

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 15<sup>th</sup> May, 2014

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.3223 of 13<sup>th</sup> May, 2014)*

*The Senate met at County Hall,  
Parliament Buildings, at 2.30 p.m.*

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### SPECIAL SITTING OF THE SENATE TO CONSIDER THE DIVISION OF REVENUE BILL, 2014

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I have a short communication to make. You may recall that the Senate met on 13<sup>th</sup> of May, 2014, at 3.30 p.m. with the aim of considering the Division of Revenue Bill (National Assembly Bill No.15 of 2014), but we did not consider it.

You may recall further that I issued a Communication from the Chair informing the House that there have been developments that have necessitated the Speaker to direct that the consideration of the Bill and the House be adjourned until a date to be notified to you in the usual manner, as set out in the Standing Orders, during which date the House would consider the Division of Revenue Bill.

Hon. Senators, by Gazette Notice No.3223 dated 13<sup>th</sup> May, 2014, the Speaker of the Senate appointed today, Thursday 15<sup>th</sup> of May, 2014, as a day for the Special Sitting of the Senate. The notice specified that the Special Sitting will be held here at the Senate Chamber, 1<sup>st</sup> Floor, County Hall, Nairobi, commencing at 2.30 p.m. The Business to be transacted at this sitting will be the consideration of the Division of Revenue Bill (National Assembly Bill No.15 of 2014), as passed by the National Assembly, with amendments on 23<sup>rd</sup> of April, 2014.

Hon. Senators, as specified in the Gazette Notice and in accordance with Standing Order 29(5) of the Senate Standing Orders, the business specified in this Notice shall be

the only business before the Senate during the Special Sitting, following which, the Senate shall stand adjourned until Tuesday, 3<sup>rd</sup> June, 2014 at 2.30 p.m. in accordance with the resolution of the Senate made on Thursday, 17<sup>th</sup> April, 2014.

I thank you, hon. Senators.

## BILL

### *Second Reading*

#### THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2014)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I beg to move that the Division of Revenue Bill, 2014, be read a Second Time.

As the hon. Senators know, the Division of Revenue Bill is one of the most critical legislations that are enacted every year by both Houses of Parliament. According to Article 217 of the Constitution, every year, the National Assembly and the Senate must determine the amount of money that is allocated to counties as a precursor to the origination and conclusion of a second and even more important Bill, called the County Allocation of Revenue Bill.

Mr. Deputy Speaker, Sir, last year, there was a bit of misunderstanding regarding the role of this House in the deliberation and enactment of the Division of Revenue Bill, which misunderstanding was resolved later through a two-pronged strategy of seeking an interpretation of the Supreme Court. The court ruled in favour of the position that this House had; namely, that we have a central role in the legislation of this Bill. As hon. Members know, the other strategy involved a lot of political pressure which bore fruit. That is why this year, the process has been smoother and we are very happy that the Constitution is being respected.

Mr. Deputy Speaker, Sir, as I have said, this Bill has been brought in accordance with Article 218 of the Constitution. I just want to highlight a number of things that are relevant as I move this Bill for Second Reading. First, according to Article 203(2) of the Constitution, the national Government must ensure that at least 15 per cent of the last audited accounts of revenue as approved by the National Assembly is allocated to counties. So, the first question is whether the proposed allocation for this year meets the 15 per cent threshold of the last audited accounts of revenue approved by the National Assembly. It does. In fact, it exceeds the 15 per cent. It is right now at 43 per cent of the last audited accounts of revenue that were approved by the National Assembly.

Mr. Deputy Speaker, Sir, I know that there is a bit of concern and which I share, from Members of this House and other legislators that we need to speed up and make sure that the Auditor-General and other agencies are able to do their work early enough. The National Assembly is able to approve accounts early enough so that we do not have to use a base year that is two or three years old. That is a genuine concern. Ideally, we should be using the accounts that are audited and approved by Parliament. They should

not be more than one year old. However, even if they have not been audited, the amount proposed for allocation is still far way above the 15 per cent threshold which is the legal requirement. That is a very important thing for hon. Senators to appreciate.

Mr. Deputy Speaker, Sir, the second issue relates to the costing and unbundling of functions. Right now, the law requires the Commission for Revenue Allocation (CRA) to make suggestions on how much counties should get. Parliament decides how much each county will get using a formula that is provided for under Articles 225 and 226 of the Constitution. However, the work around funding counties and the formula used is presumed to be based on a scientific understanding of how much it costs to deliver the various functions that are devolved to counties. In fact, the assumption is that this costing should be done for both the national Government and the county government functions. Therefore, the division of revenue is matched accordingly to meet the 15 per cent threshold.

I say so because there has been a lot of emphasis on costing of county functions, but I think the whole picture will be better understood if costing of functions is done among the two levels of Government. I say so because it might be true or, rather, we might know how much it costs to deliver county functions. But we have to relate that to the entire available resource envelope. For example, let us assume that to deliver all functions by both levels of government, you require Kshs1 trillion, yet the revenue available is Kshs700 billion. So, it means, therefore, that you have to say: "Yes, this is the cost, but this money is not there because the available revenue is Kshs700 billion." That, then, informs how you prorate the funding between the two levels of government.

Mr. Deputy Speaker, Sir, it is sad that up to now, that work has not been done. Whose duty is it? I believe this is a duty that should be done by the national Treasury as the expert organ of the national Government. They should do this, in consultation with the finance organs of county governments and other agencies that are involved in devolution, including the CRA, the Transition Authority (TA) and everybody else. I think our role as a House, could only be limited to our Committees considering the proposals that have come from the expert institutions.

Mr. Deputy Speaker, Sir, as long as the functions of both levels of government have not been unbundled and costed, we will continue using very rough methods of funding counties. That is not good because it can even undermine devolution in the long run. So, I am really hoping that this is the last time we are singing this song about unbundling and costing of functions. I hope that by the time I introduce the Division of Revenue Bill of 2015, then we would have crossed that bridge.

Mr. Deputy Speaker, Sir, this Bill has adhered to the provisions of Article 203(1) of the Constitution---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Majority Leader is informing us that the national Treasury has failed to cost the national functions, and even the functions of the devolved governments. The counties are waiting for the national Treasury to lead the country in reading the budget of this Government. Is he in order to inform us that, that is the case, and still not go ahead to announce to the country that there will be no budget read? If the budget they intend to read is arbitrary;

based on nothing and no costing has been done, then this Government is not ready to lead the country.

**The Deputy Speaker** (Sen. (Dr.) Khalwale): What is your point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, my point of order is this: Is he in order to refuse to also inform the country that there will be no budget reading forthcoming because the national Treasury, using his own words, is unable to cost?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. With profound respect to the Senator for Kakamega County, Sen. (Dr.) Khalwale, there is no provision in law that says that the national Treasury will cost and unbundle functions. By reading the Constitution and the spirit of the constitutional provisions that talk about resources being able to help both levels of government to deliver functions, it is assumed that somebody has to do so. That is number one.

Number two, Mr. Deputy Speaker, Sir, the costing and unbundling of functions is not the only parameter or criteria that should inform the budget because there are so many criteria. Number three is that this costing and unbundling of functions, critical as it is, is at best, an estimate. It is much more scientific than the available estimations we are having at the moment. So, I do not see any connection with the reading of the budget and what the Senator for Kakamega County has said.

Mr. Deputy Speaker, Sir, having said that, I also want to add that Article 230 has been complied with. The revenue allocation in the Bill is determined taking into account the following fiscal policy matters that are based mainly on the Public Finance Management Act, 2012, as well as Chapter 12 of the Constitution of Kenya, 2010.

Mr. Deputy Speaker, Sir, broadly, the following are the parameters that have been put in place---

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Am in order to say that the Senate Majority Leader is misleading the House because he is saying that the workings here are based on estimates. That means the numbers he is presenting here and is saying are over and above 43 per cent are actually estimates. What is he presenting? Does he mean these estimates will not be given to the counties?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I am being reminded by the Chairperson of the Committee on Finance, Commerce and Budget, that actually even budgets are estimates. So, there is nothing out of order in saying that these are estimates. All what we are saying is that we would want to be as certain as possible going forward.

Mr. Deputy Speaker, Sir, having said that, the first parameter that has been used is that of the national interest.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. The sharing of the revenue in front of us is based on actual audited accounts. How does it now turn out to be just estimates? We are dealing with the audited accounts of last year, but one. In fact, we are not even dealing with the allocations of this year. The money is not based on this year's budget. Those are estimates. However, here are audited, signed and certified accounts of last year, but one.

**Sen. Kagwe:** On a point of information, Mr. Deputy Speaker, Sir.

**An hon. Senator:** Who are you informing?

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I am informing the Senate Majority Leader.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kagwe, I think you are time barred for now because we are dealing with the point of order by Sen. Muthama. So, I do not know whether you can---

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I can inform him if he so wish.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is if he wishes to be informed.

Sen. Muthama, do you wish to be informed by Sen. Kagwe?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, he can go on.

**Sen. Kagwe:** Thank you, Sen. Muthama. I am aware that this is addressed to the Senate Majority Leader. But I wish to inform the House we are talking about two different things. The Kshs226 billion that has been allocated is not an estimate of monies we will get, but the actual amount of money that we are going to get. It is also based on the amount that was given. I think there is some confusion regarding the annual estimates and the actual monies that have been allocated. The monies allocated are actual, but the estimated monies for the year are estimates.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, are you now satisfied?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, that information should be directed to Sen. (Prof.) Kindiki.

**The Deputy Speaker** (Sen. Kembi-Gitura): But you said you wanted to be informed. Have you been informed accordingly?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, I am aware that we are dealing with the actual audited and certified accounts. Estimates are based on the budget that is to come the following year.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, could you, please, deal with that situation so that we move on?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have a lot of respect for the Senator for Machakos County. However, I think this afternoon, there is something that he is not getting from us yet we are extremely clear.

I did not talk about what we are allocating to counties as being estimates. I said, what is thought to be the actual cost of delivering functions is estimated. This is because up to now, no scientific assessment has been done on the actual cost of delivering functions.

**Sen. (Dr.) Khalwale:** Why?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Because it has not been done.

Mr. Deputy Speaker, Sir, I told the Senator for Kakamega County, who should engage me through the Chair, that this work is not allocated to any particular person; it is collective. Even this Senate is part of the solution to the costing of functions through the Committee on Devolved Government and the Committee on Finance, Commerce and Budget. So, let us not politicize things.

Let me continue. Some of the factors that have been taken into consideration---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Majority Leader in order to mislead the House and, in fact, the whole country that the exercise of who should do the costing is not assigned to anybody in particular and that it is assigned to everybody? We know that is the responsibility of the Government in power. When we shall take over power, we shall cost the expenditure.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you are either making a point of order or you are not. I will not allow you to make a postulation in the guise of making a point of order. I have given you a leeway. If you have a point of order, do so, but do not postulate about issues that are not before us. I shall not allow that.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I stand corrected.

The point I was trying to make is that it should occur to the Senate Majority Leader that costing of functions is critical if devolution will succeed. We want to know, as the Senate and the National Assembly, how much it costs to run the national government vis-à-vis the devolved governments. Therefore, he should be telling us how soon they will be doing it instead of hiding behind the gist that there is no specific person. You can choose anybody, including the national Treasury. Is he in order to mislead the country?

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. I want to make a clarification. The Inter Governmental Relations Act is very clear that the responsibility for costing of the functions is the work of the TA. However, Members of this House know that the TA was not funded last year. This financial year they were only given Kshs300 million. The responsibility of funding lies with Parliament.

Secondly, it is important for Members to know that, that costing is dependent on the transfer of functions. Some of the functions we transferred in this House are yet to be gazetted. It must be clear that part of the blame, as the Senate Majority Leader said, is also with us.

**The Deputy Speaker** (Sen. Kembi-Gitura): Senate Majority Leader, shall we proceed?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, some of the policy considerations that have been made, include the need to make allocations to counties stable and predictable. That is why once the costing issue is resolved, counties will be in a position to know predictably how much they can expect each year. I want to agree with Sen. (Dr.) Khalwale and other Members who feel that this exercise should be completed. However, I still stand by my remarks.

I thank you Sen. Billow for that intervention. It is true; it is the work of the TA. The funding problems are of Parliament and not of other people as Sen. (Dr.) Khalwale had wanted to suggest.

Mr. Deputy Speaker, Sir, other than stability and predictability of allocations, there is also need to ensure that the issue of observing fiscal austerity and budgetary constraints is taken into account. I am saying this because I do not think there will be a time when either the national government or county governments will get enough money.

It is about prudence. If you look at the Public Finance Management Act, it talks about prudence. This is also further about fiscal responsibility. For us, as the Senate, because our mandate is more on county governments, we will be expecting that whatever counties get is used well. I do not think there will be any compromises on this. It must be used well noting that that the purse or the resource envelope is limited.

Mr. Deputy Speaker, Sir, the other issue that has been taken into consideration is about the relationship between the two levels of Government. That must be maintained, especially with regard to Articles 186 and 187 of the Constitution which allow any level of government to transfer any functions that are allocated to it to another level so long as the level of government has the capacity to carry out those functions that have been retransferred. That level should also be able to get the resources that are required for the performance of that function. In addition, any revenues collected in the delivery of that function, goes to the level of government which is doing the function, notwithstanding that the constitutional responsibility still lies with the level of government that is assigned that responsibility.

Very quickly, because I did not intend to take a lot of time, these proposed allocations are a product of a lot of work by the Committee on Finance, Commerce and Budget. I want to take this opportunity to thank the Committee for doing a good job. However, it is also important for Members to know that the National Assembly had its take on this matter as well. Other stakeholders that are involved in the budget-making process have been put on board. So, really, this just to provide the background that this process is one that has involved so many stakeholders, other role players, including our committee that, as I have said, has done a good job.

Finally, in the proposals in this Bill, there is a proposal to do away with conditional grants. Conditional grants are conditional; they are not a must. They are there by law. If the national Government wishes to engage in conditional grants they can do so either on a county by county arrangement or even generally through the Summit, discussions between the two levels of government or the Intergovernmental Budget and Economic Council (IBEC), which is the financial and budget arm that deals with the two levels of government. However, the danger of conditional grants lies in national government dictating to counties what they must do with money.

This is very important. It is not the business of the national government to tell counties: "We are giving you Kshs5 billion so that you can improve village polytechnics," Village polytechnics are already devolved to counties. They are a function of counties. It is up to each county to decide how much of the money they get to deliver the function that is allocated to them other than the Government trying to influence through conditional grants by saying: "Use this money to do this or that." So, the logic for the national Government not suggesting conditional grants is based on that fact.

If I can just summarise, because Members have had time to look at these proposals, the proposed amount is that counties will be getting Kshs226.6 billion this financial year as money to perform the functions that are bestowed upon them. I want to repeat, this is way above the legal requirement, which is only 15 per cent. Use whatever accounts you want to use, the law has been met. This is the threshold of 15 per cent. The

principles of public finance have also been applied and also the procedures have been followed. It is in that connection that this Bill is before this House.

Mr. Deputy Speaker, Sir, I beg to move. This being a financial matter, I request the Chairperson of the Committee on Finance, Commerce and Budget to second this Bill.

**Sen. Billow:** Mr. Deputy Speaker, Sir, I rise to second the Bill. I want to state from the outset that this is a very important Bill to this House. If there is one responsibility that this House has to undertake in terms of money matters, this is the only one. The Constitution is very clear that we, as a Senate, do not deal with money Bills. But this particular Bill that deals with the division of revenue between the two levels of government is a responsibility that the Constitution has conferred on this House. We are very clear that last time, when this matter was interfered with, this House had to go to court; to get the court to clarify whether we have a mandate. This is the mandate that we need to exercise.

Secondly, I want to clarify that we only have ten days from the time the message comes to this House from the National Assembly to conclude this Bill. This means that we have to conclude the debate on this Bill today and pass it on to the National Assembly.

Mr. Deputy Speaker, in principle, devolution has started off very well. We know that all the 47 counties in this country today have their administrative structures in place, from the governor down to the county executives. All the institutions of administration are in place. We know that in the past one year, this House together with the National Assembly have allocated resources that have enabled the county governments to operate.

Mr. Deputy Speaker, Sir, one of the key mandates that we also have in this House which is not shared is the responsibility for the transfer of functions. As you are aware, quite a number of functions were transferred in August last year. Shortly afterwards, the county governments did appeal to the Senate for the transfer of the remaining functions. This House did that work. As far as I know, most of the functions have literally been transferred although the actual gazettement of some of the functions that we did is still pending.

Why is the transfer of functions important? It is because that will advise the county governments what their responsibilities are on the ground. This will show what they need to do and the activities of service delivery that they ought to engage in. This is very important because it draws the line between the national Government and the county governments.

We also appreciate that it is the transfer of functions which will assist the TA in determining the cost of those functions. I want to clarify this issue because it was raised earlier. In fact, they have been meeting in the last couple of days with other State organs to discuss that matter. Our Committee plans to bring together the relevant institutions, including the TA, to discuss this matter of costing. One of the reasons the TA has not been able to finalise, it is because the transfer of functions has not been concluded, for example, the issue of roads. We know that there are still discussions on the classification of roads. This House has a mandate to assist in determining how those classifications can be done so that the relevant Bills can be passed and we know which roads will be the



mandate of the county governments and which ones will be within the mandate of the national Government. That is part of the reasons those costings have not been done.

The other thing I wish to mention, again, before I move on to the numbers is the issue of utilization of resources. This House has a mandate to oversee the utilization of funds that are sent to the county governments. This oversight function is very important. We all know of the challenges that were placed before us last year, but which, subsequently, even the courts have concurred with this House. This House has the mandate to do oversight and hold the county governments accountable.

Mr. Deputy Speaker, Sir, my Committee invited the Council of Governors to explain, particularly with regard to the reports of the Controller of Budget. I know that the County Public Accounts and Investments Committee will also be dealing with the audited reports from the Auditor-General, so that we exercise that mandate very carefully. One of the challenges that we have in this country is accountability. Questions of integrity have dogged our governments for a very long time. Everything time you read the newspapers the main concerns that we see are about utilization of resources. In the past one week, this House impeached a governor because of questions relating to accountability and utilization of resources. Yesterday a county assembly went ahead to impeach their governor. We can see these concerns all over this country about how those resources are utilized. We have a mandate to execute our responsibility in that respect.

Mr. Deputy Speaker, Sir, last year, the Division of Revenue Bill had an equitable share allocation of Kshs190 billion and conditional allocations of Kshs20 billion. The main reason we are doing this work is so that, through the County Allocation of Revenue Bill, we shall indicate how much of that revenue will go to each county. The county governments are then required to prepare their budgets based on that. The Public Finance Management Act sets 13<sup>th</sup> April, 2014 as the deadline for passing this Bill.

Even as we debate this Bill now, we are already past the schedule because those county assemblies were required to have had the budgets from their county executives by 30<sup>th</sup> April, 2014. The good thing is that last year, out of the Kshs190 billion that was allocated equitably to the counties, the budgets that had been prepared by all those county governments had, at least, over 30 per cent of the funds allocated to development as required by the Public Finance Management Act. In each of the budgets, there is no county that did not allocate over 30 per cent of the resources to development. That is important because one of the things the people of Kenya want to see is that the resources are spent for the development of their counties.

This year, we hope that with the proposed allocations, the county governments will be able to allocate more resources to the development of their respective counties. The Bill that has been presented to us proposes that the shareable revenue estimated this financial year is Kshs1.026 trillion. In the Schedule on page four, the Bill proposes that Kshs799.65 billion goes to the national Government and Kshs226.66 billion to the county governments. The figure for the county allocation is equitable share. This means that it is not conditional and the county governments have the mandate to utilize it for whatever activities, projects or programmes that they have. I agree with the Senate Majority Leader that Kshs226.66 billion is above the minimum threshold of 15 per cent. The Constitution in Article 203 requires that it must be above the minimum threshold of 15 per cent of the

last audited accounts approved by Parliament. The last audited accounts were in 2009/2010. The revenues then were Kshs529 billion. This is why the Kshs226 amounts to 43 per cent of that figure.

Mr. Deputy Speaker, Sir, my Committee, after going through the Bill had a number of things to say. We would have preferred more resources to go to the counties. But this is a shared responsibility both with the National Assembly, ourselves and the Treasury who have also come up with the numbers. We have looked at a number of reasons. We have decided that for the moment, this financial year, because of a number of reasons that I will give, we will recommend that the Kshs226.66 billion allocated as provided for in the Bill, be sustained. However, we think it is very important, and we did bring in amendments in the Committee Stage, that provisions be made for level five hospitals to be funded outside of this figure.

The Bill was published on 17<sup>th</sup> April, 2014 in both Houses. The reason is because of the mischief that in the past, the Bill was not presented to this House. Our worry was that this Bill may not come. This was one of the reasons the same Bill had to be published here. This figure of Kshs226.66 billion was the one we negotiated between the National Assembly and our committee.

The third point I want to mention is that we have also received public views on this matter. We have been in consultations with the Treasury, the Commission on Revenue Allocation, the National Assembly and all the relevant institutions.

I want to advise hon. Members that we really need to think hard on these numbers. There is no money that will be adequate for any level of government. We would have required more money. But under the circumstances, we have negotiated with our colleagues in the National Assembly and we have recommended that we start off with the Kshs226.66 billion, but leave room later on for amendments to provide for additional resources for Level 5 hospitals.

Lastly, I want to point out that we have also recommended, and we will recommend in our report, that it is vital for the analysis of the functions and the costing to be done. This is a matter that our Committee intends to pursue. In fact, I have been in talks with the TA. Next week, we will bring them on board so that we discuss the issue of costing as soon as the classification of those roads is completed. This is so that next year, we base our decision on actual costing. What the CRA did this time, as a matter of fact, was not something that was agreed on at the IBEC. They simply took the forward estimates in the MTF budget and used that, instead of what has been agreed at the IBEC, which is a key institution in the Public Finance Management Act.

What they did was to take the Kshs190 billion of last year as the base year and then added on the cost of county governments. This includes the issue of additional employees, costs of administration, the increase in the revenue percentage; they worked on that basis and arrived at the figure that we are now having.

Mr. Deputy Speaker, Sir, I want the Members to support this Bill. However, at the third stage, we will bring in some amendments in this regard, particularly to deal with that issue of the county governments.

I beg to support.

*(Question proposed)*

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for this opportunity to contribute to this Bill. Indeed, today is a very sad day for devolution.

*(Sen. Chiaba laughed)*

I am surprised at what appears to amuse the distinguished Senator for Lamu when he is supposed to be fighting for money for his county.

This is a sad day because last year we allocated the counties Kshs190 billion and another Kshs20 billion as conditional grants. The national Treasury says the revenues of the country grew by about 11 per cent. Last year we rolled out a budget of Kshs1.6 trillion. If we are to apply the logic of growth at the county level as well, the least we would have added to the counties would have been about Kshs35 billion to Kshs40 billion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. Without interrupting the flow of thought, is it in order for the Senate Minority Leader to mislead this House that the figures to be used to determine how much goes to counties is this year's Budget, while the law in Article 203 does not refer to the current financial year's Budget? Is he in order? He is making this argument to Kenyans and we do not want to misuse the Floor of this House to mislead them.

**Sen. Abdirahman:** On a point of order, Mr. Deputy Speaker, Sir. We were carefully listening to the presentation by the Senate Minority Leader and he was trying to build up a point. He had only talked about the national growth and how much our budget for this year is. I am sorry to use this, but the Senate Majority Leader is a legal scholar. Is he in order to mislead the House that the Senate Minority Leader spoke about last year's audited accounts? He did not at all, in my own understanding. I thought a legal scholar is expected to have a sound understanding of the English language.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I am sure that you can speak for yourself.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I was just building a point. I had not even reached the point of releasing my sucker punch. However, in anticipation, my jittery friend was already up on his feet.

Mr. Deputy Speaker, Sir, even if we were to apply rational thinking, budgets are not born out of the abstract. I want to beg you that when I get these interruptions, save my time, because I intend to use all my time.

Mr. Deputy Speaker, Sir, the national Government has absolutely no intention in supporting the entrenchment and growth of devolution. You can see from these estimates. First all, they started with a deception that Kshs226 billion represented 43 per cent of the revenue, but it turned out to be false.

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. I respect the hon. Member, who is also a Member of the Committee on Finance, Commerce and Budget, but we cannot really allow him to mislead the House. He can use a calculator if he did not

do mathematics as most lawyers do not, he will realize that Kshs226 billion is exactly 43 per cent of Kshs529 billion. This is the last audited accounts approved by the National Assembly in accordance with Article 203 of the Constitution. The Constitution does not talk about Kshs1.6 trillion, but the last audited accounts. Please, do not mislead Kenyans.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not understand why this short fuse is emerging in the House. If you look at even the document---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. My point of order is on the point of order by Sen. Billow. Whereas he is right, he is out of order to mislead the Republic. This is because the Republic might think that the last audited accounts are the accounts of the other year. He should go ahead and make full disclosure that the last audited accounts are the accounts which my Committee looked at. Your famous National Assembly, with tyranny of numbers, has not been able to audit any accounts. Therefore, those accounts you are using are---

*(Several Senators stood up in their places)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! It is good that we should move on with this debate, because it is very important. Let me bring it to your attention that this being a Special Sitting, we will sit here until we finish the business of the day. It is important to say this because we do not want to misunderstand each other. Sen. (Dr.) Khalwale, in your point of order, you referred to Article 203(3) of the Constitution. It says:-

“The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

Hon. Senators, we have no control of the National Assembly. Sen. (Dr.) Khalwale, you started it correctly by saying that Sen. Billow Kerrow is correct on the figure of Kshs593 billion. Therefore, you cannot in the same breath go on and say that he is misleading the House or nation, because Article 203(3) of the Constitution is clear. Since all of you know that this Special Sitting is being televised, it is important that the nation understands that we are acting within the Constitution.

If we are talking about last year's audited accounts that were approved by the National Assembly, then we would be talking about very different figures. But we, as the Senate, can only go by what is in the Constitution. I think that it is important for us to appreciate that and move on in that direction, so that we are able to finish this debate based on law and facts.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to say that the Chairman of the Committee on Finance, Commerce and Budget made a big mistake by saying that Sen. Wetangula was referring actually to the numbers that he is mentioning here; these are estimates based on Kshs1.6 trillion? If you do proper calculation, you will see that 43 per cent of shs1.6 trillion comes close to Kshs600 billion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, with a lot of respect to you, I have already clarified that point.

Sen. Wetangula, I want to assure you that I am holding your time.

The point that I am making is that we are dealing with a figure of Kshs529.3 billion. Everything else that you can talk about is hypothetical, but for the purposes of the Division of Revenue Bill, we are dealing with actual figure. That is the figure in the Bill.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, he should not quote the estimates based on Kshs1.6 billion.

**The Deputy Speaker** (Sen. Kembi-Gitura): He should not.

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir. In the light of the clarification that you have made, would I be in order to request the Chairman of the Committee on Finance, Commerce and Budget or the Senate Majority Leader, in the interest of the general public, to clarify which accounts we are referring to because that will help?

**The Deputy Speaker** (Sen. Kembi-Gitura): I can do that because if you look at the Schedule of the Bill on page 4 that we are dealing with now, the footnote No.1 says clearly: “Based on 2009/2010 audited revenue approved by the National Assembly (Kshs529.3 billion.)” That is the point that I was making. It is not for us. Unless you are disputing the last audited accounts were 2009/2010 Financial Year. That is the figure that we are working on with.

**Sen. Obure:** Mr. Deputy Speaker, Sir, that helps a great deal from the perspective of the general public. Could the general public also be informed the basis upon which last year’s division was based?

*(Sen. Hassan consulted loudly)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Omar! Please, let us all move together, at least, as far as possible.

