significantly small amount compared to the total amount of revenue that the counties get from the national Government.

The two other parameters that have been introduced are the development factor which has a weight of 1 per cent. The development factor is important because it looks at parameters that will help us take into account the socio-economic dimensions into this matter. This is important. One of the challenges we have in this country is that owing to inequitable resource allocation over many years, the socio-economic and development indices, you will find a wide disparity. When you look at the infrastructure, sanitation, water and electricity connection, you will find a lot of disparity. This is because of the skewed allocation of resources in the past.

Therefore, this factor is based on a number of indicators that the Commission on Revenue Allocation (CRA) has looked at. For example, there are issues about literacy, pre-primary school enrolment, and the level of coverage for immunization and the rate of delivery in hospitals. I want to look at that point because my county happens to be one with the lowest maternal mortality rates in the world. We have the highest number of women who die at the time of giving birth. These are 3,795 for every 100,000. That is crazy when the average is less than 500 in the whole country. This also looks at those things; the fact that hospitals are not available. It looks at basic sanitation and how many houses are connected to water.

Mr. Temporary Speaker, Sir, when you look at the back of this book and concentrate on the part regarding Wajir where the Senate Deputy Minority Leader comes from, you will see that the percentage of not attending pre-primary education is 93 per

cent. The percentage of households without access to improved sanitation; those that do not have the normal pit latrine, forget the sewerage system at Wajir headquarters is 93 per cent. The percentage of women delivering at home is 94.6 per cent. Therefore, when you compare that with other counties, for instance, Mombasa, you will see that the rate there is 26 per cent. The lack of improved sanitation is just about 18 per cent. Owing to that, the CRA has developed a factor that looks at all that including the kilometres of paved roads among other items. Pages 40 and 41 will show you the figures.

They took all that and created a factor which has a weight of 2 per cent which we are calling the development factor. It is important that we have this because it helps redistribute resources to ensure that the areas that have been left behind can also benefit. The last parameter is called the Personnel Emoluments. This is also a very important parameter for the simple reasons that there are a number of counties that have taken over a large number of staff from the former local authorities. This is to the extent that their payroll costs represent a very significant proportion of the total amount of money that they get for their share of revenue. An example is Nairobi County which literally spends over 100 per cent of its allocation on salaries. The figures on the salaries are also provided for.

There are counties, for instance, Mombasa that spends Kshs1.5 billion on personnel emoluments. Kilifi spends Kshs1 billion while Nyeri spends Kshs1.8 billion. Kiambu spends Kshs2.6 billion of their money. Nairobi spends nearly Kshs3.8 billion on salaries. For us to address this disparity, this factor was recommended by the CRA. We looked at it and agreed that it will help to strike a balance. We should go ahead, allow and give it a weight of 2 per cent. That factor is important. Counties with huge establishment of personnel will not use all their money going into emoluments. This is not significant but will help a little bit. This is a question of how much your personnel costs are; as a percentage of the total allocation.

The entire 47 counties spent Kshs47 billion on personnel emoluments last year. If the Mombasa payroll reads 1.5, then that will translate to 1.5 per cent of the Kshs47 billion. That is how you get the factor. You can check that for each of your counties. That is the basis upon which it is done. This is important because it helps those counties. Those are the parameters and the end result is that the population will have 45 per cent and the basic share will have 25 per cent while the poverty gap will have 18 per cent. The land area will be 8 per cent, the fiscal responsibilities will be 1 per cent, development factor will have 1 per cent and personnel emoluments will have 2 per cent. That is what we recommended.

In some of the presentations we got from the public, concerns were raised on a number of issues. Some counties do not have adequate money for development because of recurrent expenditure. According to the Controller of Budget, 61 per cent was spent on Recurrent expenditure. If you look at this, you will see that parameters are critical and we cannot, therefore, ignore them. It is essential that we meet the needs and demands of these counties.

Through the Budget Office, we have looked at what other countries do. In the Report, you will see an assessment of the situation in Ethiopia which has a similar system. We also looked at the one in Nigeria and South Africa. It is important to note that

the formula we have is simple, measurable and addresses concerns of in-equitability. It also remains predictable. It is reviewed once every three years and we do not want a formula which varies every year because of the parameters we have chosen.

That is basically the recommendation. We want to urge Senators to approve this resolution for a number of reasons. One, the Division of Revenue Bill will be published any time after 15th of this month. That means from next week. Immediately it is approved, the County Allocation Revenue Bill has to be brought. That Bill requires this formula for the money to be shared out. The timeline is pretty short. We want to urge Members to approve this resolution so that it goes to the National Assembly. The National Assembly cannot amend without two-thirds majority. Hopefully, they will not so that this matter is finalized. This formula will remain in force for three years.

It is the wish of the Members of our Committee that in the next review, 2017/2018, the CRA looks at a more sophisticated formula that addresses other parameters. There are a number of submissions we have received from other institutions that think that our formula needs to be responsive to needs particularly to the costs of service delivery. Since this is transitional, the first two formulas talked about transition for three years. We have agreed with the CRA that we have simplicity in this particular one.

I want to conclude by saying that as much as we are developing this formula, we urge the county governments to be accountable. This is very important. We want to urge them to be accountable because Kenyans have confidence in devolution. If we continue to see reports by the Controller of Budget and the Auditor-General and the Senate Committees regarding misappropriation of funds and mismanagement, gradually, Kenyans will start losing confidence. This will be simply a question of devolving corruption from Nairobi to the counties. That is what will kill devolution.

Mr. Temporary Speaker, Sir, Members of this House have been fighting for an increase in allocation. I want to urge the Members that next week as the Division of Revenue Bill comes, I am sure that commitment will still be there; that the Senate will want to see more. However, we have to be very clear and we need to send a message to governors that they do not let us down. That we send more money to the county governments and what we get in return is concerns. In fact, the level of agitation in the counties has gone beyond demonstrations to petitions. This House is handling so many petitions from the county governments regarding management of public resources. The courts are full of a similar number of petitions. If you look at the county assemblies, we have reached a situation where the governors – I have to say this – have become averse to any level of criticism or engagement in the management of the county resources. If county executives, the assemblies or the Senate raises issues, they go to court. This house has been inundated by court orders as the Committee Chair raised earlier. We have orders on summons, oversight and legislature.

Today, I am told the court nullified the impeachment of the Embu Governor. This ruling was today. That is the first case of impeachment that came to this House. It is not that Senators want to impeach governors, but that was the first one on the basis of evidence that was presented to the County Assembly and to this House, which went ahead and validated that impeachment. I do not blame the courts. I blame the county

governments because we must be ready for probity and accept to be audited and be held to account. That is the thing. They have gone to court to block county assemblies from even impeaching County Assembly Executives (CECs). You cannot even summon a CEC to your small committee in the county assembly. How then do we hold the county government to account? How then do we justify the pumping of billions of shillings to the county governments?

Mr. Temporary Speaker, Sir, it is, therefore, important for this House to rise to the occasion and demand that county governors be accountable. We must not shy away, as we did last year, from exercising our mandate in full, including impeachment. If three or four Governors had gone home by now, the situation would be different in this country; I am telling you!

(Applause)

What is happening in counties today is a shame. It has gone beyond looting. You cannot even describe it. You do not need rocket science. The public are telling you; just listen to what they are saying. It has gone to levels that did not happen in Nairobi because we ended up with counties, gave them money and absolute freedom with no recourse to Nairobi. So it is really a pity.

We want this House to exercise its mandate in full and not shy away under any circumstance so that people can have the confidence. Let them go to court and let the court say: "We have declined." That is up to the courts. However, I think we must not give up because of the rulings of the courts. We must continue to exercise our mandate in that regard.

Mr. Temporary Speaker, Sir, I urge my colleagues, to adopt this resolution and look forward to seeing it being approved.

Thank you very much. I beg to move.

My seconder is a Member of my Committee who also happens to be the Senate Minority Leader.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, first, I congratulate the Chairman of my Committee who has demonstrated some reasonable degree of impartiality and independence across the Floor in his manner of debate and has moved very ably this Motion.

We are talking about the formula for sharing revenue as anticipated in Articles 201, 202, 203 and 204 of the Constitution. Devolution is what made Kenyans vote for the new Constitution. It has been the dream of Kenyans and it can and will make a difference in the lives of the people of this country.

All of a sudden, counties are receiving, in one year, more money than they have ever received since Independence because of the centrist command system that this country has been subjected to since Independence; the days when even the construction of a cattle dip in Lamu had to be determined in Nairobi. The construction of a maternity wing in Nandi had to be sanctioned from Afya House. These are days long gone. Now, the counties have to take responsibility, for the development, in a very substantial way, of their areas of jurisdiction. In doing this, the drafters of the Constitution which we all

approved – apart from a few people who are running around with the red cards and shouting from the roof tops that they support the Constitution – because we knew that it was going to bring a difference. We also knew that the people of this country were going to have a fair share of revenue collected from them. Regrettably, we did not foresee that there would be mischievous governments waiting in the wings, who would not be keen to equitably share revenue in the country.