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. On the point raised by Sen. Obure, last year’s Division of Revenue Bill actually used “the most recent audited accounts” and not exactly “the most recent audited accounts approved by Parliament.” Last year’s Bill was in error and that is why it used 2010/2011 figures. But this year, it is corrected. The correct figure is Kshs529 billion that the Chair has mentioned.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I will invite the House to look at page 10 of the Report. On page 10, while note 2 recites the Constitutional position, even those who failed mathematics in school will understand and appreciate that 226.66 billion is certainly not 43 per cent of 1.026.31 trillion. It is as simple as that.

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. He is misleading Kenyans!

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wetangula! I think that I made it clear that we are holding your time. A point of order in such an important

situation will have to be allowed, because it is important, like Sen. Obure said, that certain things have to be made clear to the Kenyans who are following this debate.

Yes, Sen. Billow Kerrow!

**Sen. Billow:** Mr. Deputy Speaker, Sir, if hon. Senators can pull out page 4 of the Bill, you will find that there are three columns; the type/level of allocation, amount in billions and Article 203 (minimum threshold of 15 per cent). If you go down you will find 43 per cent. What it means is that in terms of Article 203, which requires the minimum threshold of 15 per cent, this Kshs226 billion is, in fact, 43 per cent of the 2009/2010 accounts. It is not in order for the Senate Minority Leader to mislead Kenyans that 43 per cent is, in fact, the percentage of today's estimated revenue. This Kshs1.026 billion is really the estimated revenue of this year. So, I think that it will be misleading for him to put that as a percentage of the other one.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. This issue of which accounts are the last audited accounts is very critical because the Constitution speaks to it. It says that the Auditor General, within six months, must table his accounts to Parliament and three months after that, we should have approved them. I am aware – and many of the Senators are aware that, indeed, the Auditor-General has done exactly that. All those accounts are sitting there and no approval is taking place, the fact that the Constitution is being breached notwithstanding. It leaves us with a bitter taste in the mouth, that probably, the Executive does not want this approval, so that the wrong figures are utilized.

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

Mr. Deputy Speaker, Sir, can I make my point? He will have his time. You know that I am not fighting you.

**Sen. Billow:** On a point of information, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, with due respect, let me finish. Probably, what you want to inform me about is what I am going to conclude with.

Mr. Deputy Speaker, Sir, you rightly said that the public is following this debate. It leaves us with a bitter taste in the mouth that, probably, the Executive is deliberately ensuring that accounts are not considered or approved within the timelines specified, so that---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Khalwale, I would like to say the following and I hope that I will do so for the last time. All the 47 of us here represent counties. Do we not? I also represent a county. If you had your way, I am sure that you would want to deal with the audited accounts of 2012/2013 Financial Year. That is what all of us would wish. On the other hand, Article 203(3) of the Constitution is clear. What the Executive and National Assembly can or cannot do, we have no control. For now, this Bill is a National Assembly Bill which is coming to us by operation of the law. It is talking or referring to the last audited accounts. We can say anything else that we want to say, but the fact remains that Article 203(3) talks about the last audited accounts. You can have your time and dispute those figures if you wish, but whether or not, the Auditor-General has sent his audited accounts to the National Assembly, the Constitution enjoins

us to deal only with the last audited accounts. That for me is the whole thing; never mind that you, everybody else and I would maybe want to deal with last year's audited accounts.

Sen. Orengo!

**Sen. Orengo:** On a point of order, Mr. Deputy Speaker, Sir. The problem of the approach that is being used by the Senate Majority Leader and the Chairman of the Committee on Finance, Commerce and Budget is that the Constitution is being read selectively. If you read the Constitution selectively and take one part of the Constitution, then what you are saying is true. I cannot disagree with it. But if you look at the financial provisions of the Constitution and do not read them conjunctively, then we are bound to fall into a big constitutional error. There is no problem talking about the most recent audited accounts, but the Constitution places a responsibility on Parliament. This is in accordance with Article 229(4). It says within six months after the end of each financial year, the Auditor-General shall audit and report in respect of that financial year. When the Auditor-General finishes his job, Article 229(7) directs him on what to do. It states:-

“Audit reports shall be submitted to Parliament or the relevant county assembly.”

Article 229(8) states:-

“Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.”

Mr. Deputy Speaker, Sir, if we now concentrate on 2009/2010 accounts---

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

Mr. Deputy Speaker, Sir, I have to finish this, because he was given his time. This is the mischief that this Constitution was supposed to address. Under the last Constitution, you would find situation where accounts were not audited for ten years, for example. So, this is a requirement of Parliament. It is supposed to be done so that we do not defraud the people of Kenya by sitting on these accounts.

Finally, now that this Government is saying it is digital, it should do these things every year instead of after every three years.

The other important issue is this. The 15 per cent is just guidance. If we go beyond 15 per cent, we will have gone beyond the constitutional threshold. However, if we go below, we will be undermining the Constitution. So, on account of what the Finance, Commerce and Budget and the Senate Majority Leader have done, you have gone against the public interests of Kenyans because you are talking about accounts of three years.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orengo, I do not want you to contribute on a point of order. Make your point of order and conclude.

**Sen. Orengo:** Mr. Deputy Speaker, Sir, this Constitution talks about constitutionalism and the rule of law. If we knew that these accounts had been laid, the reasonable thing to do was to go by what---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orengo, you must make your point of order now. I will give you a chance to contribute when it comes to that time.

**Sen. Orengo:** Mr. Deputy Speaker, Sir, the Commission for Revenue Allocation (CRA) has looked at all these things. In its view, it thought that this figure was very small. This Government likes handling deals. When they are talking about deals related to the railway, they do not care. This is a deal-making Government.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, there is one thing I will not allow. If you want to make a point of order, I will allow you to do so. As I ruled earlier, this is a very important matter we are discussing. I want to imagine that the points of order you will make will be within the ambits of what we are discussing and that they will help move the debate. If you want to make a contribution, you have to wait until I ask you to do so. I think that needs to be respected because short of that we will have a disorderly House. I will not preside over a disorderly House. I want to make that very clear to everybody sitting in this House. I want us to proceed in that regard.

If anybody wants to clarify figures here, they can go ahead and clarify. If you do not believe that Kshs529.3 billion is an equivalent of 43 per cent, then you should seek that clarification. We have the Chairman of the Committee on Finance, Commerce and Budget here and the Senate Majority Leader is here too. So, let us deal with this issue the way we should and we will move forward. Remember, we will go into Committee of the Whole after I have put a question on the matters we are discussing. We have a long day ahead of us. It is up to you to decide how we will deal with the balance of it.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. I think I will be in order to refer the House to page four of the same document. It is well written that the total sharable revenue is Kshs1.026.31 trillion. These are numbers which are plainly written. The national allocation is Kshs799.65 billion. As you move down, you will see the Economic Stimulus Package (ESP) and the Equilisation Fund. We have the figure of Kshs226.66 billion.

The figures we are reading down, based on the 2009/2010 Financial Year, have no basis whatsoever. Nobody knows how the figure of Kshs529.3 billion came about. That was an amount to be shared. That should have been shown as the sharable amount. However, this has been left out down there like a hidden figure while we have other printed figures which give 43 per cent. I do not know whether this percentage is based on Kshs799.65 billion or on the Kshs1.026.36 trillion. Therefore, this is a bogus paper that has been brought here to confuse the whole House.

If you calculated 43 per cent of Kshs1 trillion, that would give you Kshs450 billion. If you base that percentage on Kshs799.65 billion, we will be talking about Kshs310 billion. Where did the Kshs226 billion come from?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! It is important that you clarify this position so that we understand one another. We also want Sen. Wetangula to finish. What Sen. Muthama is saying – you need to clarify this – is that the total sharable revenue is Kshs1.026.31 trillion. That is the figure shown below. We have a national allocation of Kshs799.65 billion plus Kshs1.45 billion and Kshs3.4 billion and Kshs226.66 billion. That comes to Kshs1.026.31 trillion. Am I correct? The question



being asked by Sen. Muthama and this is important so that we understand one another and you better listen because you will not bring me back to it. The point we need to clarify with Sen. Billow is the figure of Kshs226.66 billion. This is 43 per cent of what? After that has been clarified, we can move on.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, we have only one Chairman of the Committee on Finance, Commerce and Budget and he is the one I asked to make a clarification.

**Sen. Billow:** Mr. Deputy Speaker, Sir, it is a pity that some of the challenges we are facing are coming from Members of the Committee. This is shame. These Members had three months to go through this Bill. We went through it in three months. So, it is a shame that Members of the Committee can stand here and pretend that they do not know what is in this figure. However, let me clarify on behalf of Sen. Muthama and others who may not have understood. I did this earlier, but I want to repeat it slowly so that we appreciate it.

There are two fundamental figures that we need to know. One is the sharable amount.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to say that Sen. Billow Kerrow, the Chairman of the Senate Committee on Finance, Commerce and Budget is addressing a Muthama out there? Am I just a Muthama out there or am I Sen. Muthama?

**Sen. Billow:** Sen. Muthama, the Senator for Machakos, my apologies.

Mr. Deputy Speaker, Sir, there are two very important figures and Members need to appreciate this because they are important. One, what is the sharable revenue that we have, which must be shared between the national Government and the county Governments? That is the most important thing that we must know. That figure is the revenue that the Kenyan Government is expected to collect in the coming financial year. The figure they are expected to collect is an estimate. That figure is Kshs1.026.31 trillion. I think we are clear on that.

*(Sen. Muthama consulted with the Clerk-at-the-Table)*

The second figure that is important is that out of the Kshs1.026 trillion, county governments are supposed to get a portion which under Article 203 of the Constitution as stated in the last column, should not be less than 15 per cent of the most recent audited accounts approved by Parliament which are the 2009/2010. That revenue was Kshs529.3 billion. That is also an important figure because it gives the minimum threshold below which we should not go in terms of sharing. That is the law. I think that should be very clear.

The reason the 43 per cent appears in this column is because under Article 203, the Kshs226.66 billion represents 43 per cent of the most audited accounts of Kshs529.3 billion, but not the sharable revenue that we are expected to collect this year. The Kshs1.026 trillion is what we expect to collect in the coming financial year. We have not

even collected that revenue. Let me also finish by clarifying that when the recent audited accounts were submitted by the Auditor-General to the National Assembly, it became the mandate of the Public Accounts Committee and the Public Investment to approve the accounts and table them in the House.

The Chairman of the Public Accounts and the Public Investment Committee is a Member of the CORD coalition. I had told the Senate Minority Leader that he has a mandate to speak to his Members who are the majority in the Public Accounts and the Public Investment Committee of the House to approve those accounts. They spend the last 12 months politicking instead of addressing these issues.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Members! There is one thing I want to clarify here and that is Sen. Muthama is satisfied with the figures that have been given. He did not understand the difference between Kshs1.026 trillion and the amount being shared now and the Kshs529.3 billion. If that is clear, Sen. Wetangula can proceed with his contribution.

**Sen. Hassan:** On a point of order, Mr. Deputy Speaker, Sir. Sen. Billow tried to bring out a perception that we, in CORD, are the majority in the Public Accounts and the Public Investments Committee. That is not true. The composition constitutes six Members of the Jubilee Coalition and five Members of the CORD Coalition.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. I am not satisfied with the answer that has been given by the Chairman of the Finance, Commerce and Budget Committee.

The document I am holding does not show the workings that give him Kshs226.66 billion. I think the Deputy Speaker has the same document.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, when Sen. Billow was explaining the figures, you were talking to the Clerk-at-the-Table. Therefore, you may have missed a point. You may have missed the trend of the argument. I will not go back there. I made it clear that if you want us to proceed together, let us concentrate on the Debate in the House at the moment because it is very important.

It is important that we move together in this debate, whether or not, we have differences in it. Sen. Muthama, with respect, when the Chairman of the Committee on Finance, Commerce and Budget was explaining, you were talking to the Clerk-at-the-Table. If you missed the thread, I will not go back to it. I think we need to understand each other.

Sen. Wetangula, could you continue with your contribution? I must bring these points of order to an end now.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, allow me to proceed. I want to urge my colleagues across the Floor, that if they feel that they can derail my arguments, they will fail.

I said, and had no problem whatsoever in referring to Note No.2 on the issue of Kshs226 billion vis-à-vis the account of 2009/2010. We are not engaging in a narrow interpretation of issues. The Revenue being shared this year is Kshs1.026.31 trillion. I have not made reference to the Constitution.

I simply said that there was an earlier deception to say that Kshs226.66 billion was 43 per cent of the sharable revenue, but that was not correct. It is as simple as that.

Even those who failed in Mathematics can do the calculations and find out the percentage of Kshs226.66 billion out of Kshs1.026.31trillion. That is not 43 per cent. It is as simple as that. We have shared revenue.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. I think we should not allow Sen. Wetangula to insert terminologies here. Let us follow this clearly. This is 43 per cent of what? Is it not of Kshs529.3 billion. What is the Kshs529 billion? This is the sharable amount.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Lonyangapuo, you will not have an argument with Sen. Wetangula. Address the Chair.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I am saying that the Senate should not be allowed to say that the Kshs529 billion is shareable income which is 43 per cent. This is not it. If you want a percentage, you will get the percentage of the sharable income and that will come to about 23 per cent. This should not rephrase as such if we are to follow the Constitution.

**Sen. Bule:** On a point of order, Mr. Deputy Speaker, Sir. I know that Sen. Billow and Sen. Wetangula serve the same Committee. We have been arguing over this issue. The issue on the Floor is not in order. We want the Committee to go back and agree on the matter so that we move forward.

**The Deputy Speaker** (Sen. Kembi-Gitura): What point of order are you making?

**Sen. Bule:** Mr. Deputy Speaker, Sir, this issue is in order. Could they go back and agree first?

**Sen. Khaniri:** On a point of order, Mr. Deputy Speaker, Sir. I want to plead with the Chair because I read a conspiracy to derail the Senate Minority Leader in his contribution to this very important Bill. I want to plead with you to strictly enforce the provisions of Standing Order No.87(1). It says:-

“Any Senator may raise a point of order at any time during the speech of another Senator stating the Senator raises a point of order and that the Senator shall be required to indicate the Standing Order upon which the point of order is based.”

I want to plead that you strictly enforce this Standing Order because when the Senate Majority Leader was making his contribution and even when the Chairman of the Finance, Commerce and Budget Committee seconded the Bill; we listened to them in silence. I want to believe that every Senator will have a chance to make their point about this particular Bill. We have to dispose of this Bill today. This is a Special Sitting that you called for. Time is of essence here. I want to plead that this Standing Order be enforced.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Khaniri. I want to reiterate what Sen. Khaniri has said. That is the point I have been trying to make throughout this afternoon. I will not say that anyone has raised a frivolous point of order because points of order are important matters of procedure. However, I will also ask you to state under what Standing Order you are raising a matter. It is very difficult to stop a Member from raising a point of order because you cannot anticipate what they want to say. At the same time, I hope that you will respect the orders of the House like Sen. Khaniri has said. We should make points of orders that will enrich debate and not some that will derail us from what we are dealing with.

I hope that we will have as few as possible points of orders. As Sen. Khaniri has said correctly and clearly, when it comes to debate after I have proposed the question, each of you will want to make a contribution. You will also have a chance to contribute to the debate. Thank you very much, Sen. Khaniri. I would like to proceed in that spirit.

Go on, Sen. Wetangula. This, however, is not a gagging order. Let us proceed in that context.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I was interrupted when I was saying that 43 per cent means in note two that Kshs226 billion is 43 per cent, as my good friend from West Pokot has said. I am also saying that these colleagues who represent counties should appreciate this point because we came here to fight for our counties to get resources. The Kshs226 billion represents exact 22 per cent of Kshs1.026.31 trillion. That is what the counties are getting. We are leaving a whopping 78 per cent of revenues with the national Government. That is why I said that this is a sad day for devolution and the excited colleagues who have been interrupting me had better listen because they are supposed to go out there and explain to their people.

We came here to look for money for the counties. We recently assigned a huge bundle of responsibilities to counties. If we do not give them enough resources, we are simply setting them up for failure. This is what I am saying. I want to encourage the Chairman of my Committee for Finance, Commerce and Budget to please extend some respect to us, his Members. You have been treating me shabbily in the Committee and you cannot extend that to the Floor. I want to make my point because I represent the people of Bungoma, but I also represent a larger constituency sitting behind me and I have a duty to do so.

Mr. Speaker, Sir, it is a sad day for devolution because we have given all the responsibilities to the counties, but we are retaining all the money at the centre. You saw today, in nailing another six inch nail in the coffin of devolution, a violation of the Constitution in terms of reforming, restructuring and aligning provincial administration to devolution. A six inch nail went into that coffin.

Those of you who are here to defend counties have a duty to speak out. If we want counties to function, then the Budget and the Division of Revenue we give must help them to function. I am aware of a county like Nyandarua where the Governor sits on top of a shop. He does not even have offices to work from. There are a few other counties like that. I am told that Tana River is the same. Therefore, the Kshs266 billion we are sitting here to preside over to hand over to the counties is a pittance or it is a drop in the sea.

We have shifted a huge workforce to the counties. The county of Mombasa has been allocated just slightly above Kshs4 billion which is over Kshs400 million below their expected wage bill for the year. This means that the county of Mombasa will do nothing else, but pay salaries for a full year, have a deficit, sit there and say we have devolved responsibilities, duties, functions and everything else. This is the point I am making and when a colleague stands up in an excited manner and keeps on talking about misleading the House, I want to encourage him to listen. I listened to you and you also have a duty to listen to me.

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. We have great respect for all the Members here, but I think the hon. Senator must desist from directing his statements to the Chairperson in the manner that he is doing. What I had mentioned is that every county, including Mombasa, has over 30 per cent for development in the Budget approved by the Assemblies, submitted and which we all have. If it is only paying salaries, how did Mombasa allocate 30 per cent development? So, he is misleading the House. That is the point I mentioned. Every county was able to make development estimates out of the money given. I think he should also not mislead. He can make his point, but, please, do not say that I am misleading anybody.

**Sen. Hassan:** On a point of information, Mr. Deputy Speaker, Sir. The county of Mombasa is able to raise an estimated Kshs400 million monthly. This gives it an estimated Kshs4 billion which actually caters for its recurrent budget which is Kshs5 billion. The money allocated to Mombasa County in the last financial year as the revenue share was Kshs3.8 billion. In other words, from the monies that we were able to collect from revenues, we were able to pay salaries at Kshs4.2 billion. So, we had to do an additional Kshs400 million from the resources that we mobilized in Mombasa County. This situation complicates itself in this annual budget where we have to look for money to pay salaries because that allocation is far much less.

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. Hassan, when I sit here, I am able to follow debate and I understand when you want to solicit, to inform, which is different from giving information. What you are saying is important and in due time I will give you a chance to contribute, but let us not try to use points of information to debate through the back door. That is not allowed. The problem is that I am not able to anticipate what a Senator is going to say. I hold every Member in a lot of respect, but you have now taken about three minutes from Sen. Wetangula's time.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, I want this House to note that we have a constitutional body called the Commission of Revenue Allocation (CRA). It advises the national Government, the National Assembly and the Senate. Based on estimates of revenues available for sharing, the CRA recommended that the counties should have Kshs279.162 billion to share. That is what the CRA allocation recommended. This is a body that is mandated to advice all involved, including us and they did not pick that figure from the abstract. They got that figure from a scientific analysis of revenues available to be shared between counties. Through some manouvres, the CRA was placed in a very difficult position until they stepped down from Kshs279 billion to Kshs238 billion.

As I speak here, many of our counties are in dire need of roads, medical services, water, schools and many other facilities. I know and I have said this before, that while some of us come from counties where we have a nightmare of making murrum roads, there are some counties that have a headache of maintaining tarmac roads. So, let us talk about the majority of counties that are disadvantaged. Devolution is a dream that Kenyans hold dear. Devolution came to save the children in Narok who could not even go to school. The counties must have money to build schools nearest to every child. I went to Samburu where they celebrate four or five schools in the whole county when

other counties have a secondary school every three kilometres. We are supposed to correct this situation.

Mr. Deputy Speaker, Sir, you may recall that the Equalization Fund we allocated last year, the year is ending, but no cent has been disbursed up to now. The Pokots, the Samburu, people of Lamu and Tana River want this money. This is the point we are making. We are presiding over a flawed process of revenue division we are presiding over a deception where we are denying the grassroots level governments money.

We are presiding over a deception where we have sat here, gleefully and generously spoken of devolving functions to the counties, then we come back and say that there is no money for it. The Constitution says that you cannot devolve a function without attendant allocation of money. This is the point I am making. We do not want devolution to remain a mirage where leaders stand on a platform and in television everyday boasting of how they support devolution and yet every single step they make is to undermine devolution.

Mr. Deputy Speaker, Sir, even those of us who think we are from safe counties, just go back there and tell your people how little money you have brought and see how they will frown at you. This is because they are expecting change. They are expecting a difference. This House must assert itself. To some extent, the Office of the Speaker has also been unable to adequately represent us in dealing with issues with the National Assembly to the extent that the National Assembly is setting the agenda and we are helplessly watching and standing by. One would expect a situation where through formal--

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wetangula! You cannot say that the Office of the Speaker has failed you. I think that is wrong and you need to withdraw. When you make such kind of statement, I will not let it go. I do not want you to substantiate, but you need to withdraw.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw the statement and replace with one that the Office of the Speaker has not acted to our satisfaction.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wetangula! You and I are not going to altercate on semantics. That, we are not going to do. I think it is not right to try to put the Office of the Speaker to disrepute when you are contributing to a national debate. So, withdraw that statement in its entirety.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw.

Mr. Deputy Speaker, Sir, I want to ask my distinguished colleagues here, if, indeed, our duty as Senators is to come here and fight for money for our counties, who drafted this Bill? How many of you were involved in drafting this Bill? How many of you were able to present the wish list of your counties? How many gave the input of the irreducible minimum? There is no single Senator who was given an invitation or an opportunity to even as little as present a wish list. So, you are presented with *fait accompli* in form of Kshs226 billion, take it or leave it. Then you are blackmailed into being told that if Kshs226 billion does not pass, the Lower House will reject your proposals and the President will anyway sign what they have done like he did last year

and that you can go back to last year's allocation which is much less than Kshs226 billion. This is called blackmail!

Mr. Deputy Speaker, Sir, this Senate shall not and will not be blackmailed into degenerating into a rubber stamp. Let this year be the very last that this Senate is being used to rubber stamp a mischief. This is a House of Representatives of counties. We represent, defend counties and we stand for counties.

Listening to the Secunder of this Bill, you feel sorry for this House. If you want to use your majority to have chairpersons of committees, then have people who are committed to devolution. Let people who understand the pain of a family in Turkana eating a dog because they have no meals be the chairpersons. Another family in Baringo eating a family pet, the cat, because they do not have money and the rest of us are airborne. That is what devolution came to Kenya for. The El Molo on the shores of Lake Turkana will stop having flies biting their eyes from morning to evening and yet your children are being taken to school in Mercedes Benz. This is what devolution came for.

We will be failing this country and even failing ourselves and the people of this country if this Senate was to sit here and pretend with very attractive figures that Kshs226 billion is 43 per cent of the shareable revenue. This is cheap propaganda that those who peddle it will one day be asked to account and answer for because when you tell the truth, you do not have to remember anything. However, when you peddle lies and untruths, you will be held to account by the people who elected you and the people of this country.

Mr. Deputy Speaker, Sir, this Senate in trying to approve this Kshs226 billion, is betraying the Constitution. It is betraying Kenyans and also betraying devolution. Let it be known. Now that we are sending money to the counties, I want to come to another point. Our brothers, the governors, we are sending you money which is inadequate, but we want you to know that in the Senate you have a friend. I want the governors to know that in the Senate, they have a defender. We will defend each one of them as long as they do right. Those who do not do right have no friend in this Senate. Those who do not account have no friend in this Senate.

As we deal with revenue allocation, this country has a runaway insecurity. Before we even get to actual allocations, I want to urge the Jubilee regime that there is a requirement that security in counties must have a governor chairing a committee. Today, the President was launching a strengthened provincial administration. What that is going to do on a daily basis is to undermine governors and devolution. The County Commissioners are going to deal with day today running of issues.

Mr. Deputy Speaker, we are now on a highway to turn our governors into glorified chairman of county councils. This is very dangerous. If the national Government in Kirinyaga is busy dealing with a man called county commissioner and you have the governor, what is the role and value of the governor? Then we say in the Constitution that the county governments and the national Government are dependent and inter-dependent. But how can you be dependent and inter-dependent when you have a parallel system next to you? We say the governor cannot preside over security meetings, but when things go wrong, it is him who is put to question. He cannot do anything, but when things go wrong, we follow him up.

Mr. Deputy Speaker, Sir, there is a Ministry called the Ministry of Devolution and Planning. You have recently seen the Minister advertising contracts for construction of water pans in Mandera, Moyale and in many other places, in the media. But if you read the Fourth Schedule of the Constitution, it is very clear that these are devolved functions. On what basis, constitutionally and legally and even at common sense level, do you have a Ministry called Devolution and Planning, sitting in Nairobi and advertising to construct water pans and dams all over the country, when it is a strictly devolved function? Yet, we come here to truncate counties by giving them inadequate money. Just like Sen. James Orengo said, this country is bedeviled by deals upon deals; everybody speaks deals, dreams deals and does every deal!

*(Applause)*

These deals permeate everywhere; even skunks are being declared as good transactions. The Houses of Parliament must perform their roles.

Mr. Deputy Speaker, Sir, I salute those of us who spear headed to go to court to look for interpretation on how our functions go in as far as these kind of Bills are concerned. Even with the court ruling in our hands, nobody in the Executive seems to remember that we are there. We go out there and they say here are *Maseneta*. It is a sad day for this country; it is a terribly sad day for this country. If I had my way, this Kshs226 billion should not see the light of day. We should go for the Kshs279 billion that Cheserem recommended.

Mr. Deputy Speaker, Sir, let us not allow anybody to blackmail governors and counties. You are told that they have no absorption capacity. We were told by the distinguished Chairperson of the Committee, they have the capacity absorbs just about 15 to 20 per cent of development funds. You hand over to governors an extremely convoluted and draconian procurement law, and then you tell them that they are not able to absorb money. You give them money. In three months, you are declaring them failures when procurement takes up to six months with appeals and appeals upon appeals.

Mr. Deputy Speaker, Sir, again, if this House wants to help counties, I want to encourage both sides of the House to take it upon ourselves to look at the procurement law. How we can help without compromising accountability, trust and honesty? We should look at how the money we send to the counties can be put to good use in a more simplified, but accountable manner like what we are saying today.

Mr. Deputy Speaker, Sir, it is important to caution some of the Governors we have seen engaging in very errant activities. A governor has no business taking this money we are taking to them to purport to perform functions that are strictly national functions. You have seen a governor going to buy 120 police cars, when you know that police activities are a national function.

*(Applause)*

That is not any different from the abuse of power that we sent Wambora home for. It is not a question of who is benefitting; it is a question of fidelity to the law and to the



Constitution. So, any governor who is going to arrogate himself the responsibility and duty to abuse the little money we are sending to the counties by pretending to be better than others and performing national functions, will also be held to account the same way as a governor who has stolen money.

*(Applause)*

Because this is not right, there is no way governors will to take over responsibilities of the national Government when the national Government is holding on to 78 per cent of the sharable revenues.

Mr. Deputy Speaker, Sir, there is one other thing I want to talk about; this is Level 5 Hospitals. We have been told that we are looking for a figure of Kshs10 billion to add to Kshs226 billion to support Level 5 hospitals. This is very good. However, Level 5 Hospital allocations cannot be part of sharable revenue among the 47 counties because we only have 11 Level 5 Hospitals. I know that most of these Level 5 Hospitals, in many places, act as referral hospitals. But we also know that 90 per cent of the cases that require medical attention are not handled at a referral level. They are handled at the basic point of entry, which are the health centres, dispensaries and so on.

So, I want to urge the House and the Senate Majority Leader that when we go to Committee Stage, I will be very happy with you for a change if you brought an amendment to say that the Kshs10 billion from the national Government is not part of the sharable revenue. We need an additional sum of money to be loaded on to Kshs226 billion to enhance the revenues available for the counties. You will be doing a very good and noble job for your county and for the rest of the counties.

Mr. Deputy Speaker, Sir, in fact, my distinguished junior represents a county that is quite disadvantaged. I have been there a few times and he knows it. If I had the power, I would allocate them even more money. Now that he seats in a seat where they sit exclusively to decide how much money can be shared, I want to encourage them to remember that they come from positions of disadvantage although they may be sitting on seats of advantage.

*(Laughter)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I have no problems with the opinions of my brother, who is my junior in this House and my senior outside.

*(Laughter)*

However, it is not right for the Senate Minority Leader to suggest that in any way, I have abdicated my duties as the Senator for Tharaka Nithi County. The functions I do as the Senate Majority Leader are national functions, but I am aware of my very critical duties as the Senator for Tharaka Nithi. I am even on record bringing a Motion before this House that went through which tried to solve some of the disadvantages that Tharaka

Nithi, Tana River and Nyandarua counties are facing. This was a very difficult Motion actually relating to particular counties and excluding others.

Mr. Deputy Speaker, Sir, would I be in order to request my brother, friend and junior in the House, to kindly apologize and withdraw those remarks?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, the only thing I would request of you is that you should try not to be personal in your debate.

**The Senate Minority Leader** (Sen. Wetangula): Absolutely, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do not try to zero down on Members--

**The Senate Minority Leader** (Sen. Wetangula): I agree, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): And then you proceed in that regard.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I thought I was helping my learned junior---

*(Laughter)*

If he feels offended, I was not meant to be offensive. As he was raising his point of order, he was also nodding at what I had said.

*(Laughter)*

Mr. Deputy Speaker, Sir, let me bring to a conclusion this contribution so that others can also contribute by urging the House to remain eternally vigilant. We must take money to the counties. Whether you are on the Government side or the Opposition side, your primary responsibility is to your county. Your primary responsibility is to look for resources for the counties. If anybody thinks they have come here to defend the position, that is wrong and that is bound to fail. We, on this side, are very clear; we want more money to the counties. We want more money to boost security in the counties.

Mr. Deputy Speaker, Sir, the other day, the Senator for Mombasa was crying here because of insecurity in Mombasa, yet a popularly elected governor has no role in security. Instead, you have sent there a man called county commissioner, who just, the other day, was issuing statements that are unconstitutional, unlawful, an affront to human rights, and so on. I am just giving the example of Mombasa, but there are many others. I can see the distinguished nominated Senator for Mombasa looking restless. I am not singling out Mombasa; it is just an example. Even my own county has serious security challenges and yet, the governor who is supposed to chair the security committee is a helpless bystander. Policemen and county commissioners sit on their own, locked in rooms, and decide what to do with security when elected leaders are nowhere. This is why we need to send more resources to the counties.

Finally, Mr. Deputy Speaker, Sir, when we eventually come to dealing with the issues of allocation of revenue, I want to encourage this House, particularly Senators who represent counties; please, pay attention to issues of women and youth.

*(Applause)*

When we have a problem of famine and insecurity, the first victims are women; the next victims are youth. The youth are either drafted into fighting proxy wars, or they are caught up in situations that are not palatable. You even saw the other day the family that ate a cat in Baringo; it was the woman cooking it for her children.

Mr. Deputy Speaker, Sir, if we do not rise to the occasion and be counted, give counties money and eradicate poverty in this country, history will judge us very harshly.

Thank you for listening to me.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kiraitu Murungi.

**Sen. Murungi:** Thank you, Mr. Deputy Speaker, Sir. From the outset, I rise to support this Bill. This is a Bill to provide for equitable sharing of revenue between the national and county levels of government. We might not be accountants or understand the finesse in accounts, but one thing is very clear, even for those who do not understand all those things, we know there is an increase in the allocation to the counties from Kshs190 billion to Kshs226.66 billion. That is more than the 15 per cent of the last audited accounts approved by the National Assembly. I know, being representatives of our counties and defenders of the interests of the counties, we would like much more money to go to our counties.

*(Sen. Wetangula crossed the Floor  
without bowing to the Chair)*

**Sen. Khaniri:** On a point of order, Mr. Deputy Speaker, Sir. Did you see Sen. Wetangula, the Senate Minority Leader, cross over to the other side without bowing to the bar? He is a very senior Member of this House who is supposed to show a good example. He is breaking the same rules that he is supposed to maintain.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, before you exit the House, which I can see is what you want to do, can you, first of all, correct the error and then you can go out.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, what I did---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I do not want any explanations. Do it correctly.

*(Sen. Wetangula walked to the  
Bar and bowed to the Chair)*

*(Applause)*

**Sen. Murungi:** Mr. Deputy Speaker, Sir, you should not have allowed the Senate Minority Leader to leave the House because we have very important contributions to make, especially in view of some of the opinions that he expressed, which we thought were misguided, that need some correction and which he needs to hear.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murungi, for clarity, and with a lot of respect, I cannot draw the bars unless we are going to Division. It is very difficult to stop a Member from going away or coming in. I am afraid there is very little I can do about that.

Please, proceed.

**Sen. Murungi:** Thank you, Mr. Deputy Speaker, Sir. We believe he is going to read what we say in the HANSARD.

I was sitting in the Opposition benches in the National Assembly for ten years with my friend Sen. (Prof.) Anyang'-Nyong'o, my old friend; Sen. James Orengo, and others. It is very easy to do opposition politics because you criticize. But we all stand a chance to serve in Government for another ten years. So, we are able to see the complete picture. Opposition politics in this country is usually characterized by very flowery rhetoric. It is politics based on criticizing, condemning and complaining.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. While I deeply respect my clan elder from Meru County, is it in order for him to generalize what is purely his style of politics then to those who had much more refined opposition politics? Very uncharacteristic of the crude manner in which he presented himself.

(Laughter)

**Sen. Murungi:** Mr. Deputy Speaker, Sir, there is a principle in law that says *Res Ipsa Loquitur* which translates to *The Facts Speak for Themselves*. What the Professor has said just now confirms what I said about opposition politics. It is very flowery, intended to impress, play to the galleries, but in the sense of contributing to positive development to this country, it is zero.

(Laughter)

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is it in order, and I hope you did hear the distinguished Senator and the leader of the "*Mbus Party*" say that our contribution to development is zero as the opposition when we know that the opposition does not collect taxes from Kenyans? The opposition also does not run the Treasury or have any national resources for anything. The responsibility for development remains squarely with these deal-fixers.

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

**The Senate Minority Leader** (Sen. Wetangula): Is Sen. Murungi in order to say we are playing to the gallery and we are at zero at development when, in fact, we have no

responsibility for matters fiscal because they collect taxes and we must make sure they develop the country?

**Sen. Murungi:** Mr. Deputy Speaker, Sir, it is quite obvious from what my colleagues are saying, indeed, that I am correct that opposition politics is just about---

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is the distinguished Senator for Meru County right to say that opposition politics is not constructive? He knows pretty well that without opposition politics we would not have had the new Constitution which he was unable to deliver as a Minister for Constitutional Affairs. Is the distinguished Senator forgetting that while his life in the opposition politics was very lively and flowery, in Government, it was rather disappointing?

*(Laughter)*

**Sen. Murungi:** Mr. Deputy Speaker, Sir---

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

**Sen. Murungi:** I have not responded to---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, can you let him, at least him, finish with the point of order by Sen. (Prof.) Anyang'-Nyong'o.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I have some very important contribution to make. I do not want to be derailed. We say in the academia that there is academic menopause which appears to be creeping in to very respectable colleagues. I would appreciate that we shift gears so that the three Cs in opposition politics is not so obvious. Opposition politics is based on three C's namely; criticize, condemn and complain.

*(Laughter)*

Time has come for us---

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Am I in order to tell my good brother and former party leader of the "*Mbus Party*" that the politics of today is not just politics. It is about getting facts---

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

**Sen. Muthama:** Mr. Deputy Speaker, Sir, my point of order is: Is he forgetting that we are not doing politics? We are talking about funds that will go to his county and another 46 counties. This is not about the counties that are represented by the CORD coalition. Is he in order to turn this matter to look like politics yet we are just talking about funds?

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I do not want to trivialize this debate. Indeed, what is happening in the House this afternoon is historic. As you know, there was a Bill like this one last year where this Senate was not involved. The fact that we are debating it in this House is a milestone that we should be celebrating as the Senate. It is a product of the struggle that we took to the Supreme Court.

Mr. Deputy Speaker, Sir, allow me to commend the Speaker of the National Assembly for finally agreeing that, indeed, the Division of Revenue Bill is a matter concerning counties and no such Bill can be valid, unless it comes to the Senate for confirmation. The legislative input of the Senate is critical because we are the champions or people who defend the interests of the counties. We have to be involved in the sharing of revenue, because it does affect the amounts that finally go to our counties.

Mr. Deputy Speaker, Sir, I want to agree with my colleagues on one issue; that we can perpetually deny our counties revenues by not approving accounts. The Kshs226 billion that we are talking about is based on the accounts of 2009/2010 Financial Year. If we looked at the accounts of 2012/2013, this amount could be in the region of Kshs300 billion or more for the counties. So, by the delay of the National Assembly in approving audited accounts, we have deprived our counties of a substantial amount of money. It is the duty of every constitutional organ to work within the framework of the Constitution and law. Article 229 of the Constitution which our able Senator, Sen. James Orengo, read is really correct. It creates timelines for Parliament to approve audited accounts within certain frameworks and speed. There is a failure in that House to approve accounts with the speed in which it is required to do under the Constitution. I think that as the Senate it is our duty to point out that. So, we expect that when this Bill comes here next year, we will be talking about the accounts of 2013/2014.

Mr. Deputy Speaker, Sir, I know that the national revenues will never be enough for our counties, but we want to move fast. The budgetary resources are under a lot of competition from other pressing national issues like education, security *et cetera*. I think that we should be more innovative in generating development revenue for our counties. One way of doing so is by, as a Senate, putting pressure on the national Government to allow reasonable borrowings by the county governments. The Treasury can frustrate the county governments by not providing guarantees for the loans. I have seen very good programmes from governors who are talking to external agencies to fund development in their own areas, getting very reasonable external loans. But those can be frustrated by not getting guaranteed by the national Government. So, we, as the Senate, should be fighting to support our counties to get guarantees from the national Government for borrowing.

Mr. Deputy Speaker, Sir, I know that in Meru County we have negotiated very good rates with firms in Malaysia to do 300 kilometres of tarmac roads in Meru, in 2014/2015. We expect that there will be no obstacles from the national Government. We are not asking them for money, but just a signature. I believe that there are many other counties in our case and we should be working together to support that long-term borrowing. The Treasury resources will never be enough to support development within our areas.

Mr. Deputy Speaker, Sir, in Meru County, we have spent Kshs300 million this financial year just to pay salaries for staff and equipment of the Level 5 Hospital in Meru. If we were to deduct this amount from the Kshs5 billion that we will get, and about 45 per cent or so, is going to recurrent expenditure, then there will be very little money that will be left. I am talking about the recurrent expenditure on the national Government officials who have been transferred to the counties. I would support the proposals by our

colleagues on the other side that about the same amounts which were given to Level 5 Hospitals in the last financial year should go this year---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up!

Sen. Khalwale.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I beg to support.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to start by congratulating the National Assembly, through the Speaker, for allowing us, without unnecessary resistance and refusal to observe the provisions of the Constitution, to be part of this process.

Mr. Deputy Speaker, Sir, we missed out on this last year and it was very bad. I, therefore, want to address myself to the Members of this House; that we should use this opportunity to build synergies with the National Assembly, because it does not pay for us to do work in futility. Hon. Kaparo used to tell us that at no time should a Committee of the House or the House itself speak in vain. Therefore, because I am a disciplined Member of the Committee of this House that deals with finance, I want to beg colleagues that, yes, there is every justification in the Kshs279 billion that the CRA recommended. But, unfortunately, where we are now, even if we backed that figure of Kshs279 billion, it would be just an exercise that can be viewed in the parable of the male spider.

Mr. Deputy Speaker, Sir, the male spider usually does everything to make sure that it mates with the female one. But after mating, the female spider then eats the male spider. Do we want to sustain the Senate---

**Sen. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. Boni Khalwale, who is a medical doctor, to mislead this House that the female spider eats the male spider after mating, when it is actually not the female spider, but the praying mantis?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I stand corrected. I am a doctor of Medicine and not a doctor of Veterinary Science, and therefore, the difference.

**The Deputy Speaker** (Sen. Kembi-Gitura): So, can you make the correction first, for the purposes of the HANSARD?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the correction is that it is the praying mantis.

Mr. Deputy Speaker, Sir, why do I say this?

**Sen. Orendo:** On a point of order, Mr. Deputy Speaker, Sir. Are you taking the words of a lawyer as facts? I would think that a medical doctor is closer to knowing what happens to animals. So, the only conclusion that you can draw is that the Senator for Meru is in the habit of watching--- Is he making a scientific statement or it is from observation?

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I chose to go this route of using the parable of a praying mantis---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orendo, you know that Sen. (Dr.) Khalwale confessed that he is not a veterinary surgeon. Whether or not, it is from

observation or research by Sen. Murungi, I do not know whether it changes the argument. Does it?

Can you proceed, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, with a light touch I chose that route because today, as a disciplined Member of the Committee on Finance, Commerce and Budget, I know that it is not just we, the Senators on the Opposition side, who want more money for our counties. I also know that Senators on the proposition side also want more money. However, the reality is that we would be actually walking into that parable with our eyes wide open. We want a strong Senate that will appreciate that whereas we are protecting the interests of the counties, we are also leaders of the Republic of Kenya.

Mr. Deputy Speaker, Sir, for this country to succeed we need adequate funding for the devolved governments and the national Government. It is up to us, as senior Members in politics in this country, at the level of the Senate, to take that culture to the National Assembly, so that when the National Assembly is discharging its mandate, they always make sure that there are enough funds for both levels.

Mr. Deputy Speaker, Sir, why would I want more funds for Kakamega County, for example? Since I come from a community, why would I want more funds for the five counties of our community? It is because, unfortunately, from the time President Kibaki exited, all the projects that he had started in our five counties, including the Sigalagala-Butere Road, Kamukuywa Road and many other roads, hospitals and so on, stalled. So, our people are expecting that, probably, it is through the devolved funds that these projects can start going.

Mr. Deputy Speaker, Sir, today, I come before my people in our counties and also Kenyans, to tell them why, as a Member of the Committee on Finance, Commerce and Budget, I have decided to support the Bill in its present form of Kshs226 billion. I am supporting it with a clear mind that the Senate Majority Leader, in this House, tabled a similar Bill here. Why did he table it? It is our Bill and has got a figure of Kshs226 billion. We do not know what influenced the same Senate Majority Leader to come here with a figure of Kshs226 billion without consulting us. So, it will be deceitful of us, having failed to challenge the First Reading of that Bill, which was wrong and three times when it was in the Committee on Finance, Commerce and Budget, for us now to start saying here that we do not know it.

**Sen. Orendo:** On a point of order, Mr. Deputy Speaker, Sir. The statement that the Senator for Kakamega is making is not correct. This is because at the First Reading of a Bill, the Bill is only read and there is no procedure for discussing it.

*(Sen. (Dr.) Khalwale remained standing on his feet)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! Why are you standing? We cannot have both of you standing at the same time.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I thought that he had finished.

**The Deputy Speaker** (Sen. Kembi-Gitura): No, he has not. You cannot think that he has finished until he has sat down.



**Sen. Orengo:** Mr. Deputy Speaker, Sir, I just wanted that to go on record, because it may reflect to the public that the Bill is passing and we are not noticing, when our responsibility at the First Reading is to take notice and then it is committed to the Committee for consideration.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, because of the experience that I have in this House, I do not want to pretend that---

**Sen. Ndiema:** On a point of order, Mr. Deputy Speaker, Sir. I did hear Sen. (Dr.) Khalwale say that we shall be acting in futility if we do not go by the figures. What about if we have an alternative view? Is that correct, because I think that we, as a Senate, are entitled to give an input even if it means increasing or reducing?

*(Sen. (Dr.) Khalwale remained standing on his feet)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, let me caution you again. You cannot be standing when another Member is standing on a point of order. It is in the Standing Orders. Are you making a point of order or is this something else? Could you wait?

Sen. (Dr.) Khalwale, could you answer Sen. Ndiema?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I do not want to take too much time because I have very critical issues that I want to beg the House to listen to. The point raised by hon. Orengo is true.

**The Deputy Speaker** (Sen. Kembi-Gitura): We have already moved from Sen. Orengo's issue.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, there are two points of order. One is Sen. Orengo's while the other one is Sen. Ndiema's. I am dealing with Orengo's.

The moment a matter is on the Order Paper and has a constitutional problem - by virtue of being on the Order Paper - any Member can stand up and say that it is unconstitutional. There would then have been a ruling from the Chair. I do not want to pursue this further because Sen. Orengo, unknown to you, the matter went to the Committee. The Committee sat three times on the same day and tabled their report here. So, let it rest there.

As far as Sen. Ndiema is concerned, I am with you on that one, my brother. I am fighting for more funds. However, because we are not different from the Members of the Government side---

**Sen. Hassan:** On a point of order, Mr. Deputy Speaker, Sir. Did I just hear Sen. (Dr.) Khalwale indicate that this Bill has gone through certain processes? I am quite new to Parliamentary procedures. Does that mean that if we did not critique a Bill at a certain stage, then someone is right to oppose it?

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you seeking a clarification or is that a point of order?

**Sen. Hassan:** This is a point of order. Is Sen. (Dr.) Khalwale to say that if we did not raise objections in the preliminary stages then we cannot do so at this stage?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I think Sen. Hassan needs to listen. I said that the Committee, having come up with this Bill, as a Member, I had to

share with you my thoughts with regard to what made the Committee to hold the majority view, that this Bill should come the way it is. I would be failing if I did not do that.

As I was saying, if we want the country to move forward, the petty 15 per cent and 23 per cent that is going to the county should not be seen to be the only monies that are driving this country. We must be part of the national budget by making sure that the national budget reaches all the other areas of the country.

A culture is starting to give the impression that the only money that Kenya should worry about is the 15 per cent. We want, as Senators, to speak on the 15 per cent and to also push the national Government so that the balance reaches all corners of this country. We should not look at money which is remaining at the national Government as money that has been lost either to Tanzania or Uganda. That money is in Kenya. It is up to us to make sure that the money works in all the corners of this country.

Unlike at Independence, we have three challenges that will make or break our country. The first one is poverty which was there at Independence. At Independence, we did not have the kind of unemployment that we have today. We have highly trained young Kenyans who are unemployed and who constitute a very serious problem; unemployment. The last one is the problem of inequality. Devolution is only addressing inequality. We want the national Government to address the issue of unemployment and poverty. Even if you gave Kshs9 billion to Turkana, that would not solve the problem of Turkana. Let Turkana be supported with the Kshs9 billion. However, President Uhuru should make sure that from the national kitty, Turkana gets a giant support for the country to succeed so that we kill inequality.

We have to be strong on the issue of wastage because the corruption that takes place in the national Government is the real reason that we do not have enough money to carry out development in the counties. For example, two to three years ago, corruption caused us a loss of Kshs300 billion. The Auditor-General said recently that it had shot up to Kshs500 million. If, indeed, we are patriotic sons and daughters of this nation, sitting in this Senate, we should address this problem.

Mr. Deputy Speaker, Sir, there is a lot of duplication. The President has increased the cost of running Government. The President cannot attempt to implement Article 262(17) which requires restructuring of the Provincial Administration without involving the Senate, the National Assembly, the Kenya Law Reform Commission (KLRC), the public and the Commission on the Implementation of the Constitution (CIC). He has not done that.

We should be united around this issue and in telling the President that he is wrong. We should ask him to bring that Bill here so that we debate the structure. If it turns out to be acceptable to devolution, we pass it. This Senate cannot be used for purposes of looking for a better Opposition or a better side of the Government. This is the organ that should bring balance to this country.

The Conditional Fund is one positive reason we should support the Kshs226 billion. We were persuaded by the CRA and by the Council of Governors that governors had refused the Conditional Allocation. We must say the truth. It is only after the Chairperson of the Finance, Commerce and Budget Committee stood his ground together

with the Senate Majority Leader that the Council of Governors accepted because they wanted the conditional grant to be shared equitably.

As you know, some counties do not have Level 5 Hospitals. They have written to us. We have the letters as a Finance, Commerce and Budget Committee. So, if they have accepted the Kshs10 billion---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up now.

**Sen. (Dr.) Khalwale:** I am just concluding.

**The Deputy Speaker** (Sen. Kembi-Gitura): I will be setting a very bad precedence because we have a lot of work to do.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir—

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Your time is up!

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I will start by helping my colleague on the point that he was raising regarding the letter that came from the governor vis-à-vis the aspect of Level 5 Hospitals.

It is very important for this point to be understood by the entire House and, indeed, the country. If you look at Kakamega, Kisumu and Nyeri general hospitals, you will find that people come as far as Uganda to visit the Kisumu General Hospital. Some people come from as far as Marsabit to visit the Nyeri General Hospital.

What the governors have accepted and brought to us from the retreat in Naivasha is to ask the Senate to assist. The letter that they wrote to us reads in part; “could the Senate assist us in ensuring that Level 5 Hospitals are funded separately out of the monies allocated to the counties?”

Indeed, the support is, conditional on the acceptance that yes, they will have the Kshs226 billion. However, in addition to that, they are hoping that the Senate Majority Leader will move an amendment on the Floor of this House so that Level 5 Hospitals are taken care of.

I want, from the outset, to commend Kenyans.

*(Sen. Moi crossed the Floor of  
the Chamber)*

On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Sen. Gideon Moi to walk around as if he is walking in a market place? I do not know what he is telling Senators all over the place. Is he in order and yet he is a very experienced friend of mine in terms of procedure?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Moi! It is completely out of order, if you refer to the Standing Orders for a Member to stand in the view of the Speaker and the person who is contributing or even blocking the passageways. Look at the Standing Orders. Sen. Moi, you are completely out of order.

Could you proceed, Sen. Kagwe.

**Sen. Moi:** Mr. Deputy Speaker, Sir, with all due respect, I apologise.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Moi, I have not allowed your point of order. Until I allow your point of order, you cannot, possibly, purport to be giving a point of order. What is your point of order?

**Sen. Moi:** Mr. Deputy Speaker, Sir, I would like to inform my dear friend, Sen. Kagwe, that I am busy lobbying for the Kshs227 billion.

*(Laughter)*

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, we appreciate the hard work that Sen. Moi is doing even though he is preaching to the converted.

I said that we appreciate the maturity that Kenyans continue to show the world in some areas following the change in the Constitution in the year 2010. The healthy debate that is going on in this House, including the views from both the Opposition side and the Government side, are healthy to the extent that I have not heard a single word that was spoken in vain, as a matter of frustration or simple opposition. What I have heard are views being expressed by the Opposition side which are shared on this side too. We all want more money for our counties. There is no doubt about that. I want more money for Nyeri County.

Indeed, we, as a Finance, Commerce and Budget Committee, when we asked people from the Treasury how many counties were complaining due to lack of funds, they told us that the one county that had visited them two to three times was Nyeri County.

If you remember, Nyeri County started off on a deficit of Kshs2 billion last year. The deficit still hangs on us. Therefore, when we say that we are talking about the same thing, we are part of the same coin. It is only that there is a head and a tail. However, nonetheless, it is one coin. My hope and prayer is that whatever we decide in this House and whatever amendment we eventually agree on in this House, will be supported by the National Assembly so that we live in the spirit that hon. (Dr.) Khalwale has alluded to.

Let us show maturity. Let there not be division where what we say here, once it goes to the Lower House, is rejected simply because there is an amendment that came from the Senate. All the Members of the National Assembly come from counties. From Nyeri County, there are six Members of the National Assembly. From the 11 counties where the level five hospitals are stationed is a whole lot of people from both the Opposition and the Government side.

Our hope and prayer is that they will, indeed, support the amendment that the Senate Majority Leader will move so that we support the increase thereof. In Committee discussions, we did not put a specific figure for those hospitals. We said that the cost of running the hospitals may or may not be what was there last year. Indeed, the Treasury, in the discussions with the Committee on Finance, Commerce and Budget told us that the cost of running Level 5 Hospitals was much higher than what we allocated last year.

Consequently, the reason it reads the way it is in the Order Paper is because the governors as well as the Transition Authority (TA) which is mandated with unbundling that function and telling us how much the hospitals will cost should go ahead and do that and give the figure to the Treasury. Therefore, we hope that the National Assembly will support that amendment. We hope that there will be no opposition for the amendment. We are not talking so that we show that the Senate must change something. We are saying that, perhaps, this was an omission when it was brought to us.

Mr. Deputy Speaker, Sir, it is true that the way the Bill has emerged this year, was a negotiated position, but let us also be clear that the negotiation process involved this House. To people out there, and to Kenyans out there in general, what they know is that the Senate Leader of Majority was involved in that negotiation. They know that the Chairman of the Committee on Devolution was involved. I also believe that the Chairman of the Committee on Finance, Commerce and Budget was also involved.

Mr. Deputy Speaker, Sir, as we disagree here, it is important that we show that we respect the leadership of the House. It is important that we go out there and show one side of the Senate. This is a House that has devolved the reputation that we can fight our battles in here, but we have consistently gone out there with one position in mind. We have consistently shown collective responsibility as far as the Senate is concerned. Therefore, I urge my colleagues as much we may have wanted higher figures, let us accept that Kshs226 billion is the figure that our own people, the National Assembly and the Executive, have arrived at. We would have wanted more, that is the clear message. Next year, we intend to negotiate for more.

Having agreed on that figure, let us go ahead and vote “yes”, but with amendment. The 78 per cent of the money that we expect to collect will be in the hands of the national government. Therefore, I would urge, just like the Government came up with a stimulus package at the constituency level, let them come with a stimulus package at the county level. Let us ask ourselves some very serious questions. Let us ask what is it in Turkana that we can do to create economic impetus or economic growth by starting one project identified by the people of that county. That is one project that the national government can support over and above what we have been given that is going to be a stimulus in the growth of Turkana. Let us ask ourselves what is it that we can start in Kakamega County? Should it be that Kakamega County has two of the most fantastic polytechnics in Kenya? Consequently, should we stimulate the growth of those polytechnics to the extent that people will come from South Africa, Uganda and Tanzania to attend polytechnic training in Kakamega?

Should it be that the Nyeri County can be supported to start the packing of tea and coffee so that instead of our tea being sold in Japan or our coffee being packed in England, it is actually packed here in Kenya, creating jobs to the extent that there will be job opportunities in Nyeri County. We should have colleagues from as far as Kisumu County coming to work in Nyeri due to job opportunities. So, could the Government come up with a stimulus package for our nation, based on county to county needs?

Mr. Deputy Speaker, Sir, in the last celebrations for Mandera County, the Senator told us that the citizens said that for the first time in the history of this nation, they felt represented and part of Kenya. We are fortunate to have lived to the day when even marginalized societies have accepted that they are part of Kenya by virtue of the fact that Kenya has a devolved government. Let us not forget that by the end of the day we are a devolved system and not a federal system. Therefore, there are still going to a lot of issues that will be handled by the central Government. Hopefully, as the years go by, we will continuously devolve more and more functions to the counties because they will be able to handle them more efficiently than the national Government.

Let us note the fact that, at the moment, our counties are suffering in management. Let us note the fact that there are still no specific efficiencies developed in our counties. Let us note the teething problems in our counties and how we will overcome them. Let us, instead, use the money in the Ministry of Devolution and Planning to train our people and create efficiency, so that sooner rather than later, our counties will operate with the efficiency that was envisaged when we passed this Constitution.

With those few remarks, I beg to support.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: On a point of order, Mr. Deputy Speaker, Sir. Sorry to interrupt, I rise to ask whether it is in order for me to move a quick procedural Motion to do with electing a chairperson who can relieve the Deputy Speaker for a while. We have only one Member from the Speaker's Panel this afternoon.