Sen. (Prof.) Lonyangapuo: On a point order, Mr. Temporary Speaker, Si. Did you hear the Senate Minority Leader talking about some people on the roof tops with red cards? Can he substantiate what he meant?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I do not know if you want me to substantiate that. We know the people who were running around with red cards, flashing them all over. The same people are now standing on top of Kenyatta International Convention Centre (KICC), proclaiming how strongly they support this Constitution they had no faith in. I do not need to name ---

The Temporary Speaker (Sen. Murkomen): Order, Senate Minority Leader!

The Senate Minority Leader (Sen. Wetangula): By the way, there was a ruling by the Chair; the late Jean Marie Seroney, one of the greatest brains that ever sat where you are sitting, that a Member shall not be called upon to substantiate what is obvious. I invite you to follow that precedence.

The Temporary Speaker (Sen. Murkomen): Order! Order, Senate Minority Leader! You are completely out of order. If in any way you cast aspersions against any Member of Parliament by virtue of any position they held before the constitution was passed, you are completely out of order. This is because nobody has an option in terms of supporting the Constitution. There is no option. Those who supported or did not, have no option.

Proceed and just avoid that line of thought.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I never mentioned any name. However, where I come from, we have a saying that if there is a dog that steals in the vicinity, when you raise your stick, it starts crying and running on its own.

(Laughter)

Mr. Temporary Speaker, Sir, that is why we set up the Commission on Revenue Allocation (CRA)

The Temporary Speaker (Sen. Murkomen): Order, Senate Minority Leader. I am not interpreting you to mean that there is any dog in the House which has raised its hands.

On a light note, I just wanted to say that I do not think there is any dog around.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Thank you Mr. Temporary Speaker, Sir. Let me proceed.

The distinguished Senator for West Pokot County is a great friend of mine. He is married to a girl from my village. That is why he wears a permanent smile.

We set up the Commission on Revenue Allocation (CRA) to do a noble constitutional job; to help share revenue justly, equitably and constitutionally without any fear or favour. The Constitution also enjoins the Commission to act without any direction of any institution or any person. They have to have fidelity to the law, facts and figures. We expect nothing less. They have to design a formula that is acceptable to all. The Constitution expects them to subject that formula to participation by members of the public through this House.

Mr. Temporary Speaker, Sir, to their credit, they invited the Committee of this House on Finance, Commerce and Budget and the Committee on Devolved Government where you, Mr. Temporary Speaker, are part of. We were in Naivasha and looked at this formula on page (iii). Attempts to change it were made but we ended up with unanimity that population must take a lion's share because money goes to develop human beings. Then equal share followed so that counties that have less population or have got historical difficulties start off from the same line, as we always say, the race belongs to the strong but give everybody a fair start; then, poverty, which is a very contentious issue. I dare say that even as I am agreeing with this formula, the attendant support statistics are suspect, some are cooked, flawed or outdated and they do not give a clear reflection of the levels of poverty in some parts of this country.

Mr. Temporary Speaker, Sir, it is an assault to common sense to churn out statistics and tell Kenyans that Kajiado County is the richest in Kenya. It flies in the face of common sense. It is a crudity to say the least. A county like Nairobi, apart from these affluent men and women sitting here, hosts the poorest of the poor in the slums. The affluent people in Nairobi, I dare say, are less than 20 per cent of the population of Nairobi. This can be replicated all over. What we have in Nairobi are urban villagers. This is the same in slums in Mombasa, Eldoret and everywhere.

When we measure poverty, I want to encourage the CRA, although I know it is not their duty but the duty of the Kenya National Bureau of Statistics (KNBS) to raise questions so that the KNBS goes to the ground and carries out a proper scientific analysis of the levels of poverty in each and every county in Kenya. You cannot go to Kajiado and see a few industries coming up in Kitengela and Isinya and say that the people there are rich when the Maasai are walking half naked. This is not right.

Mr. Temporary Speaker, Sir, we, as a Senate, want to make sure, because part of our defence of devolution is to ensure that whatever product we arrive at in sharing revenue that will go to the counties is based on data that is not disputable, it should be based on data that is correct and cannot be challenged. That is a very important point and I know that this formula is supposed to last a transient period of the next three years. However, in between, I want the CRA to have a window of revision so that they can revisit areas where there is grey, doubt and unacceptable data.

When we talk about equity, it is not just about people sitting and saying Sen. G.G. Kariuki will have this, Sen. Haji will have that and Sen. Njoroge will have the other on the basis of how they look. If that happens, eventually, people will start protesting that they are not getting fair share unless it is done correctly and properly.

Mr. Temporary Speaker, Sir, the CRA, and I am happy our friend Micah Cheserem is seated up there, and I hope he is listening to us - we expect much more than what we are getting. What is worrying me today, and I say this with the greatest respect to the CRA as a constitutional commission, is the attempt for the CRA to subjugate and submit their authority and will to the Executive. This is not acceptable. We would rather the CRA does a good job badly than go and prostrate before the Executive and appear to be taking instructions on what they are doing. I was distressed and dismayed when I saw in the media---

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

The Senate Minority Leader (Sen. Wetangula): I see my tycoon from Nyeri looking agitated. I want him to listen to me very carefully.

(Laughter)

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

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I only talked of a tycoon from Nyeri. I never talked of the Senator from Nyeri County.

The Temporary Speaker (Sen. Murkomen): Yes, Sen. Kagwe, what is your point of order?

Sen. Kagwe: With all due respect to my former college mate, the bull from Bungoma, is it in order for the honourable Senator to continue referring to a poor man as a tycoon?

(Laughter)

The Temporary Speaker (Sen. Murkomen): Honorable Senators, I do not think this is a House of bulls, kings and tycoons. The House is for honourable Senators.

The Senate Minority Leader (Sen. Wetangula): Absolutely, Mr. Temporary Speaker, Sir. I was dismayed the other day to see banner headlines and in the background, we read that the CRA was part of this. That the Executive has exercised a fit of generosity and added county governments Kshs.38 billion. This is disgusting to say the least. We cannot accept that. This Senate will be signing its obituary if we accept this kind of malpractices and misconduct.

Mr. Temporary Speaker, Sir, the CRA, and I want to say with humility to my great friend there, who distinguished himself as a Governor of the Central Bank of Kenya and who in meetings has spoken with a voice and gusto like he cannot listen and take direction from anybody---

Mr. Temporary Speaker, Sir, I expected the Commission on Revenue Collection (CRA) to come up and say that the Executive has no ability, capacity or will in law and in fact to gift governments of the counties Kshs38 billion or any cent for that matter. They have none. These resources are shared only in accordance with the law and the Constitution. It is not based on gifts, goodwill or generosity. If governors fall into this trap, woe unto us, as the Senate, if we do not come up to resist it. It is not the quantum but the principle. If we let this principle fly and perish, what would stop us tomorrow for

the Government of the day to tell us that because a county did not construct a road they will slash down the money by half? Nobody in the Executive has that power or authority.

As we talk about revenues to the counties, we must do what we have always said here – and the Speaker has been one of those who have been saying that we either start it right or lose it out. If the foundation is wrong the building will be wrong. If the foundation is weak, the building will be weak. It is this Senate that is building the foundation for tomorrow's Senate. I would rather counties get less money but justly, fairly and constitutionally than anybody pretending that they are being generous to counties from the Executive. It is an anti-thesis of devolution, an assault on a constitutional commission. If I was Micah Cheserem, I would have called it a day if I do not speak it out. We want to hear the CRA tell us whether they are part of this conniving--

The Temporary Speaker (Sen. Murkomen): Yes, Sen. Haji. I think he pressed the button by mistake.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, we want to hear them say that they will do their job without fear, favour and without direction. In fact, I expect the CRA to be leading a debate that makes sense to even those who do not want to see sense. We should be moving from where we are to an opportunity available to change Articles 202 and 203 of the Constitution so that the shareable resources in this country are based on the national budget and not audited accounts. We have an annual cycle of budgeting and it is what we implement for the next 12 months. Therefore, we are visiting a fraud on ourselves by rolling out a Kshs1.8 trillion budget and pretending that shareable revenue is Kshs580 billion. Equally important, and I want to see the Committees we have formed here today and Standing Committees speak out. When you are told that health is a devolved function, on what basis other than rent seeking does the national Government pretend that it is leasing equipment and forcing it on every county regardless of their needs, requirements and requests?

Mr. Temporary Speaker, Sir, we are told that the money will be part of the revenue of the counties. This is regardless of their priorities and what the county assemblies are budgeting for. This capture of devolution by the centre has to be resisted. English people say “*give dog a bad name and hang it*”. I know there are some dirty apples among governors; for example, there are those who are fiddling, stealing and are unaccountable, but we are not going to throw out the baby with the bath water. We can pick an example from Nigeria. When devolution came to Nigeria, after the first term, more than half the governors went to jail. It may happen here.