**The Deputy Speaker** (Sen. Kembi-Gitura): You are very much in order.

### PROCEDURAL MOTION

#### ELECTION OF SENATOR TO PRESIDE OVER THE HOUSE PURSUANT TO STANDING ORDER NO. 18 AND ARTICLE 107 (1) (C) OF THE CONSTITUTION

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

THAT pursuant to Standing Order No.18 and Article 107(1)(c) of the Constitution the House elects Sen. Peter Mositet to preside over sittings of the Senate starting with the reminder of today's sitting until revoked.

Mr. Deputy Speaker, Sir, as I have already said, Members would notice that from the Speaker's Panel, there is only one Member and that is the Deputy Speaker who has been sitting since 2.30 p.m. He is a human being. It is only proper that he gets time to refresh. Secondly, when we go into Committee of the whole we will require a person, other than the Deputy Speaker to report the findings of the Committee. So, that makes it important to have another person.

Sen. Mositet has done this before. He is one of the people alongside Sen. (Dr.) Machage, on the other side, who have done a good job. I do not think we have had a problem with anybody who has occupied that Chair in this House.

With those few remarks and in that context, I beg to move the Motion. In the tradition of cordiality, brotherhood, bipartisan approach and maturity of the Senate, I request my good friend, the Leader of Minority, Sen. Wetangula to second. He is my senior outside there, but my junior inside here.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, indeed the distinguished Senator for Tharaka Nithi and my learned junior is absolutely right. We need consensus to get the approval of the House for anybody other than Members of the Speaker's Panel to sit on the Chair. The distinguished Senator for Kajiado is a level

headed Senator. He is a Senator who has humbly and ably demonstrated impartiality in all manner of conduct, behaviour and speech.

Mr. Deputy Speaker, Sir, I support that should you desire to temporarily leave the Chair and also at the time of the Committee of the Whole, he has absolute confidence of us and the competence to sit on the Chair.

*(Question proposed)*

*(Question put and agreed to)*

*(Resumption of Debate on the Bill)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orengo, you may proceed.

**Sen. Orengo:** Mr. Deputy Speaker, Sir, I want to say from the outset that I do not support this Bill. The reason I am saying I am not supporting the Bill is that even the Chair of the Committee on Finance, Commerce and Budget does not support Bill in the current form and shape it is in. If anybody is in doubt that there is something amiss with the Bill, do not ask the Senator for Siaya County, but the Chair of the Committee. If you doubt me further, look at the Order Paper, the parts of the Bill that he intends to amend, is to deal with the schedule. The proposal is that the whole of the third column of the schedule should be amended. The fact that it has to be amended has to do with percentages. It means that the Chairperson of the Finance, Commerce and Budget Committee is also not very sure or clear about the issue of percentages, but I will come to that later.

Mr. Deputy Speaker, Sir, the Budget-making process begins in the House formally when a Budget Statement is given. In accordance with the Public Finance Management Act, Treasury is required for the purposes of this House to prepare an Annual Budget Policy Statement, so that the House does not make decisions based on figures in the air. Under Section 26, he must prepare a Budget for review and outlook paper. It is my firm belief that in preparing these instruments for the purposes of discussing the Budget, the House upon approval of the Budget can go to the next stage where Parliament performs one of its most important functions. This is based on the principle of no taxation without representation. Once the Government has put out its budget plans, we go to the second stage and make a decision whether the taxation measures are justified on the basis of the instruments that are laid before the House in accordance with Sections 25 and 26 of the Public Finance Management Act and in accordance with the Constitution.

Mr. Deputy Speaker, Sir, I would rather we use the language of the law and the language of the Constitution because when you begin to hear the word “negotiate” it smirks of a process in which you were not dealing with facts and parameters which are set in the Constitution. The Constitution requires you to resolve the question of the annual division of revenue based on parameters set out in the Constitution. So, when you hear the word “negotiate” I dare say that this is not the right procedure that should be used when we are discussing the Division of Revenue Bill.

Mr. Deputy Speaker, Sir, one of the reasons I find it very difficult to support this Bill as it is, when you look at the schedule to the Bill which is not amended, because we amend what is in the Bill, you will find that the total shareable revenue according to the schedule is Kshs1.026.03 trillion. That is the figure that we have in the Bill. There is nothing about the latest audited statements that are here in accordance with the provisions of the Constitution. That figure for 2009/2010 audited revenues approved by the National Assembly serves only one purpose. It gives the National Assembly and the Senate a condition, which is a minimum 15 per cent threshold. It is therefore, upon this House realistically to look at the conditions in the country as they obtain now, not as they obtained in the year 2009/2010. The national Government is asking us for taxation measures and budgetary reallocations based on the current economic conditions. That is why I am talking about the instruments which are supposed to be placed before the House. Why is it that when it comes to the counties, we want to use the pre-existing conditions which were prevailing during the Financial Year 2009/2010?

Mr. Deputy Speaker, Sir, the Senate should come out loudly on this. This is a function that you have; that when you see that the counties are not being given their fair share of the national revenue which is collected, then the Senate should say so. So, just as the Chairperson of the Committee on Finance, Commerce and Budget will move amendments to this Bill, I am afraid to say that similarly, even some of us will be forced to make amendments at the Committee Stage in order to make sure that the allocation of revenue raised nationally between the national Government and county governments are based on some parameters which will make sure that there is fair distribution of these revenues.

Mr. Deputy Speaker, Sir, if we go by the revenue which was collected in 2009/2010 on the basis of sharable revenue, we will starve counties. I know, for one, that in the counties that were marginalized and in conditions where the Equalization Fund is not forthcoming, if you use the figures of 2009/2010, we would be starving the counties of the money and revenue they need for purposes of making sure that there is development in the counties as required, not only by the objectives of the county governments themselves, but also for the good of the entire country.

Mr. Deputy Speaker, Sir, in considering this also, I want to draw the attention of the House to the fact that the counties only have this Senate to rely on because the National Assembly deals with budget making, but without the focus on the counties. So, we can make sure that a true reflection of the share of revenue granted to the counties and to the national Government.

Mr. Deputy Speaker, Sir, if you look at the Fourth Schedule of the Constitution and the functions which have already been devolved – from agriculture, health and even lotteries, which, probably, do not consume revenue – we are trying to give the county governments a very bad deal, if I can use that word. The Senate should stand up to be counted to make sure that counties get a fair share of the national revenue. The worst case scenario would be on the basis of revenue which was collected last year.

Mr. Deputy Speaker, Sir, historically, if you look at the year 1963 onwards, it is this kind of behaviour on the part of the national Government in relation to the counties that led to the collapse of the former devolved system of government that was known as



*Majimbo.* I will plead with the Senate that history should not be repeated. History cannot be repeated if this Senate stands firm. We are saying this because there is a lot of waste in the Government. As an Opposition, that is why, unlike my true friend of many years, Sen. Kiraitu Murungi, this is criticism, condemnation, and there was a third one. It is our role that if there is a scandal like Anglo Leasing, we must condemn it. I do not think we should fear to condemn Anglo Leasing. I do not know why my friend, the Senator for Meru would want the Opposition not to condemn. By condemning, we are raising the conscience of the nation.

*(Applause)*

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

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

It is by condemning, like the conduct today, that they have realized where the Constitution spells out how the Government should be structured. The Executive is using unlawful means to try and achieve amending the Constitution by the back door. If there is a situation like that, we must condemn it so that the conscience of the nation---

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

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

**Sen. Murungi:** Mr. Temporary Speaker, Sir, have you noticed that when my colleague, Sen. Orengo---

*(An hon. Senator spoke off record)*

*(Laughter)*

Mr. Temporary Speaker, Sir, I would like him to correct that impression because I was cleared of all Anglo Leasing allegations. In fact, a Kenya Gazette to that effect was published.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I know there is that record. So, I do not know what my learned friend is scared of. I truly would not want to associate him with the Anglo Leasing scam although his name keeps on cropping up. I do not know what he will do about it. But my hand was, probably, pointing somewhere else.

*(Laughter)*

But, Mr. Temporary Speaker, Sir, on the basis of constitutionalism, there are things that in this nation we either do them right and we succeed, or we do them wrong and we do not succeed. When it comes to shares of revenue, we better do it right rather than doing it wrong to please the National Assembly or the national Executive. Even as we try to bend backwards, the record is that the Senate has been ignored in legislation. I want to sympathize with the Senate Majority Leader in this instance, because it is not like

he is not trying; but we must try harder. We can only try harder by speaking louder and using the Floor of the House to make our hand stronger so that when a Bill like this comes before the Senate, we are dealing with it in the appropriate way.

Mr. Temporary Speaker, Sir, although amendments are going to come during the Committee of the Whole, if you look at the Order Paper and you look at the Bill, the third column of the Bill is more or less being deleted. You can see that in the Schedule, the percentage of national allocation to the national Executive is not given. So, the truth of the matter is that this Schedule, as it exists in this current Bill, is a fraud because it is telling a lie about itself. It is a lie that the Chairperson of the Standing Committee on Finance, Commerce and Budget has already observed and that is why he intends to move an amendment. However, he should have gone further because he intends that money that will be allocated to referral hospitals---

**The Senate Majority Leader** (Sen. (Prof. Kindiki): On a point of order, Mr. Temporary Speaker, Sir. Sen. Orengo is one of the most level-headed Senators in this House and his intellectual depth is not in question. However, is he in order to use a term like “fraud” and impute improper motives on the Chairperson of the Committee on Finance, Commerce and Budget or any other person, for that matter, concerning any discrepancies that may be there in the Schedule? The word “fraud” connotes criminality and criminal intent. Is he in order to use the word “fraud”? If he is not in order, can he have the humility to withdraw the word “fraud” and replace it with a more appropriate word?

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I find it difficult to use any other word, because fraud is fraud. In my own opinion, it is fraud. Fraud and forgery are related offences. If you have a document that is telling a lie about itself, that is a fraud and forgery. I am fortified---

**The Temporary Speaker** (Sen. Mositet): Order, Sen. Orengo! At least when the Chairperson of the Committee on Finance, Commerce and Budget spoke, he never indicated his intention at one point to come and amend is based anything which is fraudulent in the former Bill or the Bill that we are discussing. Do not use the word “fraud.” Could you, please, withdraw it?

**Sen. Orengo:** Mr. Temporary Speaker, Sir, fraud is not unparliamentary language. You are gagging me. It is my opinion that the only reason that there is an intended amendment on that column, showing that the allocation to the county governments is 43 per cent. That is simply not true. If it is not true, my conclusion is that, that amendment is coming because that figure is telling a lie about what is contained in that Schedule.

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. With all due respect to Sen. Orengo, I think that there was a very good explanation given. In my opinion, perhaps, there could have been a mistake, but a mistake is not tantamount to fraud. In this House, as Members of the Senate, to accuse one another of fraud, in such an unsubstantiated manner, is really out of order. Would I be in order to request Sen. Orengo to use the only language that he would like used on him?

*(Several Senators stood up)*

**The Temporary Speaker** (Sen. Mositet): Let us dispose of this issue. Let us just allow Sen. Orengo to respond to that and then we put this matter to rest.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, in order not to spend time on the word that I have used, because there is a point that I want to make, I withdraw the word “fraud” and substitute therefor “deception.” It is deception because in accordance with the Constitution, what we should be giving the country and counties is last year’s audited accounts, if you go by Article 229 of the Constitution.

Mr. Temporary Speaker, Sir, with those remarks, I oppose.

**Sen. Abdirahman:** On a point of order, Mr. Temporary Speaker, Sir. Traditionally, we adjourn this House at 6.30 p.m. Looking at the number of contributors and interest, although we are trying to narrow the gap as it looks, and having the Committee of the Whole after this, 45 minutes are not going to be sufficient. It is important that we take that into account and, probably, look at how we can either reduce the number of speakers or do an option from the Senate Majority Leader’s side.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a further point of order, Mr. Temporary Speaker, Sir. I want to further clarify that we still have the Committee of the Whole, through which, perhaps, some of the unventilated issues could still be ventilated. Also, considering that we have heard the positions from both perspectives generally, I really want to beg--- Considering that we will require to finish this business today and also fearing that at some point we may not retain the numbers, unless this House guarantees that we can have adequate numbers to dispense with this business--- Yes, we extend the time, but at the same time, the Mover be called upon to reply and then go to the Committee stage, which in itself will be quite elaborate. But in terms of extending time, I do not think that there is an option.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. First of all, it is not in order for any Member who has spoken on a matter to encourage curtailment of debate. That is in the Standing Orders. But more importantly, perhaps, the most important business of this House is the Division of Revenue and Revenue Allocation. The two Bills are the most fundamental and the Chair has already ruled that we will sit until we finish the business. So, I want to encourage that we let Members, particularly those who represent their counties to ventilate on this very critical matter as much as they possibly can. This is because even their constituents are waiting to see their advocacy in looking for resources for their counties.

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Temporary Speaker, Sir. I just wish to reiterate how important it is for us to ventilate. If need be, let us extend the time, but hear different opinions. For example, I find one or two points which have not been raised by anybody and would wish to have a chance.

**The Temporary Speaker** (Sen. Mositet): Order, Senators! Just as some Members have already indicated, this is a Special Sitting and we are discussing a very important Bill. Therefore, at least, each and every Senator should have sometime to contribute. So, let us not really curtail those Members who still want to contribute.

As I said, this is a Special Sitting like the one that we had the other day when we were going through the impeachment of Hon. Wambora. For that reason, I believe that

we will extend our Sitting. But I would urge Members to try as much as possible to limit points of order. On the other hand, let us not repeat what others have gone through.

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

**The Temporary Speaker** (Sen. Mositet): Yes, Sen. Bule. Let me hear you.

**Sen. Bule:** Mr. Temporary Speaker, Sir, hon. Senators should know that this is a Special Sitting. Senators are supposed to be on recess. Some of us were not informed about this sitting and it came as an ambush to us. We are not prepared to extend the time. We should stick to the time and vote on the Division of Revenue Bill first.

**The Temporary Speaker** (Sen. Mositet): Order, Sen. Bule. This Bill is very important to this House. So, we cannot say that simply because we were on recess and were given a notice of only a day, then we shorten time. Please, just bear with us and put in mind how important this is. We are discussing issues to do with resources that will go to counties; Tana River being one of the counties that will require the resources. Therefore, let us limit the points of order and go into the debate.

**Sen. (Eng.) Muriuki:** Mr. Temporary Speaker, Sir, one of the fundamental functions of the Senate is to safeguard the interests of the counties. In my view, whether we take the Kshs226 billion or the Kshs238 billion, there is a fundamental function of this Senate that we will be fulfilling.

First of all, let me revisit the matter being referred to us, subsequent to the reference on the opinion of the Supreme Court. The Bill came last year the same way it has come today.

The mischief came after the Senate had sat, looked at it and made amendments. The mischief came thereafter. It is good to revisit what the mischief was all about. The Bill came to us with the funds going to counties reading Kshs210 billion. This Senate, in its wisdom, led by the Committee on Finance, Commerce and Budget and the Committee on Devolved Government, after consulting the national Government on how much the functions to the counties would cost, identified a number of counties – 18 in number - using the formula given by the Commission on Revenue Allocation (CRA) and discovered that certain functions would not be accomplished. The Senate, through the Committees, again went ahead and worked out how much more money that would cost. That came to Kshs28 billion, if I remember correctly. The counties that had a shortfall were exactly 18.

Another issue came up. We identified that there was Kshs28 billion required so that counties do not lack some facilities. The Senate, in its wisdom, identified counties that did not have those facilities which were causing some counties to have deficits. Some counties had no deficit because they had no Level 5 hospitals to run and neither did they have tarmac roads to maintain. Therefore, they did not have deficits.

In the wisdom of the Senate, we decided to add some money so that when we used the CRA formula, the counties that had a deficit could run their services and the ones which do not have those services could also start building them. That figure was an extra Kshs20 billion. If you add Kshs28 billion to Kshs20 billion, that comes to Kshs48 billion. That is how we got Kshs48 billion and added it to Kshs210 billion and came up with Kshs258 billion. When we finished doing that, in a way it was rubbished by the National Assembly and to some extent by the Executive because it was signed into law.

We should respect our Chairman and Vice Chairman, who negotiated to get the Kshs226 billion. I would be happy if the Senate Majority Leader, in replying would tell us what steps are being made so that we, in Senate, do not rubbish our own last year's resolution. If we do so, those counties with facilities will not continue to enjoy them and those with none will not also come up. One of the duties of the Senate is to ensure that counties, within a certain time attain a certain level of equitable level of economy.

For example, we are now talking about Level 5 hospitals. These hospitals are only found in 11 counties. Some counties like Nyandarua do not even have the Level 5 hospitals. They do not even have Level 4 hospitals. Most counties have Level 3 hospitals and want to come up. If we keep on giving money to the counties since Kshs226 billion is just an inflationary increase, counties that do not have the facilities will never get them.

Article 206 of the Constitution says that we go by 15 per cent of the last audited accounts. I do not understand where the last audited accounts came from. Probably, it was a result of the fact that the national Government could not estimate how much income we would have this year. Therefore, we took recourse in the last known accounts.

On that basis, it is not proper for us to keep on maintaining the last audited accounts and probably next time we should have an occasion to look at the Constitution – this is one of the things we should look at. We should be looking at audited accounts without waiting for them to be approved by anyone. Otherwise, we will keep on demeaning the counties.

There is a small matter in this schedule. I do not think that it is proper for us to have this 43 per cent, the way it is presented. Whereas we have a very good explanation which I accept, by the Chairman of the Committee on Finance, Commerce and Budget and the Senate Majority Leader; although Sen. Orengo used the word “deceive”, I think the whole thing gives a wrong impression. Sometimes impressions and perceptions are much stronger than facts. When the Kshs48 per cent is put against the Kshs226 billion out there, it gives the wrong impression. Someone out there in the national Government will probably stand in a podium and say that the counties have received 43 per cent, which is not true.

I would be very happy if the superscript; the one against 15 per cent at the second column, was put against Kshs226 billion. We would first put 22 per cent against it and say that this is 43 per cent of Kshs529 billion. That way, I would be quite happy. However, I am not happy with the way it is now because it gives the wrong impression.

The other issue is about the CRA formula. We, at the Senate, have not done our job in this respect. We have a few legal minds which will correct me if I am wrong. However, we are the ones to revisit that formula. We have not revisited it. I will support the Kshs226 million.

I want to hear, when the Senate Majority Leader is replying, what steps he is taking. We needed 48 per cent but now we have accepted 13 per cent. What are we really saying? That means that we have been played about. I will be quite happy to wait for another year which is not an issue. However, let us put in place some mechanisms. Let us do some negotiations between now and then so that the country knows that we, the Senate, are doing our best. We have a national Government to run but we also need to do

our function. At this time, I feel that in giving Kshs226 billion or even Kshs238 billion, we are failing. If this were Kshs279 billion, that would be better.

Right now we have a small battle to win which is that we do not want to pass things which will also be rubbished. To that extent, I would urge that we go for the Kshs226 billion. Even if we have to take a retreat for a whole week, let us do so. We need to sort out this issue once and for all. We must lift those counties which were disadvantaged all these 50 years so that they can be equitable to other counties.

With those few remarks, I beg to support.

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

**Sen. Nabwala:** Mr. Temporary Speaker, Sir, I rise to add my voice in support of the Division of Revenue Bill which is before this House for 2014/2015. The Commission on Revenue Allocation (CRA) is the body that is mandated to calculate and come up with the allocation of the revenue between the national and county governments. They have the expertise and even we in the Senate should rely on them because they have the formulae and the parameters which they use to work out the allocations. The CRA had proposed a figure of Kshs279 billion which has now deviated to Kshs226.6 billion. However, what I would like to add here is that the Kshs226 billion was debated at the Committee for Finance, Commerce and Budget. What the Committee had initially agreed was to go by what CRA has proposed, that is, the Kshs279 billion. When we consulted with the Council of Governors (CoG), Treasury and CRA, we agreed that the Kshs238 billion which had been agreed upon by IBEC was already in dispute. That meant that another negotiation had to be done and that is why our Chairman had to meet with the National Assembly, the Executive, Treasury and Council of Governors to now debate or deliberate on that figure of Kshs238 billion.

What was agreed upon after the deliberations was the Kshs226 billion which I stand to support provided that the amendments that we have agreed, that is to up the figure for referral hospitals to Kshs10 billion are taken. So, Kshs10 billion plus the Kshs226 billion will come to about Kshs238 billion which we had initially supported. This is the figure that the Council of Governors had proposed but later on, they retracted. So, we were left in abeyance and that is why this Bill is on this Floor.

Mr. Temporary Speaker, Sir, if you look at the contentious page, that is, page 4 there is Kshs226.6 billion county allocations with a percentage of 43 per cent. The Committee for Finance, Commerce and Budget had already looked at this percentage and realized that it was wrong. They were basing it on the figures for 2009/2010. However we said that we shall move the amendments once the Bill is before the House, which I think our Chair has retreated to go and start working on it. Otherwise, I think the Kshs226.6 billion is within the 15 per cent threshold mandated by the Constitution.

This Bill is very important because we know that counties need a lot of money. Last year when we allocated them Kshs190 billion plus the Kshs20 billion conditional allocation it was not enough. We are aware that counties have been struggling because we have unbundled very many functions to them. What we now need to do, even for the future, we have to burn the midnight oil to come up with a solution to the Bill. In future we should have enough time to discuss the Division of Revenue Bill together with the budgets for our various counties. This is to enable us know the needs of the counties. We

sit here and decide on the money but we do not know what the counties need. For instance in my county, Trans Nzoia, hospitals are in a very pathetic condition. Even if we say we are going to increase the amount for Level 5 hospitals which are only 11, it is not going to benefit all the counties. It means that those counties without Level 5 hospitals are going to be disadvantaged. This is one thing we need to think about. When you take population index into consideration, you will find that some counties are disadvantaged. In Trans Nzoia, most people work and live in Nairobi and so when the census is done, it is incorrect. So, when we use population index, you can never come up with correct calculations of the amount you allocate to counties.

Therefore, I support the Bill but with amendments.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I am happy that I have finally caught your eye. It was almost getting to look like there are no women in this House. I want to correct the notion of some of the Senators who think that some represent more counties than others. The women that I represent come from counties and the people with disabilities that Sen. Godliver Omondi represents come from counties. Nevertheless I want to support this Bill. The reason why I feel that the process went well is that one year ago we had a problem; we know what happened with the Division of Revenue Bill. We know that it did not go right but I am hoping that this time, it will not be repeated.

Mr. Temporary Speaker, Sir, I also want to defend the issue of negotiated figure. The reason why I want to support despite it being opposed by some Senators is that when the Constitution talks of not less than 15 per cent, it does not fix the figures. It is not a formula that you can apply and get a definite figure. It only sets the minimum. It means that since we have two Houses, the CRA and the Council of Governors being in the process of coming up with this figure, is something that is commendable. The Kshs226 billion we are talking about, I do not think any of us can vote and say that it is enough because we all want more money to go to the counties; we want services closer to the people and we want the historical injustices that have happened over the years corrected. This can only be corrected if more money goes to the counties. I am in agreement with most of the Senators that it looks like these figures are not adding up. Even if the Kshs226 billion is 22 per cent, we are still within the Constitution and we have made the threshold.

Mr. Temporary Speaker, Sir, the importance of devolution to this country can be seen. For the last one year, there are counties which got more money than they had seen in the last 50 years. That is why I keep saying that no one can fight devolution. We should be able to sit five years later and do an audit to see how we have transformed the lives of Kenyans. A report was released a few weeks ago that Kenya is still ranked amongst the most dangerous countries to give birth in. This should worry us. The zeal with which we defend this money must also go hand in hand with accountability. That is not to say that it is only applicable to the county governments. You realize that we lose almost Kshs500 billion in the national Government. That is double the amount that we are giving to the counties.

That translates to almost Kshs50 billion a month; it should worry us. I think as a Senate, we must be very clear. I know that this was brought up when we were dealing with former Governor Wambora's case; that we are not just after the county

governments. Accountability must be by all of us, whether you are a Member of County Assembly (MCA), a Senator or even a President. This should not be compromised. As we shine the light and as we get the corrupt out of the counties, the same must be applied in the national Government because we cannot be losing Kshs500 billion and think it is business as usual; and nothing happens and we think it is normal. It is not! This accountability must be applied at the two levels of Government.

Mr. Temporary Speaker, Sir, when I look at the Kshs799 billion that is remaining in the national Government, I am only worried that if we lose Kshs400 billion or Kshs500 billion to corruption, then what is left to do in this country? It is something that we should be worried about; it is something that we should talk about. It is very unfortunate that this Senate has been put in a position where we are depending on another organ to do their job when we do not have the right to interfere. That takes me to the audited accounts. It does not make sense for us to be basing this allocation on the 2009/2010 audited accounts. I think we must speak, and speak loudly. As much as we are not supposed to compel other organs to do their job, even as a Kenyan – because I am a Kenyan – I should ask why we are basing this revenue division on the audited accounts of three years ago. I think these are things that need to come out very clearly. Even as we move the amendments, these are the things that need to be corrected.

The other issue, Mr. Temporary Speaker, Sir, is on the Level 5 hospitals. We know very well that, yes, it is 11 counties that have these hospitals, but they serve very many counties. They traverse across the counties. This must be considered. I like the fact that the Chairperson of the Committee on Finance, Commerce and Budget has already mentioned it somewhere that it will come at the Committee of the Whole, because I look at the consumers of this service. Health is a devolved function; the consumers or the people who benefit most from this service are the women of this country, either for children or for themselves. So, this has to be very well considered and be actually put in the Bill. We should not really shy off and say that we can move an amendment because then it will defeat why we are discussing this Bill. I would hope that we can look at it very objectively so that we can see the fruits of devolution. That will mean that every person will look at how life was five years ago, how it is now and think that life has gotten better.

The other issue, Mr. Temporary Speaker, Sir, is on the transfer of functions. I know that as a House, we have sat, led by the Committee on Devolved Government; we have even talked about some of the functions that were not initially devolved and actually advised on them. I do not know how far the team has gone in gazetting these functions. But it should know very clearly that this function should be accompanied by resources. Devolving a function with no money will then mean that we will only judge a fish on how high it can climb a tree. I think that needs to be taken care of.

Mr. Temporary Speaker, Sir, with that, I want to support and hope that we can discuss the rest, because the rest has been said by my fellow Senators. I want to support and hope that we can move the necessary amendments at the right stage.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Obure:** Thank you very much, Mr. Temporary Speaker, Sir, for giving me this opportunity. I want to start by saying that the division of revenue between the



national Government and the county governments, together with the allocation of funds between the county governments are among the most important functions of this Senate. We are, therefore, engaged in a very important exercise.

Last year was the first time we were called upon to discharge this function. We are all aware of the difficulties that we went through and the differences that arose, forcing us, as the Senate, to seek the intervention of the Supreme Court over the interpretation of the relevant provisions of the Constitution, as to the process and role of the Senate *vis-à-vis* the role of other players in the function of the division of revenue. I am a bit disappointed that despite the authoritative advisory given by the Supreme Court, really, I am not sure that the process leading to this Bill, which we are now discussing has been done in accordance with that advisory. I would urge that in future we should give emphasis to that advisory, so that we can act in accordance with the requirements of the Constitution.

Mr. Temporary Speaker, Sir, the second issue of concern to me relates to the role of the Commission on Revenue Allocation (CRA). This Commission is a creation of the Constitution and it is actually provided for in Chapter 12 of the Constitution. In Articles 215 and 216, its composition and functions are clearly spelt out. The principal function of the Commission is to make recommendations concerning the basis for equitable sharing of revenue raised by the national Government between the two levels of Government and among the county governments themselves. This mandate which the CRA is being called upon to discharge has not been given to any other organ. Only CRA has been given that mandate. Therefore, I find it strange that we can even go and start negotiating over that function. I recall that when we were constituting this Commission during the term of the last Parliament, the focus was on merit. We identified and picked men and women of high standing and accomplished professionals with unchallengeable credentials. These are the people that we put in place. In fact, their first assignment would have been to work out a formula or criteria for fair and equitable distribution of the national revenue as required.

Mr. Temporary Speaker, Sir, I cannot envisage any other organ in this country today which will be better equipped than the CRA itself in terms of allocating revenue between the various levels of Government and county units themselves. Now, based on the criteria which they have developed themselves, they have recommended that counties be allocated Kshs279.1 billion out of the sharable revenue, yet this Bill, which is actually a recommendation of the National Assembly, is proposing Kshs226.66 billion. The question which has been lingering in my mind is: Why should we have such huge variances between what the CRA recommends and what this Bill recommends? Could it be that the CRA is not taken seriously? How do we justify its existence if its recommendations are ignored? I expect us to rely on the CRA which has the constitutional mandate and expertise to guide us in the discharge of this important function.

Mr. Temporary Speaker, Sir, my third issue of concern relates to the whole object of devolution. Devolution was overwhelmingly voted for by the people of this country, because the expectations were that it would help promote social and economic development, bring services closer to the people and improve service delivery. It will also

help reduce poverty and more importantly, help us to promote equality among the various regions of this country and reduce marginalization in the process.

These are very good expectations and objectives. In my opinion, for those to be achieved, we have an obligation to see that the devolved units are given more funds. This is one reason why I will support the recommendation by the Commission on Revenue Allocation (CRA) of Kshs279.1 billion. As Sen. (Eng.) Muriuki said, last year, we were fighting for Kshs258 billion. What would be the justification in accepting a lower figure? This is what I feel. The whole issue has not been properly handled.

I want to make very brief comments about Level 5 hospitals and the way they operate. My County, Kisii, is one of those with a Level 5 hospital. This is a shared facility. Patients come from other counties. They come from Nyamira, Migori, Homa Bay and parts of Narok and in particular, Kilgoris Sub County. I know that other hospitals like the one in Kisumu have shared facilities. This also includes the one in Nyeri. It would, therefore, be grossly wrong to leave the burden of management of these institutions to one county. It is not sustainable and it is not possible for one county to finance the activities of level five hospitals.

You will recall that last year, we received Conditional Grants that went to these hospitals. I am very grateful for the proposal I got this afternoon that an amendment will be brought aimed at introducing a provision for financing of these hospitals through the national Government.

When you are looking at the division of revenue, you cannot avoid looking at how both the national Government and the county governments intend to spend the money being given to them. If you look at page 10 of this Bill, you will also notice that at the national level, the Defence and the National Intelligence Service (NIS) have been given Kshs79.46 billion.

That amount is between 8 per cent and 10 per cent of the amount available for division between the two levels of Government. The amount is also equivalent to 35 per cent of the revenue to be distributed to all of our 47 counties. This amount of money is also equal to the amount proposed to be distributed between the first 20 counties when you name them alphabetically. In other words, 20 counties where 16.5 million people of Kenya's population live will get the same amount as the Defence and NIS.

Twenty of our counties are where 16.5 million Kenyans live. These are Kenyans who expect to have roads, water and medical services among other services. I want to express the hope that in future, while it is important to focus on security considerations and the need to channel resources to deal with the challenges facing us, it is equally important for us to consider the welfare of our people and the well-being of citizens in various counties. Therefore, we must in future allocate more funds for the welfare and wellbeing of our citizens.

Mr. Temporary Speaker, Sir, I support the way rural electrification programme has been handled in this Bill except to say that the new connection charges imposed by the Ministry of Energy recently, which were increased from Kshs34,000 to Kshs75,000 are prohibitive. Even when we take power to the people in the rural areas, they will not be able to take advantage of it because they will not afford it. They will, therefore, continue to use charcoal as a source of energy. In this way, they will continue to destroy

our forests and environment. As a matter of urgency, somebody should review those rates downwards to make it possible for members of the public to afford it.

I agree that there is need for accountability for every resource given to our counties. There is also need to advise the county assemblies in our various counties to reduce the amount of levies imposed because this is killing small-scale enterprise, family businesses and investments. I would suggest that going forward, we engage in more consultations.

Finally, I want to say that as much as I am reluctant to support this Bill, I would not like to be seen to be stopping funds to the counties because I know they have programmes and activities which are on-going. Therefore, I reluctantly support this Bill and hope that in future we will improve on the procedure and amounts available to counties.

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

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

**Sen. Muthama:** Mr. Temporary Speaker, Sir, as the Whip of this House, I went round and counted Senators who want to contribute and the total comes to 15. So, if we have 15 contributors with 15 minutes for each, that is exactly 200 minutes. If you divide this number by 60 minutes, you will get about three and a half hours, yet we have to go into the Committee of the Whole. I am asking my colleagues to accept, and I also ask this of Chair, that we reduce the time allocated from 15 minutes to five minutes, so that we can have one and a half hours for debate and then take the same time in the Committee of the Whole. That gives us three hours.

**Sen. Karaba:** On a point of order, Mr. Temporary Speaker, Sir. Much as I agree with the Senator, it is also important to note that they are the ones who speak first and normally take a lot of time. So, the senators who are remaining are the ones to decide how many minutes and seconds to allocate. Could it be re-assessed, so that everybody gets equal time?

**The Temporary Speaker** (Sen. Mositet): The two points of order are quite in order. At least Sen. Muthama is concerned that quite a number of Senators want to contribute; also Sen. Karaba is concerned that he also requires time like the earlier speakers; while I agree with both, I can also see those who want to contribute are quite fatigued. The mood of the House is that the contributions should go on.

**Sen. Ndiema:** On a point of order, Mr. Temporary Speaker, Sir. I am suggesting that we meet in between. We should agree on eight minutes.

**The Temporary Speaker** (Sen. Mositet): Let us agree on ten minutes for each contributor, but if you take fewer, the better. Just go straight to your point.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. From the beginning, I want to say that I support the Division of Revenue Bill. This is a good move as most of my colleagues have, indeed, said. This is unlike what we went through last year, when, although this is our duty, we were ignored.

Mr. Temporary Speaker, Sir, looking at what has been presented here, you heard the animated debate and concerns from most of the Senators who have stood up to speak. It is written that the Commission for Revenue Allocation (CRA) is supposed to be

coming up with their draft and share it with Senators. I am told that for this year, they started as early as December, 2013, and we are now meeting at this late hour, almost four months later. Although my Committee had the privilege of interrogating it for almost a month---

*(Loud consultations)*

**The Temporary Speaker** (Sen. Mositet): Order, Senators! Let us consult in low tones, please.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, you know that we represent counties, and that there exists a committee of 11 people who were supposed to interrogate this Bill on behalf of the others. Problems in our counties are completely varied; they depend on--- The Senator is supposed to be coming to tabulate and table the concerns that need to be addressed.

Mr. Temporary Speaker, Sir, when I look at what has been presented here, I concur with my colleagues that the 11 level five hospitals – that are scattered all over the country – need to be funded separately. We also need to see how the additional 36 level 5 hospitals can be funded every year. I remember when we were doing the Othaya level 5 hospital, the cost was around Kshs1.2 billion. I think it is almost getting completed. If, for example, every year we be dedicated to constructing five or 10 level 5 hospitals in some counties, we will sort out the congestion that some of these level 5 hospitals, and the only two referral hospitals we have, are facing at the moment. Those of us in the north rift have a hospital called “Moi Teaching and Referral Hospital” that is constantly under threat because people from western Kenya, Nyanza, north rift and even Nakuru all come to Eldoret for treatment. If we have more of these hospitals, we will decongest these level 5 hospitals. It does not cost much to construct them.

Mr. Temporary Speaker, Sir, I see what the National Assembly did when they were trying to assign themselves funds here; they said the national allocation is Kshs799.65 billion, and they isolated an item called “economic stimulus package;” they are claiming that it is supposed to complete ongoing projects under the stimulus packages in the 290 constituencies. I want this to be noted, that prior to this Constitution coming into place, there were only 210 constituencies, for which some stimulus projects were funded and not 290 constituencies. They need to rephrase this statement, because this is a way of getting money for Members of Parliament (MPs) to move around and pretend that they can have money in their constituencies. There are 80 constituencies that we did not have; why are they saying that they want to complete project in them? What do they want to complete when they did not exist? You can see that there is mischief here; Members of the National Assembly want to assign themselves funds at the expense of the counties.

Mr. Temporary Speaker, Sir, I want to speak about the Equalization Fund, which is put here like some decoration. There were 14 counties that were supposed to benefit last year; my county of West Pokot was supposed to benefit with Kshs245 million in the 2013/2014 Financial Year. This was to help deal with four main problems, electricity, water, roads and so on. You heard some people say they are so busy renovating and repairing some old tarmac roads, but we have no tarmac road to talk about. If this little

money had come, we would have seen how we would even have paved the county headquarters roads. The money that was supposed to be released last year by the national Government was retained yet it is not theirs.

The Equalization Fund was meant for marginalized counties; so, where is it? Is it a delaying tactic so that we continue being marginalized? I want to propose that this money be released as soon as possible, so that it can go to the counties; the county governments – the governors and their teams – can sit down and allocate it. Even some of us now – the Senators and MPs – can sit down and allocate this money.

Mr. Temporary Speaker, Sir, you will remember that last year, they said that the national Government would retain Kshs730.4 billion, while we had Kshs190 billion. With the problems we have been having for the last 50 years, where some counties in Kenya have continued to lag behind, I would propose that we keep the amount for the national Government constant for the period when we will have the Transition Authority (TA); retain it at Kshs730 billion for the next three years and have Kshs295 billion now. If you were to share this among the counties, you will have an average of Kshs6.3 billion, that is if you divide this figure by 47. How beautiful would this be to me, with all the problems I know I have to solve using Kshs3.7 billion that is proposed to be given?

When I look at this, I say we need to come out and actually tell the national Government that we need to also know how they spend their money. I am told that the percentage of expenditure – I used to be a Permanent Secretary – varies between 20 to 50 per cent every year. What about the balance of the money? Where does it go? I do not know whether you noted that this year, 65 or 66 tranches were released. The first tranche of the money to counties was released in September, 2013, and this is the amount they have not utilized. What are we trying to tell the people of Kenya? We are telling them that we have released money to the counties and nothing has been spent. The same happens after two or three months, but nobody is telling us what each department in the national Government has spent or what is still lying at the Central Bank of Kenya (CBK). So, we should not be pointing fingers at the counties, since four fingers are pointing back at the national Government!

I want to propose that every time the Cabinet Secretary for the Treasury releases a tranche of money to the counties, he should also release information about how much has been given to all the Ministries and how much has not been spent.

Mr. Temporary Speaker, Sir, I also want to speak about how national funds are spent. For example, even here in Parliament, where we have the Parliamentary Service Commission, there are some Commissioners you will never get in their offices, because they are permanently in the sky. Where do they go?

*(Laughter and applause)*

When we point fingers at the governors and the other people on the ground, we should ask: What about us here? We should come up with a clause to enable us recall people who are permanently joyriding, so that we can have efficiency.

Lastly, Mr. Temporary Speaker, Sir, I have looked at the way governors have spent money on trips. I do not know whether you have experienced what I have seen; people are going everywhere; it is only to South Sudan and Somalia they are not going!

*(Laughter)*

They have gone everywhere – if it is not the County Executive Committees (CEC), it is the members of the County Assembly (MCAs) – everybody is going! They even go to Burundi!

*(Laughter)*

How I wish they would even go to visit county after county. Many of them are now outside the country. Some from my county have gone to Uganda. How many times have they been a burden there? A toll station is almost being introduced at the border. Is that the way we want this money to be spent? When governors get this money, they should spend it prudently.

I support, Mr. Temporary Speaker, Sir.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Temporary Speaker, Sir. I appreciate the point that my colleagues have made. I want to make one or two points and then I sit down.

One, devolution is with us. It is in the Constitution; the two levels of government are here. The Constitution is very elaborate on how this process should be rolled out with sufficient finances. One thing that has been disturbing us in this country is the interface between devolved government and national Government during the transition from the previous regime. In the Constitution, an article on the provincial administration--- I want to quote this, and it is important that the national Government listens; it says:-

“Within five years after the effective date, the national Government shall restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution.”

This is not according to the national Executive. The effective date means the date when this Constitution came to effect. If you remember well, at Uhuru Park, on 27<sup>th</sup> August, 2010 the Constitution came into effect. That means that from 2010 to October this year, we shall have accomplished four years. This means we will have only one more year for restructuring the system of administration commonly known as the provincial administration, to accord it with devolved government. If we have one more year and the President now re-entrenches this so-called provincial administration by appointing some officers who will directly report to him, by-passing the county governments, this is contrary to the Constitution. Moreover, the President does it in what is called an “Executive Order”. Only in the United States of America (USA) is an Executive Order constitutional. There is nowhere in this Constitution where it speaks of Executive Orders. It is important that we respect the Constitution. I know that nostalgia of powers of

yesterday may drive people in the Executive to wish to preserve those powers. But the Constitution has taken it away from them.

Last year in the Committee of the Senate on Devolved Government, we met with the Cabinet Secretary in charge of devolution. We asked her to present to the Senate the Government policy paper on implementing this particular article in the Sixth Schedule. Up to this very day, the Cabinet Secretary in charge of Devolution has not presented to this Senate, whose responsibility it is to look after the affairs of the counties, a policy paper implementing this particular Article in the Sixth Schedule. So, it is our responsibility, as the Senate, to point out to the nation that respecting the Constitution, particularly with respect to devolution, must be observed.

Mr. Temporary Speaker, Sir, today we are talking about the Division of Revenue Bill. I want to make a general statement. If you look the world over, the countries that have done very well in terms of development are those with devolved governments. Even China, which people assume is a highly centralized system is only centralized politically. At the level of economic development, the provinces have a lot of autonomy. Indeed, they compete. What happens during the National People's Congress is that every head of province reports to the Communist Party of China what progress he or she is making in a particular province, so that the Government can maintain the policy of the Communist Party of China in every province. The central government does not involve itself in provincial affairs in terms of development of these provinces. That is why, since the reforms, China has done very well in terms of development; the provinces initiate a lot of development projects. They even have parastatals to do that.

In that regard, the provision on the Equitable Share and other financial laws in Article 203 of this Constitution are very important. Equitable sharing of national revenue under Article 202 to Article 203 is extremely important. When we are looking at the Division of Revenue Bill, this is a particular section of the Constitution that we should refer to. They establish principles on how revenues should be allocated to the county and the national level. They provide very detailed criteria in Article 203 on what should be observed. If you look at those articles - I want to read them quickly, so that we can evaluate this Division of Revenue Bill sensibly; it says:

“(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county governments enacted in terms of this Chapter-

- (a) the national interest;
- (b) any provision that must be in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;
- (d) the need to ensure that county governments are able to perform the functions allocated to them;”

Mr. Temporary Speaker, Sir, we have allocated functions to county governments. If, indeed, we allocate resources to county governments without ensuring that these functions are performed then, of course, we are committing a constitutional transgression.

Further Article 203(1)(f) talks of “developmental and other needs of counties.”

Somebody made a very good point here. I think it was Sen. Kagwe. He said that we should have special stimulus programmes for counties. When counties develop, the nation develops. When the County of Mombasa runs efficiently and the port brings income to this nation, the nation develops. When the Port of Kisumu is functioning and there is maritime traffic on Lake Victoria connecting Kenya with the East African Community countries, the nation develops. So, nobody from the central government should view money allocated to the counties progressively to empower the counties as anything distracting from national development. The counties are, indeed, the foundation on which national development will be achieved.

In any case, this Constitution gives the national government extremely important functions such as defence, intelligence, internal security, foreign relations, planning, national development and ensuring that Vision 2030 flagship projects are pursued and implemented. These are functions big enough to keep the national Government busy.

Mr. Temporary Speaker, Sir, when it comes to development functions that have now gone to the counties, the national cake should be divided in such a way that those provisions of the Constitution that I have just read are realized. We should not develop a mentality that there is a tug of war with people who want to get more money to the national Government because the national Government must get more money. No! The national Government should only get money in so far as that money goes to make the national Government perform its functions. It is the functions that are important. Unfortunately, even in this year’s Budget, from the report of the Committee on Finance, Commerce and Budget, we were not satisfied that budgeting at the national level was done on the basis of functions.

There was much more emphasis on doing a functional analysis of responsibility at the county level and national level. We do hope – and the Committee on Finance, Commerce and Budget has committed itself to this – that we shall have discussions with budget and finance committees of the National Assembly, so that we speak with one voice as a nation and use our resources to develop counties effectively, because without developing counties, we are not going to develop the national Government.

Mr. Temporary Speaker, Sir, finally, it is important to ensure that the Constitution constitutionally speaks of Parliament when it talks of revenue allocation.

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

**Sen. Njoroge:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity. First of all, I should commend the Committee on Finance, Commerce and Budget, which I am a Member of, for dealing with this difficult matter under difficult circumstances. I would not be wrong to inform this House that the last figure that we agreed on, as a Committee, was Kshs226 billion. I am sure that any attempts to divide this House, on this Bill, along party lines will be defeated as we will conclude by voting in support of this Bill.

Mr. Temporary Speaker, Sir, this House has always resolved issues and spoken in one voice at any one time when there have been challenges. So, I stand before this House to request Members not to deal with this matter before us on party lines. We should support the Bill as it is and the total figure of Kshs226 billion. After all, the governors outside there had no problem with that figure of Kshs226 billion.



Mr. Temporary Speaker, Sir, as I rest my case, I hope that if this is a vote which belongs to the counties, the representatives of the counties will vote and pass this Bill as it is, and the figure of Kshs226 billion.

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

**Sen. Hassan:** Thank you, Mr. Temporary Speaker, Sir. I rise to oppose this Bill on the following grounds. I, as the representative of Mombasa County, cannot be put in a situation where constantly we are in a *fait accompli* kind of position, not only with respect to this figure of Kshs226 billion, but also in terms of the long-term disenfranchisement of Mombasa in the next five years in relation to the formula for allocation of revenue.

Mr. Temporary Speaker, Sir, I have consulted the people who matter in the county, the government of Mombasa County and the Members of the County Assembly (MCAs), whom I addressed last Monday on this very Bill; I think that we are unanimous that Mombasa cannot accept a position where there is a formula that dispossesses and disenfranchises Mombasa County for the next five years without recourse. This is the second year running where we are second from the top in the contribution of revenue and seventh from the bottom in the allocation of that revenue. It cannot be acceptable. As we said, devolution was not about flags. In fact, I am aware that in the County of Mombasa, where Sen. Orengo and Sen. Muthama were, we had already advised our Governor not to fly the national flag. He actually flies the county flag. So, you can take it back, but give us money. That is all we need.

Mr. Temporary Speaker, Sir, devolution was never about grandeur states, but about resources. We have been fighting about dispossession in this country and will continue doing so, because people who wield power have wielded it for such a long time. If you look at our beach plots and businesses, they reflect who was in power during successive governments. This is not tenable. Therefore, in principle, if Mombasa does not protest these Bills---

Last year we were put in a position where we did not want to antagonize the National Assembly and had to go to court. This year we have been put in a position where we do not want to weaken the Senate, but the truth of the matter is that our counties are being weakened and we are not there to stand with them when challenges are facing us. We know that you will bring the money less what we need. We will spend it definitely, but tell you here in the Senate that, that is not the arrangement that we can accept.

Mr. Temporary Speaker, Sir, if we go with the Kshs226 billion arrangement, we will get an estimate of Kshs4.4 billion, when the wage bill itself, without the allowances to the MCAs stands at Kshs4.7 billion. No county in this country gets an allocation lower than its wage bill. Therefore, Mombasa cannot purport to say that in the interests of this country, we will move forward. We also have to move in the interests of respective counties; we are all also given the mandate to protect.

Mr. Temporary Speaker, Sir, to borrow from Sen. Orengo, who has been my mentor and elder brother for many years, if it was a condition on us, under Article 229(4) of the Constitution to have audited accounts then it would raise serious issues of constitutionality as to whether this Bill meets the constitutional threshold. This is because

if we were supposed to have audited accounts and approve them as a Parliament or Senate, and we do not have those accounts--- We are dealing with a figure, so that we can spread propaganda that we have now contributed 43 per cent to devolution. As J.F. Kennedy said, you can fool some people all the time, but we belong to that group of people that you cannot fool all the time. So, you can go on with national plebiscites, but the basis has been created here, that this amount of revenue falls far short of what is adequate. If you have devolved some of the biggest functions that the national Government has ever had, like healthcare, why would you justify holding about 70 per cent or 80 per cent of the revenue at the national level? It is just because you want to fund some of the extravagant projects that you want to undertake before the next elections.

Mr. Temporary Speaker, Sir, I am happy that my Coalition supports the fact that it is important to move us out of that kind of state of affairs. So, I support the Kshs279 billion because it would, at least, support Mombasa to foot its wage bill. We are driven by interest here and not whether the Senate is going to be shown that it is weaker by the National Assembly. Tell them that we should go to the ground and show them who is boss or king. How can we be intimidated by people who have lopsided logic, that a person who is elected by six constituencies is junior to a person who is elected by one constituency, and you accept that these people have the right for us to negotiate with them as people who understand anything?

So, I think that we need to show audacity. Time is running out; one year is gone. Every day is one day closer to the next election and you will be held to account. I will be in this Senate in the next term and will mourn those of you who always want to go and cut deals, compromise and dialogue. I will not. Young people voted for us because they knew that we stood for something different. They knew that it would not be politics as usual. I beat a Jubilee principal and another *mzee* because people wanted a differential. That differential says we are willing to stand with everybody but on this one, we will stand alone.

Mr. Temporary Speaker, Sir, we raise more revenue than any other county apart from Nairobi. We will service our debts. However, we also want to tell you that if you give us less money, every person who is paid a salary by the national Government will stop earning a salary until we readjust the anomaly. We have the Ministry that can do that. We will only pay those we have employed. We will create a crisis so that we can resolve the problem. This country only resolves issues when there are crisis.

So, therefore, I am asking for the readjustment of this value to Kshs279 billion. I am not asking that the money given to Kajiado County be taken to Mombasa County. I am not asking for money from Lamu County. I am only asking that we all get some good money. Some of you will get more money than you need and some of us will, at least, pay their wages.

We cannot have a county that is an employment bureau. We want counties that can demonstrate, after five years that they delivered on a developmental agenda. There are many national assets down there. There are Governments which put in money to ensure that those facilities run.

The pressure of running the port is borne by Mombasa County. Right now, we have rains which are ripping our roads apart. There are people who are propagandists.

They ask us about our roads and yet they know who is responsible for roads. They are dishonest people who are saying that Mombasa County Government cannot repair its roads. It is not true that there are Mombasa County roads. We should tell these people that the county government will not repair the roads and when it gets money, it will look at other infrastructural developments.

This Bill, therefore, is ill advised. It is a compromise that has come far too late. You should not tell us that you sat with so and so and yet you do not even know whether in the sittings there were initial consultations. In all fairness to the people we represent, let us do justice. Do justice to the people that we represent. They have been in their desperate situations for such a long time and this Senate should not relegate them to the same. Let this Senate get the audacity to face up situations. One time we wanted to go into a referendum to shift power and I think we were the first group, known politically, that ever said that it did not want to move power. I do not know whether we are humble or stupid.

The Council of Governors wanted to amend the Constitution to make you the Upper House and some friends of ours came out and said that they did not need it. Right now, they are politicking and dancing to the wolves but getting nothing done. They only come to tell us that this is what we negotiated. If they had that power, they would have negotiated with no one but by themselves. The way we have taken of as a Senate has put us in a perpetual position of weakness.

I have not accepted to be in a weak situation. Muslims are not weak. When you are weak, you are vulnerable. When you are weak, you are oppressed. You are not supposed to be oppressed. Our Muslim culture does not allow you two things, either to oppress or be oppressed. Those two have an equal measure of sin. So, if you sit down while being oppressed, do not think that God is sympathizing with you because you are also sinning.

Those are some of the things that we need to take with gravity. We should not allow this Senate to perpetually be positioned in a corner. Let us take this issue to the people. Let us fight this battle. Let us either win or lose because that is what we are expected to do.

I beg to oppose.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, better late than never. I think we have been here for very long; from 2.30 pm up to now. We want to clear this business as soon as possible because no matter how much we talk; the end result is to pass what is in front of us. I feel sympathetic to those who took the occasion of this debate to talk about all manner of politics. We all know that there is time for politics which has nothing to do with what other people think or say about anyone. We think just as politicians. We were treated this afternoon with that kind of politics but we cannot complain because it is legitimate for all politicians to speak about what they feel is right and especially regarding the situation we are in.

You know very well that we had a Committee of Finance, Commerce and Budget and we still have one. The gentlemen and women who are in that Committee were appointed by this House. Personally, I expected to deal with very responsible people who would say that we tried very hard but ended up with this and this is the direction we want

to follow. That is what I expected. However, when I realized that some people who signed the document, agreed with it and even brought it to the House want to talk against it, I found myself in problems. I believed that no matter how much pain it causes, as long as someone has already agreed to something, it is better they die with it because that is the only way one can be considered to be a gentleman of some kind.

We are talking about how much we want to add to this money on this Bill. We are talking about 47 counties which represent the whole country. Therefore, there is no time that you can speak of a county without taking into account that we speak for the majority of the people of Kenya. When we say that we want more money, we have to accept that the public will go by what we will pass and not by what we will say. We have already been treated to these kinds of statements before; statements asking for more money but some hon. Members do not want to give us more money. The politics of the 1960s and the 1970s are coming to an end because we are talking to a very responsible population. This is a population which is aware when we are talking politics and when we want to give them what they want.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. I have extreme respect for Sen. G.G. Kariuki. In fact, I had relegated the fact that he is Sen.No.001. However, constantly, Sen. G.G. has insinuated that some of us have spoken lesser but played politics. Is he in order to insinuate that whereas the Temporary Speaker has not ruled anybody out of order?

**The Temporary Speaker (Sen. Mositet):** Hon. Senators, as Sen. G.G. Kariuki responds to that point of order, please, let us restrict ourselves so that we move faster.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I am being very careful about what I am saying. I am sure that I am not insinuating improper motive against any Senator here. However, I equally have my own right and opinion about what I perceive to be Kenyan politics. I am not sure who among us here would not want to support additional money from Kshs226 billion to probably Kshs500 billion, if our Treasury could afford. That is in our Constitution. It says that we should get the money according to our income as a nation. We are not pleading with anybody to give us additional money unless we want to amend the Constitution.

What is allowed by the Constitution is what we are talking about. In addition, the money that is supposed to be given to us has moved from 15 per cent to 22 per cent.

Last year it was 32 per cent or 33 per cent. So, there is no limit and the only way we shall find somebody working against the Constitution is when the money is reduced to below 15 per cent. I am very sure none of the people in the Government will dare reduce this money to below 15 per cent, unless there is a national crisis. Even if there was a national crisis, the Constitution will still be mandating this House and everybody else in Kenya to demand that money.

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

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

Mr. Deputy Speaker, I find this debate very healthy because it is an opportunity to express our own opinion about this country. In the essence of development, devolution means money and development. That is what we should fight for. Let me say that, whether we want to insinuate that the Government is working against devolution, I want to believe that nobody in this country, until we are subjected to public voting, can afford or has capacity to change the Constitution of Kenya and become what he wants. I know the Constitution of Kenya deprived so many people power. These people had enjoyed power for a long time. So, when they found that power has gone, there is always a way in which they want to bring back that power quietly. That is a thing we cannot allow. This message must go to all civil servants from top to bottom. We shall make sure that this Constitution survives politics of the days and even politics of tomorrow.

Therefore, I think people should not be worried that some people in this country will change this Constitution. Due to time---

*(Several hon. Senators stood up in their places)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators. Sen. G.G. Kariuki is still on the Floor. His time is not over yet.

**Sen. G.G. Kariuki:** I was just saying that because of time, I want to say something about national security of this nation. Whatever we saw today where the President was mobilizing his team for the sake of the security of this country, I do not think we need to condemn a situation and yet we have not seen how it works. We believe that if the President remains in charge of security he must have his agents. You cannot just become a President and rely on somebody who is not working directly for you. This can never happen. I believe that quite a number of us might doubt why he is doing that but personally having worked in the security docket, I know you need straight forward agents who do nothing but direct their information to you to enable you manage the security of the country.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up.