Somebody said that we do not have governors who are thieves but we have thieves who have found their way into governors' offices. That is the difference. It is this Senate that should strengthen institutions of accountability and governance. I am happy that the Committee on Finance, Commerce and Budget together with the Committee on Devolved Government is seeking to have a retreat with the Ethics and Anti-Corruption Commission (EACC), the Auditor-General and the Director of Public Prosecutions (DPP) to find out what they are doing to stop the glaring malpractices that we are seeing.

Mr. Temporary Speaker, Sir, every county has a big story to tell. The other day some Senator was telling us how his governor wired Kshs400 million from the county accounts to a personal account in Nairobi. It is a county that is so impoverished where people are walking for 100 kilometres to look for water for their animals. That money can drill a couple of boreholes and help the ordinary people. Accountability is not an option. If you do not want to be accountable, do not take a position in a place where you are required to be accountable. If you do not want to be accountable, you should become a smuggler and keep on running ahead of the law but if you sit in an office where you are administering public resources, you must submit to audit, checks and accountability.

That is why I want to encourage our brothers and sisters on the bench that it is also an institution of accountability. The EACC or the DPP alone will do nothing. The courts must also rise to the occasion and say if you have been found with your hand in the till, you must face the full force of the law. I have yet to see in this country where people who have stolen public property are forced to return it to the public. In fact, it is people who are in jail gambling on phone every day. I am told they live like kings. As long as you have money, prisons are no longer correctional services but an extension of your sitting room. We keep on reading that authorities in Kamiti confiscated 6,000 phones; how did they get there? Every day, you get a fraudulent message that you have won a raffle in London of 2,000 pounds. How do you win a raffle that you have not participated in and yet people fall for this and lose money?

If you go to China, it may not be a system to ape but sometimes, you cannot help admiring such fellows. If you are a smuggler, they will come and set up a court outside your shop, try you, convict you, sentence and hang you on the lamppost outside your shop as a public spectacle. If you are sentenced to death, you are shot by the firing squad; the cost of the bullet is passed to your family to pay for it. We may have to go that way because when you meet Kenyans, they just talk about making money and not earning money.

If everybody is making money, who is earning money in this country? This is where devolution is going to fail. If you go to any county, there are fraudulent characters with briefcases who have moved out of Nairobi to the counties. They are now contractors and if you ask any of these contractors where his or her construction company or yard is, he or she does not have an answer. There are contractors in suits and dark glasses walking with briefcases like mafia in the movies all over – *Al Capones*.

Mr. Temporary Speaker, Sir, things have to change and they will change if this Senate starts engineering change. I want to see this Senate, the Legal Affairs and Human Rights Committee of Sen. Wako and Sen. Mutula Kilonzo Jnr. and others bring laws here that will strengthen accountability in devolution. The Constitution sets out broad guidelines. The devil must be in the detail of the statute. Let us make it difficult. I was talking to the former foreign minister of South Korea, who is now the Secretary General of the United Nations (UN), he told me that people in Korea are corrupt but he said if they catch up with them, they have made it so painful for them to be consumers of corruption. You remember six months ago the former President of Korea, they were catching up with him on the bad days in his office, he went to a cliff and leaped 200 metres into the sea and died. The Japanese call it *hara-kiri*, the Romans used to call it

falling on the sword. If you are given the authority, privilege and the power to guard the king and crooks come over the wall and harm the king, you do not wait to be dealt with, you deal with yourself; you fall on your sword. If you have been given the opportunity to guard people's money in the counties and you do not guard it, you must fall on the sword; you do not have to wait to be dealt with.

I want to urge us, as a Senate, the first Senate after the one of 1963 was frustrated and killed, if you Senators do not do what you are expected to do, you will also be frustrated and killed and you will go home. You have heard some governors asking who a Senator is, have you not? When you go to the county, the governor walks away with Ksh1 million from the county kitty or county treasury and they say "*Gavana ametoa yake na wapi ya Seneta?*" *Na si yake.*

(Laughter)

We see this every day; we must make it criminal for anybody who pretends that public resources are his resources because those are not any individual's statements resources. If I am giving out public resources, I must be decent enough to say that these are public resources. Our accountability role despite the frustrations we are suffering from ceaseless and endless judicial challenges, never give up, remain steady and eventually even our brothers and sisters in the Judiciary will start seeing the obscenity and opulence that is creeping a long devolution and start asking questions. How does a man who did not have a second car all over a sudden own a building on Kenyatta Avenue and he did not win any raffle that you know?

(Laughter)

These are big questions.

I want to go towards the end by asking the Commission on Revenue Allocation (CRA), which is our partner, if we are the defenders and protectors of devolution then the CRA is the midwife. If the CRA degenerates to be captured by the Executive, woe unto devolution. I hope Mr. Cheserem that you are not going to prostrate yourself before the Executive and market your soul because nobody can sack you, you can only be sacked in accordance with the Constitution. Do your job to help us grow devolution. If you read the Constitution it will tell you how you sack Constitutional commissioners including yourselves as a Commissioner of Parliament.

(Loud consultations)

The Temporary Speaker (Sen. Murkomen) Order, Sen. Wetangula. You were doing very well, these altercations between yourself and honorable Members are not very useful and the same applies to the distinguished Senator for Samburu.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary, Speaker, Sir, the distinguished Senator of Samburu and the man sitting next to him fumbling with the phone, we came to the Seventh Parliament on the same day and we became very good

friends and we have remained so. That is why he takes the liberty to talk to me while I am on the Floor.

Let me finish by urging members that when you are looking at this formula, the critical part and page is part (iii) that is where the formula lies. The other details that you see in front here, some are contentious but are the available data. We need to urge the national Government through the Kenya National Bureau of Statistics (KENBS) to continuously update and channel out correct data to assist the CRA to distribute resources fairly.

I urge us to support and I beg to second.

(Loud Consultations)

The Temporary Speaker (Sen. Murkomen): Order, Senator for Kisii, Hon. Obure and others who are excited by the contribution of the Senate Minority Leader, which I must say was a very good contribution.

I will now propose the question.

(Question Proposed)

Sen. Mositet: Mr. Temporary Speaker, Sir, let me take this opportunity to thank the Committee on Finance, Commerce and Budget and the Committee on Devolved Government---

(Sen. Karaba pressed the intervention button)

The Temporary Speaker (Sen. Murkomen): What is it Sen. Karaba?

Order! Senator you do not press the intervention button if you have no intervention.

Proceed, Sen. Mositet.

Sen. Mositet. Mr. Temporary, Speaker, Sir, I rise to support this report. I know that quite a number of Members have a lot of interest in contributing to it. I know that we have very limited time because I thought we were supposed, if possible, to finish and vote on it today, so that we are on time. I just want to let Members know that this is a very important formula and we are going to use it from this year so that our counties can have money. It is quite important if we observe time.

Let me thank the Mover who is the Chairman and the Seconder, who were quite eloquent. They have demonstrated that they knew exactly how the formula was developed and they also ended up shading light on some grey areas which we may want the CRA next time when they are trying to recommend the formula, may be on what to look for. I remember very well that during our two days in Naivasha we spoke a lot about this formula. We even considered changing some parameters. I was one of the people who really wanted, if possible, the population and basic share to be equal. We tried to put it at 30/30. But after doing a lot of generation and what we were getting, we ended up realizing that, that would actually cause some counties like Nairobi and other densely

populated counties to suffer. Those that are scarcely populated and with smaller areas like Lamu were likely to rise in terms of per capita.

The Commission on Revenue Allocation (CRA) did some good recommendation by saying that, at least, we can stick to 45 per cent with the population and then the basic share at 25 per cent, but when it comes to poverty, just like what the Senate Minority Leader said--- I do not know which method was used by the taskforce which went round in 2005 to rank Kajiado County as the richest. These people could have just taken a ride from Karen and went through Ngong, Kiserian, Ongata Rongai and had lunch and some beers maybe in Kitengela. From there they went back and reported that Kajiado was the richest county; not knowing that they had just covered a very small area. Kajiado County is almost the size of Rwanda in terms of square kilometres. The greater part is rural and it is quite poor and needy in terms of services. We require roads, water and health facilities. Therefore, when we talk about the poverty index, we may not really be favoured by what we are getting. I remember very well we had shared with the Commission around 2013 and they indicated at that time that they will try to moderate. I still believe that they are looking into that.

When it comes to the land area, at least, that percentage to me is quite favourable. The most important one is the fiscal responsibility. What most of the counties are collecting now compared to what the municipal councils and county councils used to collect is really worrying. Immediately they were given the authority we have seen a trend where the revenues have gone down. I do not know whether the governors and their executives have planned how they are going to run their counties given what they are collecting.

Mr. Temporary Speaker, Sir, when it comes to development in the counties, just like what the earlier speakers said, there is a lot of corruption. But also, at least, you can see some development. We now have health facilities and even water in some areas that did not have them. But that is not to say that we should keep quiet when we see what the governors are doing. It is really disheartening to learn that the court has declared the impeachment of a governor null and void. We know very well that the Governor was found to have messed with public funds. This is really worrying because in the counties where you think the Governors, Members of the County Assembly and the executive are working very well, the truth is that they are very much collaborating in misappropriating public funds. They are making love using the funds that we send there. I think we need---

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. I did not want to interrupt the distinguished Senator for Kajiado, but did you hear him allege something very serious regarding what the Governors are doing with the monies that we are sending to them? Could he clarify?

The Temporary Speaker (Sen. Murkomen): I did not hear. What did he say?

Sen. Sang: Mr. Temporary Speaker, Sir, he said something over and above eating. He said something close to love making.

The Temporary Speaker (Sen. Murkomen): If I heard the Senator very well, he said that the Governors are making love using our money. I assumed that it was figurative.

Proceed, Senator.

Sen. Mositet: Thank you, Mr. Temporary Speaker, Sir. I would request the Parliamentary Service Commission (PSC) to empower the Senators and even Madam Serem needs to know this. We require Senators to be empowered in terms of oversight, so that we can reach the ground and put in place the proper monitoring tools. At the moment we do not really have the capacity.

Recently I read in the newspapers that Madam Serem is supporting the Constituencies Development Fund (CDF) model at the ward level. I compare that to maybe devolving the executive and allowing the assemblies to be the implementers instead of doing the oversight role. This Senate must wake up. We really need to speak about that, so that the oversight role and legislation in the county assemblies can be strengthened. We should ensure that our partners in the counties know their roles properly.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support. I request the other Members to support and, if possible, try to minimize the time for contributing to this debate, so that we can pass the Motion today.

The Temporary Speaker (Sen. Murkomen): Sen. Mositet, you cannot spend your 15 minutes and then now propose a limitation of time. It is not allowed in the Standing Orders. It is like climbing a ladder and then kicking it down, so that others cannot climb.

Sen. Machage.

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, if there is a major responsibility that we are bestowed with to really deliberate in detail and make a decision it is on this revenue distribution to the counties. It is not an easy subject. I have a different opinion on what Sen. Mositet suggests. Even if it takes three or four days let us do it, so that everybody is satisfied that what we are doing is the right thing, because the country is watching.

May I appreciate the patience with which the CRA had with the Committee. We went through many deliberations and suggestions of different modalities of the formula and this is the best that we could come up with. It may not satisfy every county because these are money matters. But the devil in the formula does not lie with the formula itself. It lies on the collection of the demographics factors hitherto that were done in this country. One evil is census. We do not really agree that the figures we have on census in this country are the true figures of population count in Kenya. That must be reviewed. The Senate Minority Leader also said that we do not agree with the Constitutional statement that the figures that should be used are the latest audited accounts. Some of us saw these anomalies in the Constitution making and sang loud to have the draft changed but nobody listened. However, the language was the same. The "NO" team said: "Let us amend and then pass." The other team said: "Let us pass then review." So, let the other team which suggested the latter accept and we review some of these anomalies because that is why counties are getting far much less than they are entitled to, by getting their revenues calculated at budgets three or more years to what is expected. That must be a Constitutional review.

Mr. Temporary Speaker, Sir, it would only be prudent and maybe fair if all counties had the same number of constituencies. Migori County has eight constituencies,

Lamu County has only two constituencies, Kakamega has 12 constituencies while Kiambu has 12 constituencies. In view of that unequal distribution of constituencies, it therefore makes equal share a factor to be looked at acutely. This is because how do you give the same share of revenue to Kakamega with 12 constituencies to Lamu with only two constituencies? This is a factor that I know some Members here may think would have been of use to their own constituencies. That is being greedy and so insensitive to the rest of Kenyans who deserve an equal share of revenue and development in their areas.

Mr. Temporary speaker, Sir, I agree totally that the poverty index as stated as a factor is really difficult to account. The CRA clearly says that the poverty headcount does not measure the depth of poverty, thereby treating all poor people as a homogenous group, when in actual sense, the intensity of poverty varies from one county to another. So, how do we come up with this figure? It requires researchers, like the Senate Majority Leader has suggested, to come up with a proper formula. But again, we have to realise that the population that took 45 percent of this formula may not also be very correct, as I had hitherto said, especially considering that the highest areas known to be highly populated; Nairobi, Kakamega, Kiambu, Nakuru, Bungoma, Meru, Murang'a, Kilifi and Kisii are either industrious or areas that are highly blessed with a lot of rain or areas with big towns. This means that these are areas with highest ability to collect taxes. Look at Nairobi, which collects taxes to the tune of nearly Kshs18 billion per year. It collects taxes from people of other counties who move in and sleep at night to work the following day and the census picks them as residents of Nairobi. Then, despite the ability for Nairobi to collect a lot of taxes, it is endowed with the highest figure of revenue allocation. Compare that to Kakamega which has a truly high population of poor people. Where is fairness? Compare that to Kilifi which not only has high population, but we know that in the rural areas, there is a lot of poverty. The riches are concentrated on only some people of Italian origin. Where is fairness?

Mr. Temporary speaker, Sir, the gist of the whole matter is to maybe relook at our Constitution and amend a few of these things, so that we have fairness in distribution of revenue. However, let me convince this House that we really worked with very many different formulae, to try and work out the best that could be. Those that may not want to adopt these formulae sit down in the two or three days that we will be deliberating and work out for yourself on your computer and see the difficulty with which the Committee and the CRA went into to arrive at this noble formula.

Yes, Kshs38 billion was declared by the Executive the other day. The Senate Minority Leader has totally castigated this issue and it is true, it is not legal. However, for us in the counties, we are happy that some money has been brought to us to distribute in an orthodox way. We had asked for more revenue. If the CRA could use this Constitutional deficiency and push more money to the counties, let them have their gratitude. Thanks that we have more money to the counties. Why should we be the first ones to cry that more money has been given to the counties? It is wrong in principle; it is right as a result. That is my view.

Some of the governors were purposed by the time we were going for election. We had to finance some of these governors, all of a sudden have become billionaires. Some

are building residential houses as big as one acre. I am told that some are controlling a whole street in this city. It is a big shame and the Jubilee Government is seeing that and condoning despite the machinery that is bestowed upon you by the Constitution to curb this menace. They are now the biggest contributors using stolen money some big shots have *harambees*, and they are clapped for. Stolen from whom? The public. Shame on them! The Commission bestowed to oversee corruption should actually declare these people in 2017 not fit for re-election, because that is what that seems of all of them. Maybe it is the law; maybe it is the transition that gave them this opportunity. It is our responsibility in the Senate to curb this menace once and for all. But it is difficult to do the same when the courts are cohorts in the same menace; sleeping on the same bed and making love with governors.

(A Senator whistled)

Or is it their money? The latest information we have is that some of the people we thought were not fit to govern are being cleared to continue the same by our courts. Yes, they are showing muscle that they are over the Senate; but the question is, have they been bribed also? They should be investigated. Money is changing hands and that will destroy devolution when the Senate is watching; purposely made powerless by the judicial system and, maybe, the Executive in this country. I believe that the way the system is, the Judiciary may not be doing some of these things without the left hand knowing what is going on. But this must be changed. I am not accusing anybody. This must change for us to see prosperity, development, and better use of resources, shilling to shilling in building our country, especially at the county level. I do not condemn His Excellency the President for announcing that some equipment will be sent to county hospitals because I brought a Motion here on development of Level Five Hospitals in every county. I thank him for having done that, but that money must come from the national Government; it should not to be pushed over to the budget that is meager and being allocated to the county system. The national Government has an equal responsibility in the management of the health systems in this country because they are policy holders.

Mr. Temporary Speaker, Sir, without much ado, I beg to support.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. I stand here to oppose this report and the formula and everything that is within it. I would like to make my position very clear; I do not agree with the Commission for Revenue Allocation (CRA) in terms of the proposal they have given us. I do not believe that their proposal is fair and I will give my reasons.

The first thing is that if you look at this report, nothing much has changed from what it was last year. If you look clearly, there is a lot of focus on population. You cannot, for sure, tell us that the population of this country, particularly for the social services like health, that you are going to guarantee that by dividing money based on population alone, Elgeyo-Marakwet is not going to be treating patients from other counties. I just came from my county and Iten District Hospital is now treating almost a third of the population of two constituencies in Uasin Gishu. It is treating almost a third of residents of Trans Nzoia County. A hospital like Tot District Hospital treats people

from Pokot. There must be a formula that can determine the allocations by not using the population of 2009 as a basis of arguing that money will go a place where, perhaps, the person no longer stays there; or perhaps a population in that county has increased. I feel that unless there was a formula similar to what they have in South Africa, where you have a clear determination of what health, education or important sectors like agriculture you need for a county so that you separate from other factors that just look at population. I find it very difficult to support this formula.