**Sen. G.G. Kariuki:** Thank you for allowing me to speak.

**Sen. Muthama:** Bw. Naibu Spika, mimi nasimama hapa nikiwa na uzito sana. Uzito umenizidi. Ninatafuta mlango wa kupitia ili niunge mjadala huu na mazungumzo haya mkono lakini nimeshindwa na nimelemewa. Najilazimisha kwa sasa kuguzia mambo mawili tu.

Bw. Naibu Spika, kile kiti nilikuwa nakalia na hicho ambacho umekalia kina majukumu yake na kimepangiwa kazi yake. Ukitoa uamuzi wako tunakubali na tunaitikia. Hapa tumekuwa na mchezo wa kwenda mbele na kurudi nyuma. Sisi tumeweka tume ya kuweka kielelezo na njia ya kupanga vile pesa zetu zitagawa katika kaunti zetu. Tume ya CRA ambayo makamishma wake wanalipwa pesa na wananchi na sisi hapa, Katiba inasema wakisie kiwango cha pesa na walete kwetu. Kwa mara mbili hao watu wamekaa, wakafanya kazi yao ya kukisia na wakaleta hapa. Mara ya kwanza tulitupa nje waliyoleta. Swali ni kwamba, kwa nini wachukue mshahara kwa kufanya kazi ambayo haikubaliwi? Jambo la pili ni kwamba wametoa makisio ya mwaka huu. Watu fulani waliketi wakiwa na kamati ya kupanga mambo ya fedha wakaleta ujumbe

kusema kwamba zile pesa wametoa na wamekisia, zimerudishwa chini. Hatujui ni nani amefanya hiyo kazi na hatujui wao watakuwa na raha na heshima gani ya kufanyia taifa hili kazi.

Bw. Naibu Spika ukiangalia katika mgao wa mwaka uliopita, hesabu ambao ilitumika ilikuwa ya mwaka wa 2010/2011. Sasa huu ni mwaka wa nne. Hivi sasa haieleweki hizi pesa ambazo zimepangwa ni za mwaka gani lakini chini yake imeandikwa “2009/2010”. Katiba inasema kwamba kitakachotumika ni makisio ya hesabu iliyofanyika mwisho. Sasa ya mwisho ni 2009/2010 ama ni 2010/2011? Je, tunaenda mbele au nyuma? Tukipitisha Mswada huu ukiwa hivi kutakuwa na sarakasi na mchezo wa paka na panya. Mwaka ujao itakuwa zaidi ya hii kwa sababu tutakalishwa hapa na kuambiwa kwamba mwaka uliyopita mlipitisha hivyo. Itakuwaje kwa watu ambao wanaweza kuona na kufanya hesabu hiyo kufanya hivyo? Je, mwenye kuandika haya na kusema kwamba ni asilimia 43 alisema ni ya pesa gani? Hakuna ambaye anajua hilo.

Bw. Naibu Spika, CRA wamesema kwamba tupewe Kshs279.162 billioni ambayo ni asilimia 26. Ikiwa uchumi wetu kwa kweli umekuwa ni asilimia 11, yafaa tupate Kshs300 billioni, lakini sasa tuko chini ya Kshs279. Swali ni hili; uchumi huu umekuwa kwa maneno au ni kihalali? Kama ni halali mimi sioni kwa nini tukae hapa tuongee asilimia tano ya pesa tulizopata mwaka uliyopita. Ni dhahiri kwamba bali na kupewa pesa na hesabu ya miaka mitatu nyuma, kwa hali ya ukweli pesa zinazotolewa ni za mwaka huu. Pesa ambayo itatolewa ni ya akiba ya kitaifa ya mwaka huu. Kwa hivyo, ukichukua pesa ambazo zinakisiwa, huu ndio ukweli wa mambo, kutoka kwa Kshs1.6 trillion ukitoa Kshs226 billion, Serikali inabaki na kitita cha karibu Kshs1.4 trillion.

Sasa tunaenda wapi sisi kama taifa, na tunaenda kuambia watu wetu nini? Ikiwa pesa hizi zina baki katika Serikali kuu; kutoka Rais, Makamu wa Rais; awe nani au nani, kila mtu anatoka katika kaunti.

Juzi tumeshuhudia Rais mwenyewe akisema kuwa alipoingia katika Ofisi ya Rais, karibu Kshs300 bilioni zilikuwa haziwezi kuhesabika. Sen. Wangari hapa amegusia na kusema kwamba ikiwa itatajwa na kutamkwa kwamba kiasi cha Kshs500 kinaweza kupotea kwa njia ya magendo na rushwa, halafu zile pesa ambazo wananchi wanaweza kwenda na kuangalia kwa karibu na macho yao, nazo ni pesa zinazotoka katika kaunti zinakatwa; na ile inabaki, inabaki pale ambapo kuna panya, kunguni na mchwa kutafuna, je, sisi tunaenda kufanya nini? Lengo la Katiba mpya lilikuwa ni kutoa mambo hayo. Kazi hii kutoka kwa Serikali Kuu kukupangia eti Murang’a mutapata Kshs100 bilioni, na hakuna kitu kinafika; au mutapata Kshs100 milioni huko Baringo, na hakuna kitu kitafika; tukaleta Katiba hii ambayo tuliiuza Wakristo huku wakiikataa--- Mimi niliiuza nani alimkuta kasisi wa kanisa la Katoliki akipeana sakramenti huku akisema “kula sakramenti na usisahau Katiba ni mbaya.” Nilikua katika kanisa hilo nikingojea misa iishe ili “niuze” Katiba; hakuna kazi ilikuwa ngumu kama hiyo!

Niliifanya hiyo kazi ili nihakikishe kwamba pesa hizi zinafika mashinani na wananchi wanakaa chini ili kupanga matumizi yake. Haya nimachungu mazito! Napinga Mswada huu na nitapiga kura kuukataa. Nasema kuwa ni Kshs279 bilioni zilizopangwa na Commission for Revenue Allocation (CRA), na yule mtu ambaye anasema tu na kukanusha yale maoni yaliyotolewa na CRA watuambie tutaenda kwa nani. Ikiwa hawa

wanatoa maoni yao, na tumewapa hiyo kazi, na inapokuja kwetu unasema “Laahaula, hatutaki! Sisi tunaenda na njia yetu;” basi tuambiwe ni nani ataweza kuzungumza na kusema tutoe---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you on a point of order, Sen. Omar?

**Sen. Hassan:** Yes, Mr. Deputy Speaker, Sir.

Bw. Naibu Spika, wajua mimi natoka katika---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, are you through?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, he is on a point of order.

**Sen. Hassan:** Bw. Naibu Spika, wajua natoka katika Jimbo la Mombasa. Nilikuwa nataka kujua maana ya neno “laahaula!”

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Just proceed, Sen. Muthama.

**Sen. Muthama:** Asante sana, Bw. Naibu Spika. Yatakikana Sen. Hassan ajue kwamba mtu akiwa na kilio, hulia na lugha zote---

**The Deputy Speaker** (Sen. Kembi-Gitura): I told you to proceed and just ignore his remarks!

**Sen. Muthama:** Bw. Naibu Spika, nataka kusema hapa leo kwamba yafaa tupeane heshima na kila mtu apewe nafasi ili afanye kazi yake. Rais yuko na kazi yake; kwa hivyo tumpe heshima na wakati ili aifanye hiyo kazi. Sisi hapa kama Seneti tuko na kazi yetu; CRA wako na kazi yao, na kama hawana kazi, mimi nasema tuwafute kazi ili waende nyumbani! Kwa nini wakae katika ofisi, wanafanya kazi usiku na mchana; wanapanga pesa, halafu tunafika hapa na kusema “Aa, ile kazi wamefanya haifai; ile tu ndio inafaa?” Katiba ingejua kwamba sisi tuko na uwezo huo, basi tungelifanya kazi hiyo.

La mwisho, Bw. Naibu Spika, tulienda katika *Supreme Court* na korti ikaamua kwamba ni sisi Seneti ambayo nikielelezo na ina uwezo wa kuamua pesa itatoka wapi na kwenda namna gani. Hivi sasa, tunarudi tena kukaa nyuma ya Bunge nakusema “Bunge imetoa; tukianguka tutapata aibu.” Aibu gani tutapata kama tunakaa hapa na kusema “Bunge mumekosea na muliyofanya hayafai?”

Bw. Naibu Spika mimi nimeudhika sana na napinga Mswada huu!

*(Applause)*

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

**Sen. Karaba:** Thank you very much, Mr. Deputy Speaker, Sir, for allowing me to catch your eye and for giving me this opportunity to contribute. We are discussing something budgetary in nature; the topic is on the budget, and we are discussing how we are supposed to now share money to the counties. What I thought we should have started with is to find out how much money it is, where is it coming from or where is it being generated from, so that from there now, we can see whether the counties that are going to

benefit are also going to generate some little money so that, again, it can be transmitted back to the same kitty so that it can be sub-divided or distributed to those other counties which do not have that money.

For me, Mr. Deputy Speaker, Sir, I approach it in a very different way. We have some counties here which produce or which can generate money, like in the cases of Mombasa, Nairobi, Kajiado and, maybe, in the larger Mt. Kenya region, Kirinyaga included, where we grow coffee, tea, rice and many other crops. All these are cash crops which generate money, and this money is transmitted to the central pool to be dished out in the form of revenue allocation. What this means is that as much as we have those counties producing and even contributing that much to the national kitty, we are not talking of the same counties as to how we can now perpetuate the same wealth and contribution that they have been giving to the national kitty so that the others can also receive from the same. So, I would, therefore, advocate that those counties which have done that contribution to be appreciated. I stand here to defend those counties which have contributed enough money to the kitty so that the same money can now be redistributed to those others in the name of Equalisation Fund and many other names.

Mr. Deputy Speaker, Sir, what we see in our counties is very different; you will find the way counties budget their money is different from what others do. Towards the end, you will find that not a single county will claim that they have enough money. Even if they were to be given Kshs270 billion, Kshs280 billion or even Kshs300 billion, they will never say that enough is enough. So, what we should encourage these counties is to ask them whether the money that they are given will be generated enough so that it can have what we call the multiplier effect so that, that multiplier effect can now be translated to mean that money is now enough to be generated to other counties and to be given out in the form of allocations.

So, Mr. Deputy Speaker, Sir, most of the counties are suffering from inability to do even fiscal accounting. Some of them cannot account for the money given to them; some of them cannot even make sure that the labour or the jobs that they create can be sustained in the same counties. We have most of the counties which are giving job scales which are very high. You will find that the jobs which are there are of scale S; others are T, and others are even beyond that. These are very senior positions. So, what this House should, therefore, do is to come up with a general policy which is going to be average to all of them so that all counties employ personnel of the same caliber and that they are given the same salary.

Those who will be transferred from the national Government to the counties should know that they are transferring with their earnings so that their salary will be transferred also. But the moment you now transfer the services to the counties and you are not even devolving the salaries to the same counties, it means that you are going to overburden the counties. Therefore, these counties will spend most of their money in recruitment and on the salaries. Most of these counties have become employment bureaus. So, if there is a way, we should restrict the number of people to be employed. We should even dictate to them the kind of scales that they are supposed to adopt and in so doing, I am sure they are going to save quite a lot of money which can be saved in other areas.



The Kshs226.66 billion that has been allocated may or may not be enough. It may be enough if it is prudently spent and accounted for. I am sure they will be able to save and initiate proper development projects. However, most of these counties lack the technical and financial managers. The executive officers in the counties need to be guided on prudent ways of spending money. It is a pity that many MCAs spent a lot of their money on travelling all the world instead of initiating development projects in their wards. When they come back from foreign trips, they support the speaker or the governor. Sometime the speakers and governors are now aware of these trips. So, this House should come up with general guidelines on how to spend this money. With proper guidelines, I am sure we will reduce the number of extravagant ventures that are undertaken by MCAs, governors and many other executive officers in counties. That is the only way to develop these counties.

Mr. Deputy Speaker, Sir, we need to audit the projects which are being undertaken by various counties to avoid many ghost or white elephant projects. We need not blame the counties per se. We are the ones to be blamed because we have failed to come up with systems of checking and balancing expenditures in the counties. Those counties which are not able to toe the line should be named so that in future they are given less money. That is the only way we can make progress. We should always commend those counties that are doing well by investing their money into productive projects. Such counties should be given more money to enable them improve the infrastructure and complete the ongoing projects. That is the only way we can bring at par those counties that are lagging behind.

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

**Sen. Abdirahman:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this very important Bill this afternoon. Before I make my first comments, I want to borrow a few words that were used by Sen. Hassan Omar from Mombasa County and qualify them further. It is true Islam does not accept oppression nor does it accept to one to become very weak. This is not in terms of strength, but in terms of further oppression. But it qualifies further by saying that you must be humble, tolerant, accommodative and, above all, serving the community. This is very crucial. As we go about our deliberations, including devolution, we need to consider a number of important aspects that can improve interpersonal relations and our responses in terms of how we mitigate certain issues.

Mr. Deputy Speaker, Sir, coming to the core subject, this is a very important Bill that will help us determine allocation of revenue between the national Government and county governments. The finger pointing we saw at our Tuesday *Kamjunji* and even this afternoon at the start, does not necessarily mean we do not have trust in our Committee of Finance, Commerce and Budget. It is because we wanted them to carry the entire Senate membership on board. I say this because these are matters that seriously affect our counties. It was clearly demonstrated this afternoon when you listened to the contributions from both sides of the House, irrespective of whether one is in Jubilee or in CORD. This is a matter that affects our counties. We are not saying that people should not support it. But we must critic to a level where we are sure tomorrow, in the subsequent years, we do not fall in the same trap we are falling in, year in, year out.

A number of things which were raised included using the 2009/2010 audited accounts. I was a Member of the Public Investments Committee (PIC) in the Ninth Parliament. We found these same things happening. That was in 2003 to 2007. Why should we have this in the Eleventh Parliament? With a light touch, I want to say that when this Government came in it was said to be very digital. It must stamp its authority and say: “Why is the Auditor-General staying with unaudited accounts for two years?” We should be having the 2010-2011 Financial Year, audited accounts by now. We should be using those figures to share revenue that is raised by the Government.

I do not want to over emphasise the conditional grants to Level 5 Hospitals. It is a burden on county governments. That must be reinstated without further delay. I know the Transition Authority (TA) had shared with us early last year that they were going to work on costings and unbundling of functions, something that is yet to come to a reality. We cannot keep on talking about failing to cost functions both for the national and county governments. This should have been done yesterday and not today.

So much money is held at the national level by the national Government. Water and agriculture, for instance, are devolved functions. Why should the national Government be disbursing monies for water pans, for instance, in our areas when these things can be effectively done by our county governments? I remember the Ministry of Devolution and Planning is one sample of the Ministries. They were allocated about Kshs63 billion last time. We had the Ministry of State for Development of Northern Kenya. It is now a department. I do not think we need to allocate so much funding to the Ministry of Devolution and Planning in the pretext that they are actually having an enormous number of departments under it. We, as the Senate, should clearly look at whether this funding that goes to certain Ministries is used for the purposes intended.

I am a bit skeptical about the Kshs1.45 billion shown on page four of the Schedule. This is for the Economic Stimulus Programme (ESP). I echo what Sen. (Prof.) Lonyangapuo said. We had only 210 constituencies where programmes like the economic stimulus projects were on going. Where will the money for the 80 constituencies above the 210 go, in the first place? I am also worried because this can be like what they used to call the Local Authority Transfer Fund (LATF). I am sure many of you will remember that the LATF was ongoing for ten years under the Ministry of Local Government. What they told us is that they were going to use this money to pay debts. These debts never ended. This will be the same thing if we are not careful. Let us watch, probably in the next financial year, they will tell us so much will be done under the ESP. We have to be very careful about this. I say so because in the constituency I served in the early days, we used the entire Kshs30 million on one project. So, what are they talking about when they say they will keep on allocating funds?

The other item I want to talk about is the absorption capacities of county governments which may have been a problem. The Treasury could actually device a mechanism in which funds for county governments that have not absorbed, just like the CDF, can be reinvested. I remember of a project in the ASAL areas which used to be called the Arid Lands Resource Management Project (ALRMP) having reinvested funding. We need to be very careful with the manner in which these funds may be brought back to the Treasury.

Finally, in the interest of the nation, our counties and the renewed collaborative effort between the two Houses, I support.

**Sen. Wamatangi:** Thank you, Mr. Deputy Speaker, Sir. For the sake of the success of our counties and the quest of this House that devolution may succeed, I rise to support this Motion.

Mr. Deputy Speaker, Sir, in hindsight, the determination of Members of this House across the board is not in doubt. We have all devoted ourselves to make sure that devolution will succeed. That was evidently illustrated sometimes back when we, irrespective of party affiliation led our Speaker, went to the Supreme Court, to ensure that, that effort was not defeated. The ideal situation would be, in the next few years, to see a situation where the revenue divided between counties and the national Government would even be split on a 50/50 basis. The road towards that dream and time when the resources will be taken to our people must be clear. It must be clear by setting proper standards and ensuring that what needs to be done must be done.

Mr. Deputy Speaker, Sir, if we could just use some of the provisions of the current Division of Revenue Bill to see what needs to be done to make sure that, that is cleared, we could start by looking at what is the basis of equitable distribution or division of revenue. The costing of functions assigned to each level of Government forms the basis of equitable division of revenue in line with the principle that finance should follow functions. From a comparison of the proposed allocations of revenue between the national Government and county governments by the national Treasury, the Inter-governmental Budget and Economic Council (IBEC) and the Commission on Revenue Allocation (CRA), it is clear that there are a number of issues in regard to the approach adopted in costing functions by these three entities.

Mr. Deputy Speaker, Sir, the first issue that arises is a question that we need to ask ourselves. Why do we have significantly different figures for county governments equitable share for this year; 2014/2015? It is clear that the approach used by those three entities is different in the baseline of computation of the county functions adopted, as the main reason for the differences stated by the CRA and the national Treasury. The CRA adopted historical allocations approach, based on the two outer years of Estimates, that is 2014/2015, for the Ministries and the Estimate of Recurrent and Development Expenditure for the year 2012/2013. The national Treasury based their computation on the cost of devolved functions on the approved Division of Revenue Bill, 2013, which was Kshs190 billion. Therefore, it is important for us to note that the difference between the figure used as the baseline for the cost of devolved functions by the CRA and the national Treasury this year was Kshs40.8 billion. That should lead us to some important observations as a House.

Mr. Deputy Speaker, Sir, first, we, as Parliament, should interrogate the reasons for the conflicting approach and the baseline used in costing of those county functions between the CRA and the national Treasury, in order to ensure that the basis of costing this estimation is made clear.

Mr. Deputy Speaker, Sir, secondly, this is important in ensuring that counties receive adequate resources, to ensure that service delivery is not adversely affected. Thirdly, the Institute of Economic Affairs (IEA) should welcome the CRA together with

the national Treasury and IBEC to initiate a public dialogue on the most appropriate and practical approach to use in costing of the devolved functions.

Mr. Deputy Speaker, Sir, the other issue that we ought to pick and ask as a question is the unexplained hike in the cost of running the new county structures. There is a considerable variance between the CRA's estimation of remuneration in administrative cost of running the new county structures. At Kshs43.3 billion compared with the national Treasury's figure of Kshs30.2 billion, that is a whole Kshs18.1 billion difference, which the national Treasury claims is overstated. That should also bring to thoughts and recommendations as a House. One, Parliament should seek an explanation for this hike in the cost of running the county structures. As such, we should also request the national Treasury to furnish us with detailed information on the staffing at the county, including those seconded from the national level. We should also examine whether the new administrative structures are well aligned to the assigned county functions.

Mr. Deputy Speaker, Sir, the bulging wage bill, at about 13 per cent of the Gross Domestic Product (GDP) in 2013, against a target of 8 per cent by the national Treasury, is a cause of concern. Thus, as Parliament, we will need to interrogate the case where the national Government is busy hiring staff for already transferred functions.

Mr. Deputy Speaker, Sir, in the interest of time, the observations that I would quickly make around the issue of conditional transfers is that while we may agree with the national Treasury on the stated reasons for maintaining donor-financed projects in the interim at the national level, the issues raised must bring to us budget transparency questions, which we would need to interrogate as a House. There are issues that we, as a House, would need to pick out and remain vigilant about in this financial year, to ensure that this is not repeated in the next year.

In summary, there is a need to have a near consensus in the approach of costing county functions with regard to the baseline used in estimation of county sharable revenue. The lack of information on the staffing and remuneration at the county government level makes it difficult to explain the justification of hikes in the cost of running the new structures.

Mr. Deputy Speaker, Sir, the addition and two new unjustified items, that is, strategic interventions and the costings of the office of the Presidency, as part of the national interesting, comprising criteria for evaluating revenue sharing between the national Government and county governments, has the implication of reducing the amount of funds that remain as sharable revenue to county governments.

Mr. Deputy Speaker, Sir, in summary, we, as a House, look forward to the day when the national level of Government and the counties will work and have a symbiotic relationship, anchored on the pedestal of the interest of the common person in this country. If we adopt that as our driving force, I am sure that next year, when we sit here to discuss the division of revenue, we will be speaking about a win-win situation for both the counties and the national Government.

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

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir for finally seeing me.

**The Deputy Speaker** (Sen. Kembi-Gitura): I have seen you for the first time.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I have been here from the beginning and I have been standing.

Mr. Deputy Speaker, Sir, our main interest is to serve the interests of the counties. That is the basic thing. I find it very hard to support this Bill the way it is, not because I do not want counties, including mine, to get a cent, but of the figures that have been proposed.

Last year, around this time, I was a very proud Senator representing the people of Trans Nzoia. We researched and arrived at a definite figure of Kshs258 billion that we thought was the minimum amount that would make devolution work in our counties. We even went to the extent of going to the courts and we were proven right.

My concern is what I will tell the people of Trans Nzoia. They knew that the figure was Kshs258 billion. Now, a year down the line, how do I tell them that we have come down to Kshs226 billion? That is very difficult because responsibilities for the counties have increased. They are not the same as they were last year. Salary increments for the Members of the County Assemblies (MCAs) have been affected and there are new structures there. You will recall that last year, counties had not started recruiting. However, they have now recruited and they continue to recruit in setting up their structures.

Mr. Deputy Speaker, Sir, additional functions have been taken up by the counties. I want to thank the national Government for readily releasing functions to the counties much faster than it had been anticipated. Unfortunately, funds to support these new structures are also being reduced. I am saying they have reduced because what has been allocated to counties this year is less than what they got last year. Why do I say so?

On page 8 of the memorandum, it is alleged - which is quite misleading - that the allocation of Kshs226 billion reflects a growth of 19.3 per cent of the Kshs190 billion allocated to counties in 2013/2014. We all know that last year, the counties did not get Kshs190 billion, but Kshs210 billion. It was Kshs210 billion because the Kshs226, includes funds, for referral hospitals or Level 5 Hospitals. Therefore, in effect, the 19 per cent increment is not there. We should not make counties think that they will be getting more.

There has not been any meaningful growth. Last year, it was at Kshs190 billion. This year, if it is approved at Kshs226 billion, as suggested, in real terms, the difference will be 16 billion. This is Kshs16 billion to be shared among 47 counties. My county, Trans Nzoia is neither marginalised, but neither is it populous. I may not get the share that others will get. If you divide the Kshs16 billion to counties and convert it to percentages, you will see that counties are getting nothing. They will not even afford to pay the annual increment for the staff that is already there. This afternoon, we have had arguments. As a matter of goodwill, these matters had been conversed elsewhere and agreed. Therefore, we should not appear to be of convergent views.

Our major responsibility as a Senate is to allocate money to counties.

**Sen. Khaniri:** On a point of order, Mr. Deputy Speaker, Sir. I stand under Standing Order No.98(1). I appreciate that this is a very important Bill and many Members would want to have their input in the debate. However, we have a Committee Stage where we can add some input. I see a lot of interest. There are about six to seven

Senators who still want to speak and that means we still have another hour of debate. Considering that we have the Committee Stage, would I be in order to request that you call upon the Mover to reply?

**Sen. Sang:** Mr. Deputy Speaker, Sir, while I appreciate the point raised by Sen. Khaniri, some of us have been struggling this afternoon to be seen so that we make our contributions. It would be unfair to make that ruling. The Senate Minority Whip had already done some calculations and it would only be fair to allow those who want to make their contributions to do so.

**Sen. Mungai:** Mr. Deputy Speaker, Sir, I am also one of the Senators who have not spoken. I believe that it is important that we deliberate at the Committee Stage since time has really gone.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I appreciate that this is a Special Sitting and that we have to complete the business of the day. I know that everybody would have wanted to contribute. Indeed, nobody would have wanted to contribute more than I because I also represent a county. However, I have not done it. We have to finish this debate and move on to Committee Stage. There are some amendments in the Order Paper.

Looking at the mood of the House, I think we need to bring this debate to a closure. I agree with Sen. Khaniri that, probably, it is time that we put the question. However, it will only be fair to allow Sen. Ndiema to complete his contribution then we move to the next stage.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I was saying that if these matters were conversed elsewhere, I do not think that can bind this House. It is our main responsibility to perform the function of passing the Division of Revenue Bill. Other players like the Governors have also negotiated on this. No wonder they also want to open offices in Nairobi. That is our responsibility.

Last year, we performed better even if we were complaining. We got 32 per cent. This year, if we agree with the figures, we will get 22 per cent. The counties will not operate. The Ministries that have been devolved are very important. There is also the Ministry of Agriculture.

In my county, I do not think we shall be able to produce food and feed Kenyans as we have always done. There are also some international obligations that we have entered into as to how much we should spend on health or agriculture. I am afraid that the 22 per cent of revenue is not going to bring us anywhere near to the international requirements.

Mr. Deputy Speaker, Sir, due to time, let me say that I am unable to support unless at some stage we do some amendments that will ensure that counties get their rightful share.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, let me get this right. As you know, I had indicated that it would be my wish that we put the question now, but I noticed that there are only two or three people who want to contribute. In all fairness and considering the sensitivity of this Bill, I will allow the three of them before I close. That is my order for now. So, we shall have Sen. Sang, Sen. Chiaba and then Sen. Moi.

**Sen. Sang:** Mr. Deputy Speaker, Sir, from the outset, I want to join my colleagues who have raised concerns in regard to the need to have more resources in the counties.

From the face of it, the Bill that we are discussing this evening is obviously defective. That means that some of us express our support to the Bill with the intention some amendments will be made at the relevant stage. Therefore, I want to join my colleagues and make this very clear, that all of us in this House, support more resources getting to the counties. It would be dishonest to imagine that there is a Senator sitting in this House who wants resources going to the counties reduced. We must be very honest with ourselves. As we talk about figures, for example, Kshs226 billion, Kshs238 billion or Kshs279 billion, the process that should enable us to have factual information as to the amount of money for the counties has not been done.

Regarding the costing of functions, it is quite unfortunate that the TA were given resources and should have done costing of functions so that as we debate the Division of Revenue Bill, we should be talking and dealing with actual facts and figures. Right now, Kshs226 billion is an arbitrary figure that was negotiated and we do not have a rationale for it. Again, we do not have factual information as to how the figure of Kshs238 billion was arrived at. Therefore, I hope that this will be the last time this Senate will be discussing the Division of Revenue Bill before we have costing of functions.

The other critical and important process is the ongoing process of auditing of assets and liabilities. Some of our counties are spending the amount of resources given to them on acquiring assets, building county offices, building residences for governors and so on. What we know is that some counties have those facilities, but the national Government is still holding on to them. Therefore, we need to finalize the process of auditing and costing of functions. The facilities that were being used by the national Government on functions that have been devolved should be transferred to county governments. That will reduce the amount of resources that may need to go to---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): What is it, Sen. Bule?