Mr. Temporary Speaker, Sir, I would like to say again that I agree with the Senate Minority Leader that this is a game of statistics; and the statistics here must be credible. There are places we are told that the population is “X”, but even when you see with your own eyes, it cannot be “X”.

Sen. Billow: Order!

Sen. Murkomen: The Chairperson of the Committee on Finance, Commerce and Budget is telling me “order!” I do not think he is suspecting anything; I am just saying that when you go to counties like Elgeyo-Marakwet, you are told that the population is a certain figure of nearly 500,000, but you are still using statistics of the past. You are also forgetting the fact that some communities in places like Elgeyo-Marakwet around Cherangani Hills even refused to be registered. So, statistics play a very important role and that is where the crux of the matter is. That is why, one, I believe that the Kenya National Bureau of Statistics (KNBS) should be changed from just being a department in Government and be made an independent Commission which is able to operate independently.

Mr. Temporary Speaker, Sir, this House must also pass law that makes it mandatory that our data must be captured electronically; and it must be updated every time so that you have real time information. For example, the census was done at night yet there are many counties in this country that have greater populations during the day but at night, people go to sleep in other counties. There are services that are required to be discharged in that county during the day and there are those that are supposed to be discharged in the county where they are going to sleep. So, there must be data that can define exactly what population is in a particular county during the day and what factors is it going to change in that regard. So, the KNBS needs to be changed so that it becomes an independent Commission so that we make it mandatory that we have real time information. That is why those who have been opposing electronic registration of persons should not look at it from an immigration perspective only; we must look at it from sharing of revenue and resources in this country.

(Applause)

Mr. Temporary Speaker, Sir, the reason I am also opposed to this formula is because the counties that are getting more money by collecting taxes are again being given more money, whereas counties like Samburu, Elgeyo-Marakwet, Tharaka-Nithi and even most parts of Kajiado – although some part of Kajiado is able to collect a lot of taxes – I was so surprised the other day when the Governor was saying “we have improved so much this financial year; we are collecting Kshs120 million.” What is that?

(Laughter)

A great improvement of collection of local revenue in Elgeyo-Marakwet County led us to Kshs120 million! That is a drop in the ocean! In Nairobi County, they are collecting Kshs18 billion, which is twice more than what is being allocated. That is the same to other counties; they have the opportunity to collect revenue. So, why are you punishing us, who are unable to collect revenue by saying that as a result of population, let us make that parameter 45 per cent? You are actually keeping the historical marginalization in Taita Taveta, Kwale, Kilifi and in Tana River counties. The reason why certain places have less population is not because they were not able to give birth; it is because poverty made it impossible to give birth to many people!

(Laughter)

Now, you are saying “continue giving them that allocation that will ensure that, that population remains small.” If population is the greatest incentive to giving resources, then let us give some money to some counties as an incentive for them to give birth so that we will be, at some certain point, equal as a country. So, I think that really needs to be changed.

Mr. Temporary Speaker, Sir, I also read media reports generally about division of revenue. Once a formula has been put in place that determines how much money is going to a particular place, it is erroneous for media houses to try to report to the country that Lamu County is a loser and Nairobi County a winner for getting more money. To create the impression that someone was sitting somewhere to make Lamu lose and Nairobi gain; instead of reporting that, as a result of division of revenue allocation formula that is in place, Lamu got this amount of money and Nairobi got that amount of money. We need to have proper information being given to the public. It is not about winning and losing, it is about the factors that have been used in defining that formula. But if you tell people that “ooh” you know Elgeyo-Marakwet lost, “ooh” Tharaka-Nithi lost, Lamu lost; lost as against what? So, we must also give proper information to the public that once you put that population figure inside there - which is a huge determinant - that then certain counties get little resources for allocation. We need to tell the public that the formula we are using is the one that has led to that particular kind of information coming to the public.

Mr. Temporary Speaker, Sir, there is the problem we have within our counties and I think you or one of the contributors mentioned it here. Many of the counties are passing something called “Ward Development Fund” which is an equivalent to the Constituencies Development Fund (CDF). The one for Elgeyo-Marakwet, without demeaning the County Assembly, says that 38 per cent will be shared based on population, twenty-something per cent will be equally shared; it is akin of some formula like this. So that, now, there is a creation of a parallel way of discharging development funds in the counties and the county governments are totally ignored. So, they are told to remain with the recurrent expenditure, continue paying salaries and other stories, we have formed our

ward committees that will take care of all the money that is for development. That is extremely dangerous for the country. The Committees on Finance, Commerce and Budget, Devolved Government, Legal Affairs and Human Rights and Delegated Legislation must now provide the lead in reviewing those legislations because I think that is the one that deals with legislation touching on the counties. We must find a way of achieving what the Members of County Assembly (MCAs) nobly want to achieve which is basically to equitably distribute resources across the county without actually creating another overhead and a parallel structure of governance within the county.

Mr. Temporary Speaker, Sir, permit me at this point in time to say that we have a serious problem of accountability. Those of us who started singing this song of accountability from 2013, Sen. Kindiki and I among others, were told at that point in time that we were being used by the Jubilee Government to kill devolution. Nowadays, I am relaxed because the singers of the song of accountability are so many. When we were trying at that time, it was being labelled as anti-government, anti-devolution; now go to your county and find out. You will note that in your county government, characters that are called “advisors” or funny people around the governor are multi-millionaires. Every time you ask a question about your county, you are told “we have even prepared somebody to replace you as a Senator” using the money that we are busy here fighting, that more money should go to your county.

Mr. Temporary Speaker, Sir, this cancer of corruption must be rooted out from our counties. We must make our voices heard. We must not keep quiet in fighting for that accountability. I dare say, as a lawyer and as an officer of the court, that it is not true that we have moved any reasonable distance in reforming the Judiciary. This problem of accountability and corruption is being abated by our own judges and the courts. It is better to say the truth as it is. I said it here another time that as long as county governors are going to have the control to use the money, as long as they have a right to hire any lawyer, as long as they have an extra account as we were told here that is called the “governors account” that they can use as they wish, they will compromise everybody including judicial officers to achieve the judgment they require. They are not angels; they are Kenyans like us; we know how this country operates. There are things that people do not say, but we must say that our judges and courts have not reached a stage where you can comfortably say that they are dispensing justice for the sake and the common good of the poor person in that very marginalized county. That struggle for fairness and accountability is not just confined to this House. It must go to those institutions of the Judiciary and other institutions so that we achieve the devolution we want. If someone thought that they were going to discourage the Senate by letting loose thieves to go to the field to go and hunt; if they thought they are going to discourage this House, our resolve has even been doubled - We will do more! We will bring most of those characters to this House; we will impeach them if they deserve to be impeached and we will shame them if they deserve to be shamed. It is not our responsibility to know whether someone else is going to set them free out there. We will sleep knowing that at least we hanged the thief, and he was saved by somebody out there who is collaborating with that person to steal the money. I see some people say “the Senate has been rendered impotent”. How many years did they spend in the courts trying to clear their names? We

will do the same so that they can go and live in the courts and one day they will find a fair and just judge who will say that the interest of the public is greater than the interest of an individual; and they will be hanged. Nobody should bother himself in this House to know what is happening in the courts. We must actually bother ourselves with what is happening with our job in ensuring that there is accountability.

Finally, Mr. Temporary Speaker, Sir, I request this House not to pass this report as it is.

(Applause)

Let us sit down and look at the formula of South Africa. Let us dissociate certain social areas that are important. Let us remove it from just normal sharing and we know how much it is going to help. For example, if we say that there is a “Maputo Protocol” that requires at least 10 per cent of the national funds to go to agriculture, how are we going to achieve that if we just say we are giving out money blindly to the counties without safe guarding the most important social sectors? How will we achieve literacy levels and education if we are going to share the money just like that? So, I propose that a formula be achieved so that we can delay this for a day or two and have a caucus as a Senate and achieve a formula.

Thank you Mr. Temporary Speaker, Sir, I beg to oppose.

Sen. Elachi: Thank you Mr. Temporary Speaker, Sir. I also rise to support this Report and also thank the Commission on Revenue Allocation (CRA) for the work we started last year. I know that it is very difficult, even in the hands of the CRA, to come up with a formula that will please all of us. The biggest challenge is because we must come one day to face the 2009 census. As a country we must agree that, indeed, we went wrong. If we are going to look at a criterion where we are going to give people money in that manner, we shall always have people complaining and crying foul on the same; but the problem will not be the Commission, but our census and that is what they are using in terms of population.

I will just give a quick example. When you look at the 2009 census, Nairobi at that time had a population of 3.138 million, Kakamega had 1.6million, Mombasa had 939,000; Mandera had 1,000,025, and Lamu had 101,539. Today, when you go back to the same areas, I believe things have really changed and, therefore, as this Senate, we must really think and ask ourselves how can we ensure, based on our criteria especially when we use population, we are going to satisfy every Kenyan. While we use this criterion, we should not forget that while we give money - and that is why we are also having problems with our governors in some counties, you find some serious surplus of money and that is why they wonder sometimes what to do with it. That is upon this Senate to decide. This Senate must rise up and stop complaining about the courts. It is time we brought a report of a county in this Senate, looked at it and determined it. We should shame a county if money is being misused and become the public opinion for Kenyans to understand issues. As far as we understand, Kenyans do not know what is happening. Every Kenyan now prefers the CDF system which is not very good for

Senators. It is up to Senators to stand up and fight for themselves and to play their role the way Kenyans expect them to do.

I know it will be difficult for many people to understand this document. When you look at it, counties facing a lot of poverty have been recommended to have 18 per cent of the allocation. Money for physical responsibility should be at one per cent and the land area should remain at eight per cent. We will caution counties that will receive the largest amounts to come up and be good examples to other counties. Indeed, when you receive money from the national Government you can work with it.

It is unfortunate that the Senate is not asking about the local revenue that was left in the counties. How will we ensure that the development agenda for the counties is run using the allocated money? How will we know how much has been collected? For example, how will you know that based on the local revenue, that you have collected Kshs1 billion and that this money will go directly to development? It is up to Senators to follow up issues with their governors. That is why it is important; whether you like your governor or not, to have dialogue so that you know what is happening. That is very important. That is how we can avoid the things we are seeing in Makueni.

We do not understand how the Governor for Makueni can continue operating the way he is while he still needs the Assembly to approve the matters that are before him. He has come out clearly and proved himself right. What about counties that may go into conflict in future? What will happen to them? They will do the same thing. This is something we need to address as the Senate. How do we ensure that this will work? Will we amend the law? Maybe it is time we thought about amending the law so that county assemblies can also be a County Executive Committee (CEC) so that they work together; the governor and the county assembly. This is something we have to think about. We have to also ask ourselves, while we look at employment of staff to the counties what will happen to those Kenyans after 2017? Will they be sacked by the next governor who may come into power and tell them to move out because he will want to employ his own? It is us to come up with legislation that can guide some form of gratuity. It is the Senate that should address all these things.

When you look at the formula, look at the county assemblies. They have been fighting with governors. However, we have not come out clearly to look at what they are doing. We said that we wanted to have a ceiling for some amounts. We have talked about the Executive side of the county. It is time we looked at the Assemblies to see whether they are facing the same challenges which we are not talking about. All these goes back to public funds being spent by county governments.

I want to support the President regarding what the Governors did recently. Indeed, they are better of getting and buying facilities for hospitals. I will give an example. A classroom built using the CDF money costs Kshs600,000. A classroom being built by a governor costs the public Kshs1.5 million. This is the same classroom using the same public resources. We are comparing what has been happening with the CDF projects. We should ask them to account for their projects which are exactly the same as the ones by the CDF. How come theirs are much higher? Those are the feelings of Kenyans. Unfortunately, when they get very angry, they keep of issues. It is time we changed that

attitude. We should see this as our money and the reason we wanted devolution. This is why we fought for this Constitution.

We must see every county building itself. If we leave the governors to be the ones to do everything and then we start shouting at each other that will be very unfortunate. This Senate will be blamed at the end because it is, indeed, the watchdog of counties.

In this Report, we need to appreciate what the Chairman, Mr. Cheserem, has done with his team despite all the challenges that he faced. Governors are politicians. I know that they go to lobby. Today, we are saying that they have been given Kshs38 billion. I do not think they have been given that amount. This is because the issue has to come through this Senate for a decision. The same decision has to also be made by the National Assembly. Therefore, it is us to decide whether they were given or not and to also approve. Do we have the money? At the end of the day, it is Parliament that decides for them. The best thing we can say is that there was a proposal of Kshs38 billion. Parliament should then decide whether or not to approve the amount. I know that hon. Mutava knows how to make decisions regarding that and we have to appreciate him for that. Therefore, we have to see how to battle out the matter up to the end. This is just a proposal and we will not blame anyone for that. The proposal will come to Parliament which will decide on it.

The Committee on Finance, Commerce and Budget is also facing many challenges while dealing with counties. We are urging this House to seriously take Reports that have been laid on the Table. For example, when Dr. Khalwale's Committee lays on the Table a Report regarding the issues we are talking about here, we should take time to address them. We should create awareness for Kenyans to understand that we have been frustrated by the courts. This is the reality. However, when we start having sideshows that is how we will get lost in everything. In 2015, we have an opportunity to tell Kenyans that we have money and that our country is rich. We should explain to them why we went wrong in bringing in politicians to become governors. The governors are thumping their chests and it is unfortunate that they can even decide to dissolve a county just as an experiment. The dissolution of Makueni will be an experiment.

I believe that political parties could have dealt with the issue of Makueni. This is a matter of removing governors who are rogue and allow the county to continue running. We are now giving an example to counties that we have been trying to negotiate with like Isiolo. However, I believe that this Senate will have to apply a lot of wisdom when that issue comes.

As I finalise, the basic equal share within 47 counties may become a big challenge. Counties that collect a lot of revenue which goes to the national Government may reach a point where they decided that enough is enough. That is why it is important for this Senate to come up with an electronic chip card which ensures that data collection of the population of this country is captured correctly. This identification card should also be used as a voter's card and a drivers licence. That is when we will know, indeed, whether we are 43 million or whether we are less than that. This is all important and the Senate must tell the Government the things that must be done. For us to solve the issues of data, everything should be electronic. This country should move to a better generation when we will have our things. That will also help in the insecurity we are facing.

I beg to support and hope that this House will pass this Report so that we move on.

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

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

The Temporary Speaker (Sen. Mositet): Sen. Obure.

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to make brief comments on this report. First, I want to thank the Members of the Committee for a job well done. I also commend the Chair for presenting it eloquently and very effectively.

Devolution is about the people. It is about improving the welfare and quality of life of our people. It is also equitable distribution of available national resources. For this reason, the formula for allocating resources is very important, indeed, and attracts a great deal of interest from everybody including members of the public.

Mr. Temporary Speaker, Sir, I am very satisfied and happy to know that the Report which we are debating is really a product of many consultations. It has been scrutinized by various stakeholders, including our own committees – the Committee on Devolved Government and the Committee on Finance, Commerce and Budget and a number of county assembly committees on Finance Commerce and Budget. It has also been the subject of scrutiny by members of the public themselves. Therefore, I feel happy that the report we are dealing with here, has been enriched by those other stakeholders. I am also glad that the Committee also considered many proposals and looked at practices in other countries as well. Further, that the Committee also examined our own situation, experience and needs and all that has been factored in the Report we are debating today.

The formula we are about to adopt or reject – I hope we will adopt it – must be simple and easy to understand. It must also make provisions to reward those who manage their resources well. I think it is important. It will be a formula which minimizes inequalities among counties. That is the kind of report that we should adopt.

Regarding the various ways which have been assigned to various parameters, of course, we have said devolution is about people. Therefore, the most important parameter should be population. A measure of 45 per cent is important. I only hope that as we move to the future this percentage will be higher so that we fully take cognisance of the fact that population; the people themselves, should be given the greatest amount of consideration.

Mr. Temporary Speaker, Sir, on the issue of basic share which has been allocated 25 per cent, I hope that in future we will look at this for the reasons which were advanced by Hon. (Dr.) Machage of Migori County. I think we should be able to relook at this so that this base figure of 25 per cent can be reduced to a laser figure. It is important to consider the issue of poverty but I hope that as we move forward into the future that this percentage should gradually come down.

Regarding the issue of land mass, some explanation was given and I can understand that I was opposed to this figure of eight per cent but for the reasons advanced

by the chair, I am convinced it is the right way to go. Although we have said that we must reward counties which manage their resources well, I am surprised that we are also reducing the weight from two to one. It should have been the other way.

Personnel emoluments in some counties, including my own County of Kisii, inherited very large numbers of both direct and indirect costs and staff from the very large local authorities that existed before. They have been inherited and I am glad that the figure of two per cent is being taken on board to take account of such counties.

I want to make some very few remarks about the Commission on Revenue Allocation (CRA). This is an independent Commission comprising mainly of experts and professionals. This is a Commission that has the capacity to distribute national resources fairly. Any other institution, including the national Government and counties themselves, have a deep interest in these resources because they will be benefitting from those shares. This Commission should be the right body to be charged with the responsibility of distributing resources. Therefore, I feel they are the right people to distribute resources between the national and the counties and between the counties themselves. It is important. Any attempt to try and manipulate the Commission on Revenue Allocation should be resisted, discouraged and nobody should make any attempt to try and manipulate that body. Indeed, the CRA themselves should never allow anybody to manipulate them.