**Sen. Bule:** Mr. Deputy Speaker, Sir, the current speaker is saying that the facilities exist in counties. Which counties is he talking about? Is he talking about his county or is he referring to all the counties?

**Sen. Sang:** Mr. Deputy Speaker, Sir, let me clarify that it is in most counties. I appreciate that Sen. Bule comes from a county that has no such facilities. Therefore, if we can transfer some of these facilities to the county governments, then the county governments do not need to budget for building of new offices or building of residences for governors.

Mr. Deputy Speaker, Sir, I also want to appreciate the fact that if you go to every county, we have the county integrated development plan. If you look at that plan some of the issues fall within the mandate of the Government. We know very well that for us to achieve the county integrated development plan, we should organize ourselves and co-operate with the national government. Therefore, I hope that this House will not only look at Kshs226 billion, but also look at the remaining amount of resources at the national level and ask ourselves if we are devolving them to the counties. At the end of the day, we must be able to achieve our county integrated development plan which carries the national Government and also the county government's functions.

Mr. Deputy Speaker, Sir, I want to appreciate and laud Mombasa County. The Senator has indicated that they generated a lot of revenue. Most of our counties have concentrated on the resources transferred to them by the national Government at the expense of generating more revenue at the counties. So, it is important for the governors and the county governments to focus on ways and means of raising revenue and sealing the loopholes that exist so that they are able to raise local revenue to deal and help them in dealing with recurrent expenditure. One of the issues, and I think this is a legal issue, some of our counties have staff serving under the national Government, there was mass transfer.

The law is very clear that counties should only absorb staff they need. If, for example, in my county we have around 350 staff that we do not need, we should give them back to the national Government so that it can decide on a retrenchment programme and the attendant cost to be put on the national Government. So, we should not be complaining or our county governments should not feel restricted to push away some of the staff that were assigned to them by the national Government so that they can reduce the cost.

Mr. Deputy Speaker, Sir, finally, it is quite unfortunate that whereas our county governments are telling us that they have to shoulder huge wage bills, but they continue to engage in a process of recruiting staff they do not even need. County governments need to start from a clean slate so that the challenges that we are facing of wage bill can be avoided. They should ensure that they only engage the staff they need. The kind of hiring process going on in our counties is absurd. You hear of a county government that has a political advisor, economic advisor, cultural advisor and all manner of advisors. We want to tell them that as they complain of runaway wage bill, what are they doing to ensure that they do not create the same problem that exist?

Mr. Deputy Speaker, I wish to talk about the issue of the Equalization Fund. It is shocking to hear that the Equalization Fund that we agreed upon and passed in the last financial year never went to the counties. The question that some of us are asking ourselves is what was the Committee for Finance, Commerce and Budget doing in this House for the whole year. That issue has never been raised. Why did the Committee not raise the issue with the relevant institution or with the national Government? Therefore, the relevant Committee of this House has let down our counties and this House.

As we pass this Bill and deal with the County Allocation of Revenue Bill at the right time, we should ensure that the resources that were allocated through the Equalization Fund must be transferred to the counties immediately.

Mr. Deputy Speaker, Sir, I hope when we get to the Committee of the Whole, we will amend the relevant clauses before we pass the Bill.

Mr. Deputy Speaker, Sir, I beg to support, but with a heavy heart.

**Sen. Chiaba:** Asante sana, Naibu Spika, kwa kunipatia nafasi hii kuunga mkono Mswada huu ingawa kwa shingo upande. Nasema hivyo kwa sababu pesa hizi Kshs226 bilioni hazikutokana na Seneti hii.

Katiba imetupa haki ya kupanga mipangilio ya fedha za kaunti hapa. Takwimu hii tumeletewa na tunaulizwa tuipitishie vile ilivyo bila kuuliza maswali. Ninamuunga mkono



rafiki yangu, Sen. Wetangula, kwa kusema kuwa ni masikitiko makubwa kuwa katika pesa zote hizo, Kaunti ya Lamu imetengewa Kshs1.7 billioni---

**The Senate Minority Leader** (Sen. Wetangula): Peke yake?

**Sen. Chiaba:** Peke yake!

Bw. Naibu Spika, pesa hizi ni za kulipa madeni ya watu ambayo tumeyarithi kutoka kwa *County Council* ya zamani. Huu ni uonevu---

**Sen. Hassan:** Dhuluma! Aibu!

**Sen. Chiaba:** Madeni tuliyoyarithi kutoka kwa *County Council* ni Kshs1.3 billion. Pesa zitakazobaki ni ngapi? Tutabaki na Kshs400 milioni. Pesa hizi zitachukuliwa na Serikali ya kaunti. Waheshimiwa Bunge wa Kaunti watatumia pesa hizi kufanya kazi yao.

Bw. Naibu Spika, miaka 50 sasa, Kaunti ya Lamu imebaguliwa kwa njia zote. Hatuna hata barabara hata kilomita moja ya lami. Nimewaona marais watatu. Nilimwambia Rais mstaafu baba Moi kuwa Lamu inahitajika barabara ya lami ilituweze kujivunie kama kaunti zingine lakini hakufanya hivyo kwa muda wa miaka kumi. Pia tumezungumza na Rais Kibaki kwa miaka kumi tuliyokuwa naye, tukizunguza siku ingia, siku toka, lakini hakuna barabara hata moja katika Kaunti ya Lamu. Kwa Bahati mbaya, sikio la kufa halisikii nini?

**Hon. Senators:** Dawa!

**Sen. Chiaba:** Bw. Naibu Spika, sikio la kufa halina dawa. Hivi sasa, tuko na Katiba mpya inayotupa haki ya kupata pesa sawa katika kaunti zote. Huo ndio wajibu mkubwa wa Bunge hili la Seneti. Lakini kwa miaka hii yote miwili iliyopita, Bunge hili haliwezi kujivunia ya kwamba wametupa pesa za kutosha katika kaunti yetu. Tumeletewa yale makadirio ya kwanza na yakapita; tukafanya mapendekezo ya Seneti yakapuuzwa na mapendekezo ya watu wengine yakachukuliwa. Hivi sasa, tunaaulizwa kupitisha Kshs226 bilioni. Hata mimi ninaunga mkono Mswada huu huko kama nimefunga jicho moja.

*(Applause)*

Lakini haya mambo yanayofanyika si haki. Mimi naiomba Seneti hii pamoja na ile Tume ya Cheserem waangalie ile mbinu ya kugawa pesa katika kaunti. Haiwezekani kuwa Lamu inapata pesa za chini ilhali najua kuwa Lamu ina watu masikini kushinda sehemu nyingi zote nchini. Watu wa Nairobi wakienda huko, huwa wanaenda katika kijiji cha Amu peke yake. Hawajui ya kwamba wapo watu wanaoishi katika kilomita 300 katika Kaunti ya Lamu ambao siku zingine hawawezi kupata chakula cha hata mara moja kwa siku.

*(Sen. Hassan spoke off the record)*

Hakuna haja kwa sababu si chama. Sisi tunawafuasi wa chama cha *Jubilee* na pia watu wa *CORD* walikuwako katika Serikali iliyopita ya nusu mkate. Hata hivyo hawakuweza kufanya Serikali ile ifanye kitu kama hicho. Hivi sasa, tunaendelea kubaguliwa na kudunishwa kwa kupatiwa pesa chache sana. Tutafurahi tu wakati tutapata haki zetu.

**Sen. Hassan:** Kweli!

**Sen. Chiaba:** Kwa hivyo, naiomba Seneti hii isimame kidete na Kaunti ya Lamu mwaka ujao ili tuweze kwa na mradi mingi ya maendeleo.

Bw. Naibu Spika, kwa hayo machache, naomba kuunga Mswada huu mkono.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Gideon Moi.

**Sen. Moi:** Niko na furaha---

*(Laughter)*

Mr. Deputy Speaker, Sir, thank you very much for giving me this opportunity to contribute. I will be very brief. I too, like my brother, Sen. Sang, am saddened. I have a heavy heart today because the job which is designated to Cheserem was done. He brought a figure of Kshs279 billion after going through the technical aspects. All of us, thought that figure was adequate for all our counties for now. We went to Berlin with your Mr. Deputy Speaker. However, when we came back, we learned that things had changed. There were meetings with the various leaders of this country. Basically, they said that they did not have the funds to pay the Kshs279 billion. After much haggling, it came down to Kshs238 billion. The meeting was organized by Inter-Governmental Budget and Economic Council (IBEC). It was chaired by the Deputy President. We then accepted the Kshs238 billion with a heavy heart because it is totally inadequate for all our counties. We then came here and held our *kamukunji* meeting. This negotiated figure of Kshs226 billion came up. My friend, Sen. Wetangula, when I talked to him about this figure, he told me: "Gideon, a bad settlement in law is better than a good trial." That is what he told me.

*(Laughter)*

I could not believe it, but I have accepted it with a heavy heart.

Mr. Deputy Speaker, Sir, there is one thing that we all have to accept as a Senate. I thought we should have started with Kshs238 billion. We take it to the National Assembly and let them reject it, then we go to the people. This is because this Kshs238 billion is not going into our individual pockets; it is going to our counties. The National Assembly Members are also members of the counties. Personally, I come from Baringo County, which has six constituencies. I would have liked to see one Member of National Assembly from Baringo who would have opposed it.

They are running around asking for funds for hospitals, roads and bursaries. Where do you think the money will come from? They rejected the Kshs238 billion and here they want to allocate Kshs226.66 billion. Again, there will be crisis at the county level because we cannot deliver. My brother Sen. Abu Chiaba said after paying for recurrent expenditure, there is only about Kshs400 million left for his county. In Baringo County, after recurrent expenditure and other expenses, we only have Kshs1 billion left. This is a county comprising six constituencies with nearly 300,000 people. We all understand the geographic terrain in this county. I agree with Members in this House that

we need to revisit the formula the Commission on Revenue Allocation (CRA) used in determining what each county gets.

*(Applause)*

The other issue that we must be honest about with ourselves and which we must revisit is the issue of census.

**An hon. Senator:** There is a problem with there!

**Sen. Moi:** Exactly! We want to know the true population census of this country. This is because there are some counties which are having what is not theirs. That is a fact.

*(Applause)*

Mr. Deputy Speaker, Sir, when we look at the Equalisation Fund, Baringo County was excluded from benefitting from this Fund. Our neighbours; West Pokot and Samburu counties benefitted of this Fund yet the same hardship on one side of Pokot is the same that is experienced in Baringo County. The skewed nature of the formula used---

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

We were looking after the whole country. What did you want us to do? Look at only ours?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Members! Sen. Moi, you have the Floor. I will not allow you to debate with the Members on the other side. Address the Chair and end your arguments with the rest of the Members. I will not allow you to altercation with any Member of the House. Do not let them interrupt you unless they are on a point of order.

Proceed.

**Sen. Moi:** Thank you, Mr. Deputy Speaker. They are my friends across there, so it is okay.

The issue I would like to---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Sen. Gideon Moi has informed us that they were looking at the whole country for 24 years. Could he substantiate why while they were looking after the whole country, they refused to look after Baringo?

*(Laughter)*

**Sen. Moi:** Mr. Deputy Speaker, Sir, I cannot reply to comedians and bull fighters.

*(Laughter)*

As I was saying---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I do not mind what Sen. Moi calls me because I am alive to the fact that it is not the messenger that counts, it is the message. The message is: If you were, indeed, for 24 years looking after the whole country, why did you not look after Baringo? Could he substantiate?

**Sen. Bule:** On a point of order, Mr. Deputy Speaker, Sir. The same point of order goes to---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Moi, just proceed.

**Sen. Moi:** Mr. Deputy Speaker, Sir, we did look after Baringo.

**Sen. Bule:** Mr. Deputy Speaker, Sir, my point still goes to Sen. Gideon Moi---

*(Laughter)*

Please, allow me to speak on---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Bule, what part of the procedure do you not understand?

**Sen. Bule:** Actually, allow me to speak---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Bule! Let me tell you this for the last time. I will not stop you for from making a point of order. You have a right to do so. What I will stop you from doing is assuming that you have the right over everybody else, standing and starting to talk. It is up to you to decide whether you want to go by the rules or whether you want to have your own rules in the House. If you want to make a point of order, watch what everybody else does. They say they have a point of order, they are allowed by the Chair then they raise the point of order. But nobody except you stands and starts talking. It is not allowed. So, if you want to make a point of order, do it properly and I will allow you to do so. By the way, this is not funny. It is either you want to make a point of order or you do not want to.

Do you want to make a point of order?

**Sen. Bule:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then seek the right to make a point of order. What is your point of order?

**Sen. Bule:** Mr. Deputy Speaker, Sir, I was touched by the words of my brother Sen. Moi who has been demanding for the Equalisation Fund yet they were leading this nation for over 24 years.

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

**Sen. Bule:** Mr. Deputy Speaker, Sir, my point of order is that the Equalisation Fund was meant for counties that have lagged behind like Tana River County, but not a county like Baringo where the leadership came from. They were in leadership for over 24 years!

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Moi, just proceed.

**Sen. Moi:** Mr. Deputy Speaker, Sir, one point that was raised by Sen. Muthama is extremely valid. We are using the accounts of the Financial Year 2009/2010. That is totally wrong. The figures that are giving us the 43 per cent are deceptive. If we use the figures of last year then we should not be talking of the Kshs226.66 billion allocations.

We will be talking of Kshs300 billion or Kshs400 billion which will be going to the counties. We, as the Senate, must push for that.

Mr. Deputy Speaker, Sir, as I finish I want to dispel what an hon. Senator said here that there are people eating cats in Baringo County. This is a serious matter. It is true there is hunger in that area, but there is no one who is eating any cat. Wild animals are being eaten, but not cats. I have ascertained this. We are appealing to the national Government to assist us by giving us food. The county government is doing its best. If it had more money, we would not be in this position.

Mr. Deputy Speaker, Sir, having said this, we, as a county, must generate our revenue. As the Chairperson of the Committee on Energy we participated in coming up with the Energy Bill where we said that the revenue share in the natural resources will be shared at the county level at 25 per cent. The national Government wanted this to be at 20 per cent, but we pushed it to 25 per cent. Five per cent will be given to the community and 20 per to the county government. I am proud to say that in Baringo County, we have got geothermal energy. We are pursuing that angle hoping that we will be getting the necessary monies from this 25 per cent. Likewise, in the county of the bull fighter, they have gold. We pushed that, that is a natural resource. They too must get the 25 per cent. Each county which has natural resources should have that allocation, including Mombasa.

**An hon. Senator:** And Kwale!

**Sen. Moi:** Of course, Kwale where we have titanium and other minerals. The counties should be self sufficient. But there is one thing that I would like to warn my fellow Senators, that they are trying to cap---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Your time is up.

**Sen. Moi:** Mr. Deputy Speaker, Sir, with a heavy heart, I support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Just before you call upon the Mover to reply, last year's Division of Revenue Act indicates that the audited accounts used to determine the division, were of the year 2010/2011. Today, we are being told that we are using the audited accounts of 2009/2010. This is something that we need clarity on before we even go to Committee or vote, because we cannot be operating backwards. The Government is the originator of the Bill. Therefore, it owes us an explanation on this. This is because you remember how ferocious the Chairman of the Committee was when I was making reference to audited accounts and the percentages. So, clarity on this would help. When Sen. James Orendo tried to label it with an appropriate title and description, my distinguished learned junior was quite ferocious in opposition. Now it is obvious that if we used the accounts for 2010/2011 last year, then using the accounts of 2009/2010 now is a deception.

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. That explanation was actually given by the Chairman when he explained very clearly that the figure that was used last year was used erroneously on the grounds that it had not been approved by Parliament. That is what was clearly said to us by the Chairman of the Committee. In fact, he said very clearly that last year it was a mistake. That is why they had corrected it this year.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you may allow me to clarify what my good friend, the tycoon from Nyeri, is saying. The same Act of last year very clearly says:- “The percentage of 2011/2013 audited revenue, but not approved by Parliament.” So, it is 2011/2012 that had not been approved by Parliament, because it is clarified in the Act. However, 2010/2011 accounts had been audited and approved by Parliament. That is what the Act says. By the way, I am not casting aspersions on anybody. I am only questioning the accuracy of information placed before the House to debate. We have been very ferocious, even to some degree of insolence to each other, to defend the figure that is being based on the audited accounts of 2009/2010, when, in fact, we have audited and approved accounts of 2010/2011. That the Constitution says should be the basis. The clarity on that will help clear and clean the record, because we, as a House, cannot proceed on the basis of information that is inaccurate.

**The Deputy Speaker** (Hon. Kembi-Gitura): I do not know whether the Senate Majority Leader wants to respond, but maybe it is too late in the day for the Senate Minority Leader to raise that issue. This is because as I was sitting here I did ask the Chairman of the Committee to make a clarification when the matter became a little bit heated. He gave an explanation and clarification which Sen. Mutahi Kagwe has encapsulated quite correctly. The HANSARD is there to bear me out that he explained and said clearly that the figure on which we based our arguments and debate last year was based on a mistake. He reiterated that the current figure that we are going by – Kshs529.3 billion – is the last audited accounts approved by Parliament.

I do recall saying that this is a Bill that has come to us from the National Assembly. It is not our Bill. However, we are dealing with it pursuant to the provisions of the Constitution. So, unless anybody has any data to show that the figures are wrong, since the audited accounts were approved by the National Assembly, I believe, at this point in time, that we can only go by the figures that we have. I do not recall any Member raising an issue with the Chairman, when he made the clarification that there was a mistake on the figures that we dealt with last year and the figure that we have to deal with now is Kshs529.3 billion. That is my off-the-cuff understanding of the situation.

I can see that Sen. Muthama wants to say something, but this is not an issue that I want to protract. This is because I do not believe that we are going to reverse what we have dealt with this afternoon, at this point in time.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to point out that Sen. Mutahi Kagwe admitted that actually there was a big mistake? In your ruling, you also confirmed it.

Mr. Deputy Speaker, instead of moving to correct those mistakes we are committing more mistakes by now going back to the accounts of 2009/2010 and apply them in this year's allocation. My kind request is that we should move and make corrections, so that next year we do not come and say: “Last year but one, there were mistakes. The year that followed there were mistakes. Since we have made mistakes twice, we have to continue making mistakes.” Two mistakes do not make a right. If we made a mistake, it is time to bite the bullet now and make corrections.

*(Several Senators stood up in their places)*

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not know whether you want us to open this debate.

Sen. Orengo!

**Sen. Orengo:** On a point of order, Mr. Deputy Speaker, Sir. My small, but very important point is that we have an Act of Parliament, the Division of Revenue Act (No.31 of 2013). In that Act, there is a Schedule, which is a part of the Act, which says that the percentage of the approved audited revenue for 2010/2011 was Kshs608.1 billion. So, whereas we are being told orally that there is a mistake, this is part of the law of Kenya, with a Schedule showing us that there were those audited accounts. So, I appreciate what the Chair is saying, but the Senate Majority Leader should tell us how he intends to deal with that part of the law that will conflict with the law that we are now trying to pass. This is because in this law, the Schedule will say that the last audited accounts were in 2009/2010 and yet, there is another law which says that it was in the subsequent year. We are creating a conflict in law right in the face of it and want to wish it away. That is the problem that I have.

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. I appreciate the concern that the hon. Senator and, indeed, also Sen. Muthama, have expressed. But I think that it was explained very clearly as follows: First, the figures that were used last year were audited, but not approved, which is the mistake that was made. The Chairman owned up to the fact that the figures at that time were a mistake. Whatever the figures were; either Kshs600 billion or Kshs500 billion, they were audited, but not approved. So, all sorts of changes would have happened between auditing and approval. I really agree with you that if we go this way we are going to open debate again.

Mr. Deputy Speaker, Sir, the second point is that what we are currently using is not a mistake. These are the actual figures that are both audited and approved. Therefore, I think we are beyond that point now.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I honestly do not understand the indefensible arguments being pursued by the distinguished Senator for Nyeri. There is already a law; an Act of Parliament that says that the last audited, but not approved accounts that were available last year were the ones for 2011/2012. The ones for 2010/2011 were available. They were the ones used for the basis of the Bill that became an Act last year. Is this a mistake and is it a genuine one? We are not asking the distinguished Nyeri Senator to stand up and defend this because he is on the side of Government. We are talking about facts.

You can direct the House the way you understand it and the way you ought to, as our Deputy Speaker, on a matter where facts placed before the House are based on wrong information. The information in the statute contradicts and controverts what we are using. So, this is not just about the explanation of the Chairman of the Committee that can cure this conflict. That cannot. The Chairman of the Committee will come here to try and justify the unjustifiable. However, we want the Deputy Speaker to direct the House on how we can proceed hereafter. We can see, very clearly, that the law will conflict with an existing law.

We are using accounts that came out a year earlier than the existing, audited and approved accounts.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Members! This is the way I look at it and it will be my direction on this issue. We have debated on this matter the whole afternoon and I dare say that we have had a very enriching debate on the issues. I know that all of us are working towards the best of the betterment of what we can do for the counties. Therefore, I take it that everybody has made contributions in good faith towards that goal.

However, the fact remains that in the course of debates – I hope that Senate Minority Leader is with me on this one – we had many points of orders, corrections and clarifications one of which – the HANSARD will bear me out – is on the issue we are discussing now. This was when Sen. Muthama rose very solemnly and argued about the figure of Kshs1.026 trillion vis-a-viz the figure of Kshs529.3 billion said to be the last audited accounts against Kshs226.2 billion which is said to be 43 per cent of the Kshs529 billion.

As I stand here, I do not know what figures you are talking about when you refer to the Division of Revenue Act that was passed last year.

Hon. Senators, the point I want to make is that when Sen. Muthama sought a clarification from the Chairman of the Committee, he explained candidly and said that there was a mistake. After he said that, we went on with debate and nobody raised an issue with him on that specific point. I now take it that there was a mistake which could also mean that the figure that Sen. Orengo has referred to and reiterated by Senators Muthama and Wetangula, could be correct. However, the Bill we have in front of us this night – this must be the third time I am saying this – has been generated by the National Assembly. If you look at page four footnote one, you will see, clearly, that these that the audited and approved accounts of 2009/2010.

Article 20(2) of the Constitution talks about the last audited and approved accounts. That is the figure that we have in front of us. I have not seen an amendment from any Member or Senator. I have not seen anything else apart from the clarification that we got. Therefore, the direction that I give tonight, as sought by the Senate Minority Leader, is that we can only go by what we have. Seeing that I do not have an amendment in front of me or anything to show that we have moved on the wrong premise other than what the Chairman of the Committee gave us, as the figures and clarification when he talked, candidly, maybe we passed the wrong figure last year. These were based on what Sen. Kagwe says were the last audited accounts, but not approved accounts. So, we could have made a mistake last year. Should we also say that we have made the same mistake this year? I do not know, but the figure we have now of Kshs529 billion, as far as I can see, is the last audited and approved accounts. The accounts were approved by the National Assembly pursuant to Article 203(2) of the Constitution. I hope that this brings a closure to this argument so that we proceed with the issues we were discussing.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, the same Article 203(2) that you have quoted says;

“For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue



collected by the national government.”

Sub article 3 is very important.

“The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received and as approved by the National Assembly.”

The most recent audited accounts of revenue are 2010/2011 and not 2009/2010. Even if the membership of the House did not bring an amendment, the Chair has a constitutional duty to point out any process of legislation that does not meet the expectations of the Constitution or the constitutional threshold.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I have not missed any point that you have made or which any of the Senators have made. If you want to talk about Article 203(2), which is very clear and I have read says;

“(2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.”

Right?

Article 203(3) says;

“The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

As far as I can see, this is clarified very clearly. Sub article 2 talks about revenue, but sub article 3 talks about the most recent. Nobody sitting in this Senate, using any document has shown me, that we have the most recent and audited and approved accounts apart from what is on page 4 of the Bill and that is the schedule.

That is why I have said that it may be too late in the day.

**Hon. Senators:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): I will allow your points of order. However, the point I am making is that as far as I am concerned nobody has shown me that we have more recent audited and approved accounts other than what we have in the Bill pursuant to what Sen. Billow explained when he was doing the clarifications.

**Sen. Orendo:** On a point of order, Mr. Deputy Speaker, Sir. Let me just use the Bill that is before us. It does not say what is required under the Constitution; which is the most recent audited accounts. If you look at the footnote as compared to the Act we passed last year, where the footnote was correct, but this one is saying that “based on 2009/2010 audited revenues approved by the National Assembly”. It does not say the most recent audited accounts.

**The Deputy Speaker** (Sen. Kembi-Gitura): You have not shown me anything.

**Sen. Orendo:** Mr. Deputy Speaker, Sir, I am sorry, what we have been referring to talks about the most recent audited accounts. Even going by this Bill, the provisions of the Constitution have not been complied with. The statement should have been “not audited revenues approved by the National Assembly by 2009/2010”. The requirement is that it should say that those accounts are the most recent audited accounts by the National Assembly.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orendo, maybe you are right in your position, but to me it looks like it is too late in the day because we have gone

through the whole system, including finishing the debate and just waiting for the Mover to reply. All of you argued based on Kshs1.26 trillion, based on shareable portion taken by the national Government, based on Kshs226 billion that has gone to the counties and based on Kshs529.2 billion that is the latest audited accounts of 2009/2010. That is what I understood. So, you could be right. However, I am saying that as far as I can see, I do not have an amendment in front of me or anything to show or to bring forth the argument that we now have on this point.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. It might help the House, if we want to move forward, to remember that we have in our possession a paper that was laid in this House by the Chairman of the Committee of Finance, Commerce and Budget. In that paper, on page 12, we are informed that our Committee held a meeting on 8<sup>th</sup> May, 2014. That is a meeting that I attended.

**The Deputy Speaker** (Sen. Kembi-Gitura): Which paragraph are you reading?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am on page 12 on meeting with the national Treasury. You will notice that in that meeting, we pressed the national Treasury to tell us which accounts they were using. We were pressing them because we were looking for the statement to concur with the provision in the Constitution. In paragraph two, they stated that the last audited revenue approved by the National Assembly were those of 2009/2010. That is the report from the national Treasury. That is why we are going with this report. If there are some other audited accounts by the National Assembly, probably, that might have been done after this exercise had been completed. So, this moves this debate forward because we have here on paper the authority from Treasury that they were using the last audited accounts which were 2009/2010.

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you agreeing with my position, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I do agree with you. I am asking that we move on that because this is the evidence from the Committee. What other evidence do we need?

**The Deputy Speaker** (Sen. Kembi-Gitura): In any case, I had already made my own direction on the issue only that the Leader of Minority re-opened it. That will be the position that I have taken on this issue. I am happy to hear that a Member of the Committee concurs that those are the only figures that we have on a report that was laid on the Table of the House. So, it was in your possession throughout. I said that I have nothing before me to show anything other than what I have said.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. I rise in support of the point by Sen. (Dr.) Khalwale and you. Could I plead with the House because we have all been Members of the National Assembly and some of us have been chairmen of both the Public Investments Committee (PIC) and Public Accounts Committee (PAC)? It is quite common in the National Assembly that audited accounts by both the Auditor-General and the Auditor-General (Corporations), can lie in the offices of the National Assembly for quite some time before they are tabled in the House. The mischief that needs to be cured is when it comes to the audited accounts that affects the division of revenue, we, as a Committee, should dialogue with the Budget Committee of

the National Assembly to ensure that these audited accounts are tabled in the House expeditiously to avoid a situation where we are basing our calculations on old audited accounts. That is the problem. I think we should appreciate it and move on.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, you are going to be the very last person.

**The Senate Minority Leader** (Sen. Wetangula): Most obliged, Sir. It must be made very clear that I am a Member of the Committee. I am fully aware of the paragraph that my distinguished friend and colleague, Sen. (Dr.) Khalwale, has pointed out, but the law is the law. The law maybe an ass, but the law is the law. What I have been pointing out is that what is in the report is evidence brought before the Committee. We have a statute that we passed last year that indicate that the last audited accounts were 2010/2011. It is important that we move on and express very clearly our fidelity to the truth and the law and the rule of law requires that we do that.