Mr. Temporary Speaker, Sir, allow me to mention Level Five hospitals where they exist. In my county of Kisii, there is one such hospital. It is a massive hospital which serves a number of counties; patients from Migori, Homa Bay, Nyamira and parts of Narok. The resources required to manage these hospitals are massively huge. They cannot be provided by the county alone. I feel if we were to leave these hospitals to the counties themselves, it is a huge burden which cannot be borne by the counties that are hosting these Level Five hospitals. Therefore, I am appealing – because the expenditure is huge in terms of meeting costs of the staff, maintenance, equipment, provision of drugs and medical equipment – that some form of intervention is necessary and, indeed, required. Otherwise, we are setting up these counties for failure and it will not be a good thing. I appeal to all those concerned including CRA to look at this factor and make sure that some form of intervention is provided.

Finally, Mr. Temporary Speaker, Sir, regarding the issue of accountability, we must account for the resources which are under our charge. Governors must account for the resources made available to them. It is a basic principle because really, without being accountable, we will not get value for money. We must do everything possible as a Senate to ensure that there is maximum accountability at all levels including the county government levels.

Mr. Temporary Speaker, Sir, I support.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support this second generation revenue sharing formula. Sitting here this afternoon and listening to colleagues, I really feel proud to be a Member of this Senate because of the depth of debate. I have learned something new from every one of the speakers who have come before me and I thank them.

I want to thank the Commission on Revenue Allocation (CRA) and especially the boss, Mr. Cheserem, because of the respect they have had for the Constitution because they have not only observed Articles 201, 203, 204 and 217 but also they have gone ahead and observed Article 118. We must thank them. When they presented this formula to us, it was fairly complex because my worry was that we would come here and start fighting amongst ourselves. I thought that people would be looking at the best way in which their respective counties will be favoured. We have not done this in our contributions and I think this then confirms that Mr. Cheserem thought well and right.

Mr. Temporary Speaker, Sir, having been persuaded by the CRA, I went further and consulted financial experts, some of whom were my schoolmates at primary school, secondary school all the way up to the university. Many of them, amongst them Mr. Samuel Omukoko, the Chief Executive Officer, agreed with Mr. Cheserem. However, with all due respect, they have poisoned me to disagree with Mr. Cheserem on only two items on this floor.

The first one is the issue of the basic equal share to share amongst 47 counties. We are being simplistic. The nearest we would have gone to equal share would have been to recognize the 290 constituencies so that the equal share is equal for 290 constituencies. What the county government then gets is the aggregate of the number of constituencies that it has. That way, we would have allowed Lamu County to get its equal share of two constituencies aggregated at two; at one plus one to two. Kakamega County would have gotten the aggregate of 12 constituencies and so on. That one is mathematically closer, but again, I am a doctor of medicine, I left mathematics many years ago. Therefore, I will leave it to Mr. Cheserem to think about it as the years go along.

Mr. Temporary Speaker, Sir, the second point I am persuaded to disagree with Mr. Cheserem, for purposes of factoring in future, is the issue of personnel emolument. On personnel emolument, the moment you show these governors - and we now have seen their appetite for cash - they will even return you ghost personnel or they will deliberately bloat their payroll. Therefore, the thing to do would have been to bring in this particular element as a conditional allocation. This is so that those counties that are seriously challenged like Kiambu, Nairobi, Mombasa, Kakamega, Kisii and others would then get conditional allocation. Just in the same way that those counties that have got Level Five hospitals are given a conditional fund to help them take care of their Level Five hospitals. It is something we need to think about for the future. I am saying this so that the record is clear in the HANSARD that we were not just supporting this formula blindly.

Having looked at the case studies of South Africa, Ethiopia and Nigeria, these studies give me an opportunity to persuade colleagues, Senators, who are above the pettiness that goes on in politics of this country sometimes, that what the President or the Deputy President did or wherever the agreement was where more money was added, is a good thing. However, we will not always have a good president. One of these days you might get a president who is just impossible. We cannot allow this to be based on goodwill. We need to close it in law. If you are afraid, it is working in Nigeria. It can work here in Kenya.

In Nigeria, the national Government remains with 52.7 per cent of the budget. They have put it in law in Nigeria. The president can be nice on little things but on important issues like how much revenue should be shared between the two governments, we should not leave it to his goodness. Let us be brave enough and realize that the opposition is not always wrong. Sometimes the opposition is right. When we say we would like the figure to be 45 per cent for the devolved level and then the balance to go to the national Government, that does not mean a county that is controlled by Jubilee Coalition, for example, Tharaka-Nithi County or Nyeri County, will be denied this higher share of funds. So, we are actually doing the work for your people.

I imagine when shove will come to push or push will come to shove and I go to Tharaka-Nithi, start *kutetea wanyonge* and then I tell them that the Senate Majority Leader is the one who is opposing the 45 per cent because he would like you to remain at a lower figure for him to be kneeling before the Executive for you get anything better. I do not think your popularity will increase. I beg you, now that you are aspiring to be the king of Meru, although in a bad way, you should support us on this.

(Laughter)

Mr. Temporary Speaker, Sir, as I support this Motion, I want to speak to the issue of respect of public funds. I hope that in my lifetime and if not in my lifetime, the lifetime of my last born daughter, a time will come in this country when people will be proud to be judged for their intellectual capacity rather than the size of their bank account.

Mr. Temporary Speaker, Sir, you have just seen this afternoon a colleague, who is a friend of mine and whom I love very much, he comes from one these green counties of this Republic. He wondered how a Senator like Khalwale has managed over the last two weeks to overfly Mau Forest because flying in choppers is their preserve. I looked at it and said, but this is the same Senator who the other day was escorting Express Mail Service (EMS) speed post vehicles to deliver letters by speed post to my office when I was working as a doctor of medicine. Dare he. Just because I have decided to lead a straight life, he does not want to have any respect for my intellectual property. Instead, he wants me to be persuaded that I should steal, so as to join the sky team. How I sympathize with them. They do not know these things.

Mr. Temporary Speaker, Sir, now that I was speaking like a doctor, today I want to beg my elder brother, our leader from our community and a core principal in the Coalition for Reforms and Democracy (CORD), that I disagree with him. I want to persuade him to change his mind because he is a lay man in the area he has waded in. My brother is contesting the decision by the President to procure medical equipment. You have a point but as a doctor of medicine who has been in charge of bigger districts like Machakos and Kakamega, I can tell you that what the President did was the best decision for health services in this country. Let me explain because this is a complex matter. The medical equipment that the President procured, the only beef that the governors can persuade us to agree with them, is that they are sulking they were not given an opportunity to be part of the procurement so that they can have a share of the pie. That is

all. Otherwise, the Constitution provides that it is only the national Government that can engage another government for purposes of the kind of work that the President did.

More importantly, that equipment, and Sen. (Dr.) Machage my senior will agree with me, are expensive and depreciate every day. The technology of those machines requires regular upgrading. Maintaining those machines requires specialized technicians. Had President Uhuru allowed those machines to come in the normal manner, you would have found them in the same state that I used to see when I was in my practice. When you go in the backyard of a hospital you will find many obsolete machines because expensive spare parts could not be procured or the money to procure them was limited.

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

The Temporary Speaker (Sen. Mositet): What is your point of order?

Sen. (Dr.) Khalwale: Could you kindly hold my time.

Sen. Hassan: I have no issues with what Sen. (Dr.) Khalwale is saying in terms of opinion but on my own assessment I can say that there is actually no framework on how county governments and national Government would work on matters that are devolved. Is Sen. (Dr.) Khalwale in order to make an opinion that is the subject of debate that touches on law?

Sen. (Dr.) Khalwale: The Senator for Mombasa has just confirmed that he is a layman in medicine.

Then it would have forced us to now ship technicians abroad so that they are adequately trained at an expense for them to come back and maintain these machines. The spare parts would have come with an additional cost. When technology required upgrading on those machines, we would not have had anybody to upgrade them. They would lie there idle for a month or even six months as we wait for proper technicians to come and upgrade them and they would become obsolete. If the machines belong to those guys, when they become obsolete, they go with them or write them off and bring in new ones for the service to continue.

Mr. Temporary Speaker, Sir, therefore, I would like to appeal to Members of the County Assemblies and governors to go and sit in their assembly and debate which two hospitals are suitable in their county to house these machines and how they can put up physical infrastructure that would accommodate the equipment.

Regarding the issue of the World Bank Report, the governors are now busy trying to justify why that report is wrong. I can assure you if that report had been done by the Senate, they would be in the high court today. Right now, they are stuck with it and the truth is as you saw only 10 counties pass the mark of 30 per cent, probably that is an indicator of how poorly we are doing in terms of the success of devolution. We should stop babysitting governors, but put them under pressure. Devolution was about development, when you go through the media, in a County like Meru, which we know very and the governor who was my colleague the other day, Governor Munya, who used to argue passionately about the interest of the poor, when you hear that he is now putting up a palatial home of Ksh300 million, well let live like a big man but the question is: Is that the priority? Why not start with upgrading the hospital or a road with that Ksh300 million while he sleeps in his humble home? Some of us live in humble houses in Malinya in Kakamega---

The Temporary Speaker (Sen. Mositet): Your time is up.
Sen. Mutahi Kagwe.

Sen. Kagwe: Mr. Temporary Speaker, Sir, from the outset, I want to start first of all by agreeing with Sen.(Dr) Khalwale on his preposition as far as the medical equipment move is concerned. He is spot on.

(Loud Consultations)

The Temporary Speaker (Sen. Mositet): Order Senators, Sen. Omar, Order Please.

Sen. Kagwe: Mr. Temporary Speaker, Sir, You know sometimes even big people can turn into hecklers but we do not want to name them.

I want to start from the word go and say that this formula is the best we could come up with. It was not the best formula but simply the best formula under the circumstances that we could come up with. I also want to clarify something that Sen. Wetangula might not have been completely correct in saying because, Article 217 of the Constitution is very clear about what the role of the Commission on Revenue Allocation (CRA) is, because it does not make the formula, the Senate is the one that makes the formula. The CRA is simply responsible for making recommendations among other people who can make recommendations to the Senate. The CRA provides the expertise, the technical support for the Senate to make that decision. Therefore, it is not correct that the CRA can go somewhere and be told by people what formula they are going to bring to us, or be told by the Executive or go to the Executive as far as that decision is concerned because it is the decision of this Senate. What the CRA brings here can be accepted or otherwise. In this particular case we are saying we debated this matter, we looked at this formula, simulated other scenes and we even simulated what Sen. Murkomen was saying. Actually, what happened is that when we did so it produced more inequities instead of equalities than you would have expected. In fact, Sen. Murkomen was in that meeting in Naivasha. Therefore, I do not understand why you are opposing what you supported in one instance.

We have looked at the formula and the only thing I would disagree with some of my colleague is that the issue----

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

The Temporary Speaker (Sen. Mositet): What is the point of intervention Sen. Chelule? Does the Senator want to be informed?

Sen. Chelule: I hope so.

Sen. Kagwe: Let my sister inform me.

Sen. Chelule: What you are saying Senator for Nyeri is that, it is not only that, even the Commission itself went around the country taking views on the parameters to be used and we are all witnesses. They came to Nakuru and I was there. It is something that was subjected to the public.

The Temporary Speaker (Sen. Mositet): You have already informed the Senator.

Sen. Kagwe: Thank you very much, Mr. Temporary Speaker, Sir. I had that information but it is good for me to be reminded. The role of the Commission on

Revenue Allocation (CRA) is very clear. I think it is good for us to dispense with that, lest we start blaming them for things that actually do not belong to them. If somebody comes out with a bad formula, it will be this House that will have come out with a bad formula and not the CRA.

Having said that, there are some areas that were highlighted, like the fiscal responsibility. Somebody gave the example of India. In India, fiscal responsibility is a reward. The more revenue you manage to collect the more you are given in terms of the fiscal responsibility. So, there is nothing wrong with that. In fact, we should have improved it. Let us be clear that it is not the quantity that will determine how much you get in terms of fiscal responsibility, but the efficiency. Efficiency is completely different because Nairobi can collect Kshs18 billion and improve only by one per cent, while Elgeyo-Marakwet can collect Kshs196 million and improve by 10 per cent. So, the level of efficiency is what we are referring to in this particular case.

Mr. Temporary Speaker, Sir, poverty is not a county issue. There are regions within the county - you will find that in a region like Nyeri, an area like Kieni is poverty stricken whereas Nyeri Town is substantially endowed. If you go to Kakamega Town you will think that everybody in Kakamega County is very well to do, but that is not the case. Therefore, in calculating the formula examining poverty, there is need to keep that in mind. People should not wonder how come one region is seen as poor and another one rich, when actually what we can see is poverty. I heard somebody contribute here and ask how Kajiado can be poor when we have seen Maasai people dressed in *shukas*. Some of the biggest millionaires in Maasailand are dressed in *shukas*. Let us not look at the way people are dressed and determine poverty. After all there was a big debate about “my dress my choice.” That is not poverty. I can be dressed in a *Kanga* and I am a billionaire.

Sen. (Dr.) Kuti: On a point of order, Mr. Temporary Speaker, Sir. I would like to challenge my colleague and friend, the distinguished Senator for Nyeri. We know that right now the Maasais could be having millions in their pocket, because they are selling their heritage, which is land. In the next five to ten years the Maasais will be one of the poorest communities because they will have no place to graze their cows. Is the Senator in order to say that they are the richest when in actual fact richness is about the future and development? They are actually retrogressing.

Sen. Kagwe: Mr. Temporary Speaker, Sir, thank you for the speech that was made as a point of order.

(Laughter)

Because of time, let me mention a little bit about the issue of oversight. A very big error was made in terms of the structure of how we are going to oversight counties. First, Parliament in its selfish wisdom, determined that the President and Deputy President of this nation will be holders of college degrees. But it decided that those who oversight them do not necessarily need to have any college degrees. They can be anything. We then went on to say that the governor and deputy governor must also have university degrees, but also determined selfishly that those who oversight them do not need to have any education qualifications, except maybe a driving certificate after O-

Level. This is wrong whether or not we like to address it. Whether we want to bury our heads in the ground like the proverbial ostriches, it is wrong. You cannot put a very informed and smart governor and then allow anybody of any qualification from anywhere to oversight him. Every public job has a description. I think it is very important for us to describe the job that a Member of the County Assembly (MCA) needs to do.

Sen. (Prof.) Lonyangapuo: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): Do you wish to be informed?

Sen. Kagwe: Mr. Speaker, Sir, I am very well persuaded because I have no time.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, please hold the time for him. I want to inform my colleague here that it is not only a blanket thing where you just need any certificate to be a Member of county Assembly (MCA). There are some counties in this country with MCAs who never went to school. They are so many and very dominant. They sign using thumb prints. I have informed you, Sen. Kagwe.

Sen. Kagwe: I am very well informed Mr. Temporary Speaker, Sir, which basically tells that some counties elected MCAs in a manner that is against the law. This is because they are supposed to have at least – as far as I know – an O Level certificate and a post O Level qualification of whatever nature. Therefore, this is an area that we must revisit if we want to have the kind of oversight that we are talking about having in the county assemblies.

Mr. Temporary Speaker, Sir, I want to add something about the devolved functions. I am persuaded that there are very many other functions that we should devolve to the counties, the biggest one, for me, being primary school education. This should be devolved to the counties straightaway. This function must be followed by the resources that are necessary for primary school education. I want to persuade this House in supporting this formula that unless and until money for a certain function has been allocated to that function, for purposes of moving forward, we will assume that, that function has not been transferred to the county government. For example, we spoke about Level Five Hospitals. If the amounts to run a hospital have not been allocated sufficient funds, for the purposes of running that, that hospital then we must assume that function, even if under the transitional clauses it has been assumed to be devolved, we must assume that function is still in the national Government's hands. Any responsibility must be given to the national Government. This is because when you think about it, we in Nyeri were at some point determined to close the Nyeri General Hospital because it is costing the county so much money. That it is not worth continuing given the fact that people can go to dispensaries and come to Kenyatta National Hospital.

Mr. Temporary Speaker, Sir, even as we address the formula here, it is important particularly for those counties that have got this problem; Kakamega, Nyeri, Mombasa and others to address this problem head on. It must be addressed in a manner that does not operate on the premise that we call the "PHD syndrome" where you think that we can be equal by pulling the other one down. We are equal by lifting people up, not pulling the ones who are up down.

I also want to persuade my friends that we must rethink the issue of security. Security is an issue that we need to rethink and ask ourselves how much responsibilities

we can give to county governments. Particularly, as we progress and entrench devolution, we must ask ourselves:- Should we not allow some element of security to be devolved to the county governments? The reason is that somebody in Nairobi is managing the situation in Mandera, Pokot and other areas. Should we not be thinking of how we can transfer some functions or create some sort of home guards who can contribute to the security of the place, even as the national Government thinks about national security? This is because we know that we have challenges of corruption, but this is not always going to be the case. We must not only think about today but also think about tomorrow and what it will look like. We must plan today for that tomorrow. I, therefore, want to persuade my colleagues to support this formula. Let us accept that it is not absolutely perfect, agree to continue working, benchmarking and looking at other countries and what they have. Let us not wait for the last minute to determine what the next formula is going to be like. Let the Committee work continuously from now and come up with a better formula next time.

Mr. Temporary Speaker, Sir, finally, I hear figures being thrown around about how much money is going to the counties and how much money is going to be retained by the national Government. As far as I know, I have not heard the debate on the Division of Revenue Bill. We have not had that debate and as far as this House is concerned, we simulated this formula on Kshs279 billion and Kshs350 billion. So, the amount of money to be given to counties has not actually been determined. We have simply determined the formula of how we are going to do so, but now the next step is to agree and debate on how much money that is going to be. For sure, I do not see it being Kshs273 billion.

With those few remarks, I beg to support.

ADJOURNMENT

The Temporary Speaker (Sen. Mositet) Hon. Senators, it is now time to adjourn the House. The Senate stands adjourned until Tuesday, 17th February, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.