I am not saying that we reverse what we have said today, I am simply saying that the evidence given before the Committee which is in the report is, in fact, not part of the statute that we are going to pass. We are basing this on the wrong premise that the last audited accounts as required under Article 203(3) is 2010/2011 and not 2009/2010, as simple as that. You know it is very easy to say “move on” but next time, those who will read this will indict you for negligence. So, let us have issues right. It is not just about rolling on and moving on, passing and going home. We are passing the law for posterity.

**The Deputy Speaker** (Sen. Kembi-Gitura): I said that Sen. Wetangula was going to be the last person to discuss this issue. Let me say so that we can move on. I have heard you, but I had made a direction. I want you to do this since all of us are Senators representing counties. Always remember that vigilance is the prize for freedom. Article 229 of the Constitution is very clear that the audited accounts shall be dealt with within a certain framework. It is true that we are now dealing with 2009/2010 which is three years ago. All of you know that we are dealing with the figure of Kshs1.026 trillion. The figure of 43 per cent which will be going to the counties is Kshs444 billion.

It is a pity that counties lose that money because the National Assembly has not approved its audited accounts. All of us, as Senators, representing counties, are clear and we support that position. So, the challenge that is before us, as Senators, representing counties, is that when we are dealing with the same issue next year, that we try and endeavor to deal with the very latest audited and approved accounts. We know the Members of the National Assembly come from counties and are members of counties. If they were last year's, we would be talking about a figure in excess of Kshs400 billion. That is money lost because maybe we were not vigilant, or maybe it is because the Members of the National Assembly were not vigilant. But as we sit here tonight, we are dealing with the only figures that are before us. Those are from the Financial Year 2009/2010. Again, I must confess that the debate we have, even on this issue, is very enriching and it is will help us moving forward.

Can the Mover now reply?

*(Applause)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I thank you, Mr. Deputy Speaker, Sir. I want to thank all my colleagues, distinguished Senators from both sides of the House who have spent a lot of time, energy and intellect the entire afternoon and into the night discussing one of the most important legislations in the annual calendar of the Senate.

Mr. Deputy Speaker, Sir, I cannot thank everybody enough. Mine is to say that I have appreciated all the input that has been made to improve this Bill. Those who are sponsoring amendments are welcome to do so.

Mr. Deputy Speaker, Sir, the tone of the contributions has been to support this Bill. For that reason, I am grateful.

Lastly, mine will be to clarify that we have spent about a third of our time on the issue of the percentage and the audited accounts. From where I stand, I want to say that whichever year you use, whether the accounts are audited or not, even if you use the Kshs1 trillion that is this year's budget, we are talking about an allocation of 22 per cent, which is way above the 15 per cent that is demanded by law. For me that is what matters.

Mr. Deputy Speaker, Sir, having appreciated everybody, I beg to move.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senate Majority Leader.

Hon. Senators, you all know what we do with Bills that deal with counties. So, the question does not arise. So, under Standing Order No.77, we will ring the Division Bell. It will be rung for eight minutes, after which I shall put the Question, and then we shall vote by roll call.

So, let the bell be rung. In the meantime, the Senate Majority and Minority Leaders, please, give us the names of the tellers. The bell can be rung now.

*(The Division Bell was rung)*

**The Chairperson** (Sen. Kembi-Gitura): Order, hon. Senators! The Bell has stopped ringing.

The Tellers are as follows: Ayes: Sen. Boy Juma Boy and for the Noes, Sen.(Prof.) Kindiki. I order that the bars be drawn.

I will now put the question that the Division of Revenue Bill, (National Assembly Bill No.15 of 2014) be read a second time.

We can now proceed with the Roll Call Voting.

## **DIVISION**

### **ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County---

**The Clerk-at-the-Table:** Kakamega County!

*(Interruption of voting)*

**Sen. (Dr.) Khalwale:** Mr. Chairperson, Sir, in anticipation of the amendment for Kshs10 billion conditional funds, Kakamega votes "yes".

**Sen. Hassan:** On a point of order, Mr. Chairperson, Sir.

**An. hon. Senator:** But we are in Committee.

**Sen. Hassan:** Mr. Chairperson, Sir, I thought the vote is either "yes" or "no". The qualification that "in anticipation of a certain amendment" you vote "yes" or "no"; is that the proper procedure for voting?

**The Chairperson** (Sen. Kembi-Gitura): I am happy that you have brought it to my attention. He has to vote that his county votes "yes" or "no". He can say anything else, but if he says it is anticipation of something else which we have not seen yet, it could be a spoilt vote. Sen. (Dr.) Khalwale, it should be in your interest to vote properly.

**Sen. (Dr.) Khalwale:** Mr. Chairperson, Sir, Kakamega County votes "yes".

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. Let us proceed.

*(Resumption of voting)*

Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Boy Juma Boy.

**NOES:** Sen. Hassan, Mombasa County; Sen. Muthama, Machakos County; Sen. Orenge, Siaya County and Sen. Wetangula, Bungoma County.

**Teller of the Noes:** Sen. (Prof.) Kindiki.

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, the results are as follows:

**AYES:** 24

**NOES:** 4

**ABSENTIONS:** Nil

*(Question carried by 24 votes to 4)*

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

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, I order that the bars be now drawn.

Next Order!

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

### THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.15 OF 2014)

**The Chairperson** (Sen. Kembi-Gitura): Order, hon. Senators! Let us have some order. It is now 9.30 p.m. and we still have some way to go. We are now in the Committee of the Whole to consider the Division of Revenue Bill (National Assembly Bill No.15 of 2014.) I would like you to note the following:-

1. The sequence of dealing with a Bill in the Committee is set out in the Standing Order No.136.

2. The Bill is a county matter and, therefore, Senators must be prepared to undertake the several Divisions required by the Constitution and Standing Orders.

3. The Clerk-at-the Table will call out the clauses in sequence, set out in Standing Order No.136. The Committee shall then proceed and consider them, including amendments filed.

4. For the convenience of the Committee, I direct that we deal with all the clauses – those with or without amendments - but put the Question at the end, so that the Divisions are undertaken together. All clauses without amendments will be dealt with together and likewise, clauses with amendment.

I hope that is clear and we can proceed on that premise. We have done this many times before.

### *Clause 4*

**Sen. Kagwe:** Mr. Chairman, Sir, I beg to move:-

THAT Clause 4 be amended by renumbering the existing provision as Clause 4---

**The Chairperson** (Sen. Kembi-Gitura): Sen. Kagwe, the proposed amendment to the Bill is in the name of Sen. Billow Kerrow. Can you refer me to the Standing Order on which you are proposing the amendment on his behalf?

**Sen. Kagwe:** Mr. Chairman, Sir, the proposed amendment, as you can see reads that it is the Chairperson of the Standing Committee on Finance, Commerce and Budget. Therefore, Sen. Billow Kerrow was simply moving the amendment on behalf of the Committee. As is the tradition in the House, any Member of the Committee may, indeed, move the amendment.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Mutahi Kagwe, I refer you to Standing Order No.51 (2), which relates to the time of moving Motions. It reads:-

“Save for a Special Motion, a Senator who has a Motion standing in his or her name may authorize in writing another Senator to move that Motion in the Senator’s stead.”

**Sen. Kagwe:** Mr. Chairman, Sir, whereas a narrow interpretation of that could have afforded that explanation, if you look at the amendment, you will see that the amendment was not being moved Sen. Billow per sé. It is very clear that it is the Chairperson of the Standing Committee on Finance, Commerce and Budget who happens to be Sen. Billow.

My understanding of that is that Sen. Billow was moving that amendment as an individual. It is unfortunate that Sen. Billow is absent from this House now. He is not being referred to as the Chairperson of the Standing Committee on Finance, Commerce and Budget Committee. He would be doing it in his personal capacity as the Senator for Mandera.

**The Chairperson** (Sen. Kembi-Gitura): Did I hear you talk about choosing a narrow interpretation? Is this a question of the interpretation that one takes? I would like you to look at Standing Order No.51(2) and then you address me on that.

**Sen. Kagwe:** Mr. Chairman, Sir, I appreciate the Standing Order that you have raised rightly that says;

“Save for a Special Motion, a Senator who has a Motion standing in his or her name may authorize, in writing, another Senator to move that Motion in the Senator’s stead.”

I propose that this amendment is not moved in the name of Sen. Billow Kerrow. It should be moved in the name of the Committee. He is only representing the Committee as the Chairperson of the Committee.

**The Chairperson** (Sen. Kembi-Gitura): Allow me to consult because I need to go to the root of the matter. This also depends on who signed the Motion and in what form. Allow me a minute or two, then I will come back to you.

*(The Chairperson (Sen. Kembi-Gitura)  
consulted with the Clerk-at-the-Table)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. Is it possible for us to hear what you are saying as you consult on that point?

**The Chairperson** (Sen. Kembi-Gitura): No, give me time to consult and I will come back to you. Give me a few moments and I will get back to you.

Hon. Senators, this is my considered opinion on the issue. There are two amendments on the paper ahead of us. If you look at the second page, you will see the two amendments. You will see the one by Sen. Billow and another one by Sen. (Eng) Muriuki Karue.

The amendment by Sen. (Eng.) Muriuki Karue is clearly signed by him. He has signed his name and his county in brackets (Nyandarua County). The amendment by Sen. Billow starts with the words: "The Chairperson of the Standing Committee on Finance, Commerce and Budget. Sen. Billow wears two hats in this House. He is Sen. Billow, the Senator for Mandera and he is also Sen. Billow, the Chairman of the Committee.

So, as Sen. (Eng.) Muriuki Karue has done, he should also have signed below his amendment as Sen. Billow, Senator, Mandera County. However, he has signed this amendment as Sen. Billow, Chairperson of the Standing Committee on Finance, Commerce and Budget.

I understand that he has also signed the Motion as Sen. Billow, Chairperson of the Standing Committee on Finance, Commerce and Budget. Therefore, I agree with Sen. Mutahi Kagwe that this is not a personal Motion in the name of Sen. Billow Kerrow. It is a Motion by the Committee and anyone from the Committee can move the amendment.

**Sen. Kagwe:** Mr. Chairman, let me say that you are a wise Chairman.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Mutahi Kagwe, I do not need any accolades. I am only doing my work.

**Sen. Kagwe:** Mr. Chairman, Sir that has come from my heart. I move that amendment as follows:

THAT, the Bill be amended by inserting the following new sub clause immediately after the renumbered provision.

-In accordance with provisions of Article 187(2) and Article 23(1)(d) of the Constitution and for further certainty, the allocation for the national Government under sub clause one, includes adequate financing for all Level Five hospitals as currently listed.

Mr. Chairman, Sir, considering the debate that has gone on in this House regarding Level 5 hospitals, I need not elaborate further on this matter. It is an issue that has been agreed upon by both sides of the House and I ask that Sen. (Dr.) Khalwale seconds.

**Sen. (Dr.) Khalwale:** Mr. Chairman, Sir, I rise to second these amendments with the following comments. Hon. Senators, if you refer to Article 187(2) of the Constitution, it says that if a function or power is transferred from a Government at one level to a Government at the other level-

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

(b) constitutional responsibility for the performance or exercise of the power shall remain in the Government to which it is assigned by the Fourth Schedule.

Mr. Chairman, Sir, this is very important. We are looking for a conditional grant of Kshs10 billion. This function is in the Fourth Schedule transferred to the county governments. Unless the county governments have that money, all the eleven Level 5 hospitals in the country risk being closed. We were reliably informed in the committee



sessions by chair of this Committee that high level consultations have been done with the National Assembly's Committee on Budget and the Chief Executive Officer (CEO) of the nation on the need for concurrence on this Kshs10 billion. The answer at both levels of consultations has been that the Budget Committee is willing to support this amendment and also President Uhuru Kenyatta is prepared to support it.

For that reason, I second.

*(Question of the amendment proposed)*

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Who is on a point of order? Sen. (Eng.) Muriuki Karue.

**Sen. (Eng.) Muriuki:** Mr. Chairman, Sir, could I be in order to request the indulgence of the Chair if you see my amendment is actually inside the amendment that has just been moved. So, I want to make a further amendment to that amendment before we go on to the debate.

**The Chairperson** (Sen. (Kembi-Gitura): The only problem is that we are now dealing with Clause 4 and yours is on the schedule. So, it will come when we are dealing with the schedule. We can only do with the ones for the Committee at the moment.

I wonder how long you want us to give people who want to contribute.

How long can you take, Sen. Obure, if I can use you as a barometer?

**Sen. Obure:** At most, two minutes.

**The Chairperson** (Sen. Kembi-Gitura): Then it shall be two minutes for any contributor who wants to contribute on this issue.

**Sen. Obure:** Mr. Chairman, Sir, first of all, I think this is a very wise and very timely amendment coming from the Committee as proposed by the Senator for Nyeri. As the situation was, we were going to set up county governments with Level 5 hospitals for failure. They were going to fail because they were in a predicament having been given the unsustainable burden of running level five hospitals. Therefore, this is an amendment which we should all support because it resolves a very major problem that was going to face these counties. I hope that the amounts that will be made available by the national Government would be substantial because these facilities, as we demonstrated earlier, are shared across several counties. So, I want to commend the Mover of this amendment as I think it will go a long way in solving this potential crisis.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Khaniri, did I see you standing when Sen. Obure was talking? Do you want to contribute? It is your turn, please, take two minutes.

**Sen. Khaniri:** Mr. Chairman, Sir, let me begin by thanking the Committee on Finance, Commerce and Budget for moving this particular amendment. We all know the important role that these Level 5 hospitals play. These hospitals do not just serve people from the resident county, but they serve across counties. My people benefit from the Level 5 hospital in Kakamega and also the one in Kisumu. We have just been told that the wage bill for this type of hospitals averages about Kshs300 million a year. Therefore, the amount we are allocating will work to about to just about Kshs1 billion per hospital if

it is evenly distributed. We believe this will go a long way in sustaining these hospitals and, indeed, we must sustain them due to the important role they play.

So, I support this amendment.

**Sen. Mungai:** Mr. Chairman, Sir, I would like to make a small contribution touching on this particular amendment. Kshs10 billion is not so much, but it is not so little. I come from a county that has a Level 5 hospital. There is so much that the hospital does. Almost each and every Kenyan passes through my county and many accidents apparently happen in that area. As the Senator for Nakuru County, I would like to thank my Chairman and other Members of the Committee on Finance, Commerce and Budget for bringing in this amendment.

I support.

**Sen. Lesuuda:** Mr. Chairman, Sir, I just want to echo my colleague's sentiments of thanking the Members of the Committee for this very important amendment. I will be brief. I just want to say that it is important for us to do the right thing when we are supposed to do it. We could have only procrastinated giving these Level 5 hospitals the funds that they need. So, it is important that we do it now because we will still have to do it. If we do it earlier, we shall also have time to look at other counties which need these hospitals to be established there because we will have finished with the existing ones. As we have said, as much as we are sharing these hospitals as counties, they could be far or they might not be accessible. So, when we finish with these ones, next time we will be debating which counties need Level 5 hospitals.

Thank you.

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

**Sen. Karaba:** Mr. Chairman, Sir, thank you very much. I also support the amendment as moved. I hope that these kinds of level 5 hospitals will introduce, for the first time, the machines that are so badly needed in such hospitals instead of using a lot of money taking patients to India.

Mr. Chairman, Sir, you will realize that most of our patients, once they have problems with their hearts, kidneys and the other delicate internal organs, they have to be supported by villagers to raise money through *harambees*. This money is too much. We are taking a lot of our revenue and income to India. So, let us hope that they will use a part of this money to buy the required machines to alleviate this problem.

Thank you, Mr. Chairman, Sir.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Chairman, Sir, I support the amendment. Thank you.

*(Applause)*

**Sen. Ndiema:** Mr. Chairman, Sir, this is quite some relief, but I would hope that, come next year, this should not be a permanent feature for only those counties. What we should do is for purposes of equality and treating all the counties the same---. We should decide to make all the county hospitals level 5 hospitals next time because a hospital like Kitale also serves other counties. It serves people from Turkana and Uganda.

Thank you, Mr. Chairman, Sir.

**Sen. Orendo:** Mr. Chairman, Sir, I also wish to strongly support this amendment. While supporting it, I think we must look for a lasting solution to make sure that similar facilities exist in all the counties as opposed to just some of the counties.

*(Applause)*

But as a measure, in the interim, as we formulate policies and mechanisms for having those kinds of hospitals in every county, this amendment fills the gap. For that reason, I strongly support the amendment.

*(Applause)*

**Sen. Hassan:** Mr. Chairman, Sir, I support this amendment, particularly with respect to Article 43, which wants to ensure that health care for all is a basic right.

Secondly, Mr. Chairman, Sir, I come from a county that has a level 5 hospital. I have visited it severally. I can tell you that we receive patients from as far as Machakos and other parts of eastern province and the coastal region. It will be important to continue to subsidize and support some of these counties because they are also inadequately funded. We cannot prejudice health care as a very basic and fundamental right.

**Sen. (Prof.) Anyang'Nyong'o:** Mr. Chairman, Sir, I feel obliged, as a former Minister for Medical Services, to add my voice to the support of this amendment. I also want to add that I think, as a Senate in the coming months, we should pay specific attention to the health sector, which is going through tremendous problems.

Mr. Chairman, Sir, while I was the Minister for Medical Services, I proposed that we should transform 22 heavy volume hospitals into referral facilities to ensure that they are well funded to take care of major health problems in the nation.

*(Applause)*

This proposal was passed by the Cabinet, but the Commission for the Implementation of the Constitution (CIC) turned it down. They said it was against the county interests, but now it is proving that we need this thing. So, I am just proposing that in the coming months, in consultation with the Committee on Health, we as a Senate, should come up with a much more imaginative way of dealing with the health sector than it is at the moment being experienced.

**The Chairperson** (Sen. Kembi-Gitura): I want to relieve you of the pain of being here for a very long time, the proposal I have is to put the question towards the end. Is that right?

*(Applause)*

**An hon. Senator:** What about the Schedule?

**The Chairperson** (Sen. Kembi-Gitura): We are going to do the Schedule after because it has more than one amendment.

I propose that we now go to Division and deal with the four clauses. The bell will be rung for eight minutes.

*(The Division Bell was rung)*

Order, hon. Senators! The Bell has stopped ringing. Can the bars be drawn now?

The Tellers are as follows: Ayes, Sen. Boy Juma Boy and for the Noes, Sen. Naisula Lesuda.

For the sake of clarity, I will now put the question as follows:-

THAT, clauses 3, 5 and 6 be part of the Bill, and;

THAT, Clause 4 be amended as proposed and as moved by Sen. Kagwe for the Committee on Finance, Commerce and Budget.

We will vote for all of them in one Division. When you vote, it is “yes” or “no” on clauses 3, 4, 5 and 6.

Let us now proceed to Roll Call Voting.

*Clause 3*

## DIVISION

### ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Wangari, Nairobi County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Boy Juma Boy.

**Teller of the Noes:** Sen. Lesuuda

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, the results are as follows on all the four:

**AYES:** 28

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 28 votes to 0)*

*(Clause 3 agreed to)*

*Clause 4*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question of the amendment put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Wangari, Nairobi County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Boy Juma Boy.

**Teller of the Noes:** Sen. Lesuuda

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, the results are as follows on all the four:

**AYES:** 28

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 28 votes to 0)*

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

*(Clause 4 as amended agreed to)*

*Clauses 5 and 6*

## DIVISION

## ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Wangari, Nairobi County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Boy Juma Boy.

**Noes:** Nil

**Teller of the Noes:** Sen. Lesuuda

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, the results are as follows on all the four:

**AYES:** 28

**NOES:** Nil

**ABSENTIONS:** Nil

*(Clauses 5 and 6 agreed to)*

**The Chairperson** (Sen. Kembi-Gitura): Open the door!

*(The door was opened)*

Let us proceed.

*Schedule*

**Sen. Kagwe:** Mr. Chairman, Sir, I beg to move:-

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

## SCHEDULE

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE  
NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2014/15**

Type / Level of allocation	Amount in Kshs. billions
<b>Total Shareable Revenue</b>	<b>1,026.31</b>
<b>A. National Allocation</b>	<b>799.65</b>
<i>of which;</i>	
Economic Stimulus Package 1	<b>1.45</b>
Equalization fund	<b>3.40</b>
<b>B. County Allocation 2</b>	<b>226.66</b>

## Note

1 For completion of centers of excellence under the Economic Stimulus Package in all the 290 Constituencies (Kshs5 million each)

2 Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs226.66 billion is above the minimum threshold of 15% of all revenue collected by the National Government as stipulated under Article 203(2) of the Constitution.

*(Question of the amendment proposed)*

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Chairman, Sir. Allow me to revisit my earlier request, which is that I be allowed to move my amendment, which is listed in the Order Paper as No.2, as a further amendment to the one which has just been proposed.

**The Chairperson** (Sen. Kembi-Gitura): Okay, Sen. Muriuki Karue!

**Sen. (Eng.) Muriuki:** Mr. Chairman, Sir, I beg to move:-

- (a) THAT the Schedule be further amended by inserting the following new paragraph in row A (National Allocation) immediately below the paragraph reading "Equalization Fund"-  
Construction of County Headquarter

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## Facilities 3

## 1.2

(b) THAT the Schedule be amended by inserting the following new footnote immediately after footnote 2-

*3 For assisting three counties, namely, Nyandarua, Tharaka Nithi and Tana River (who did not inherit any premises from the former local authorities or provincial administration that could be used for headquarters) to start developing their own headquarter facilities (Kshs. 400 million each*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. I do not know if we are proceeding correctly, because Sen. Kagwe has proposed an amendment to the Schedule. We ought to pass that and then allow amendments now to the new Schedule, which is to be moved by Sen. Karue and Sen. Orengo who is waiting to move a further amendment.

**The Chairperson** (Sen. Kembi-Gitura): I do not think so, because if we pass the one for Sen. Kagwe, then that is finished. We are moving in the right direction.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Chairman, Sir, I stand corrected.

**Sen. (Eng.) Muriuki**: Mr. Chairman, Sir, earlier one, as you recall, the House was debating the adequacy or inadequacy of the funds going to the counties. We are all agreed that the funds going to the counties are inadequate even as of now.

**Sen. Orengo**: On a point of order, Mr. Chairman, Sir. We have a problem.

*(Loud consultations)*

**The Chairperson** (Sen. Kembi-Gitura): Order! Order! Sen. Bule, can you, please, find a place to sit? I know that everybody is pretty tired now, but we must finish this business. So, please, concentrate just for a little while.

**Sen. Orengo**: Mr. Chairman, Sir, Sen. Kagwe has moved an amendment to the Schedule. So, I had proposed to move an amendment to the amendment. That is what we must deal with. But Sen. Karue's amendment is an amendment to the Schedule, but in respect of the Bill as it stands. It is not an amendment to the amendment by Sen. Kagwe.

**The Chairperson** (Sen. Kembi-Gitura): What you are saying, if I get you right, is that Sen. Muriuki Karue's amendment is a stand alone. So, my understanding is that we must finish with Sen. Mutahi Kagwe's amendment and any amendment that may come therein. Sen. Muriuki Karue's amendment is a stand alone and not affected by the specific amendment; never mind that he is amending the Schedule.

Sen. Orengo!

**Sen. Orengo**: Mr. Chairman, Sir, I think we should look at Sen. Kagwe's amendment. His is an amendment to the schedule. Sen. Karue's amendment is also an amendment to the schedule and, therefore, a different amendment. My proposed amendment is a further amendment to the amendment by Sen. Kagwe.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Orengo, please, give me a minute please.



Hon. Senators and the Senate Minority Leader, since we are at the Committee Stage, I want us to move on together. Sen. Kagwe, your amendment does not have to be seconded because we are at the Committee stage. Sen. Orendo wants to move a further amendment to that amendment. That has to do with the schedule. The correct procedure is as Sen. Orendo has stated. Sen. Muriuki Karue's is a standalone whether or not we pass the amendment to his amendment by Sen. Orendo.

**Sen. (Eng.) Muriuki:** On a point of clarification, Mr. Chairperson, Sir. If, indeed, there are two amendments coming to the Schedule, why would we not, in the first place, have a schedule that can be amended having passed it, or otherwise? We should dispose of the amendment that I have proposed and, thereafter, amend it. Right now, if Sen. Orendo were to amend, what would he be amending and yet we have not carried it?

**The Chairperson** (Sen. Kembi-Gitura): If we move the amendment that Sen. Mutahi Kagwe has proposed and we pass it, Sen. Orendo will have no avenue of reopening that position. That is the legal position as I understand it. Once you have passed it, you have passed it and that is it.

Under Standing Order 138(2), he will be time barred from bringing any amendment. Therefore, what Sen. Orendo is doing – which he is entitled to do – is coming under Standing Order No.138(3) in which he can ride on your amendment. However, if we allow yours to pass, he will have no other opening. He cannot come after under Standing Order No.138(2).

*(Sen. Hassan spoke off the record)*

Hon. Senators, as I said, I do not need accolades. I am only doing what I have to do, Sen. Hassan.

Sen. Muriuki Karue, your amendment has to wait for its time.

**Sen. (Eng.) Muriuki:** Very well guided, Mr. Chairman.

**Sen. Orendo:** Mr. Chairman, Sir, I move:-

THAT, the proposed amendment to the schedule as appears on page 086 of the Order Paper be amended by deleting the figure Kshs226.66 appearing in part "b" of the schedule in the second column and substituting therefore the figure Kshs279.162 billion and further amending the figure 799.65 appearing on part "a" of the schedule in the second column and substituting, thereof, the figure 7.148.

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR2014/2015**

Type/Level of allocation	Amount in Kshs. billions
<b>Total Shareable Revenue</b>	<b>1,026.31</b>
<b>A. National Allocation</b>	<b>747.31</b>

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<i>of which;</i>	
Economic Stimulus Package	<b>1.45</b>
Equilisation Fund	<b>3.40</b>
<b>B. County Allocation</b>	<b>279</b>

By moving this amendment, I want to draw the attention of the Senate and the Committee of the Whole to the fact that there is a requirement that in sharing of revenue between the two levels of Government, there is compliance with Article 203 of the Constitution.

In respect of the county governments, I want to put the Senate on notice that when you are doing these allocations in the interests of the counties, you are supposed to take care of the following needs. I will begin with 203(1)(d) which is the most relevant. The need to ensure that county governments are able to perform the functions allocated to them in the fiscal capacity and efficiency of county governments.

203. (1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;
- (d) the need to ensure that county governments are able to perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of county governments;
- (f) developmental and other needs of counties;
- (g) economic disparities within and among counties and the need to remedy them;
- (h) the need for affirmative action in respect of disadvantaged areas and groups;
- (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
- (j) the desirability of stable and predictable allocations of revenue; and
- (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

Part “f” is on economic and other needs of counties, “g” is about economic disparities within and among counties and the need to remedy them and, “h” is about the need for affirmative action in respect of the disadvantaged areas and groups. I am saying this when the CRA is exercising its mandate under Article 201(6). They are required to follow Article 203 and, by statute, lay out criteria for revenue allocation between the national Government and the county governments.

The CRA in exercising that mandate did not pick a figure from the air. They had historical approach to costing which they laid out. They took the costs of devolved functions, costs of administration and county assemblies and the needs of the county executive committees.

So, in effect, this, therefore, means that since we must fulfill the requirement of Article 203 of the Constitution first, then we should deduct a figure of Kshs53.502 billion from the allocation to the national Government which appears on part “a” as Kshs799.65 billion. If you reduce it, it will come to the figure Kshs747.148 billion. For the county allocation, instead of the figure Kshs226 billion, the figure will now be Kshs279.162 billion as recommended by CRA.

We are saying that instead of using a negotiated figure, we will be using a figure that the CRA has already computed on the basis of Article 203(1) of the Constitution in invoking its jurisdiction under Article 216 of the Constitution.

You may not be worried about this because in the national budget, there is a figure of Kshs78 billion which is described as miscellaneous and is not designated for any purpose. A reduction of that figure from the national Government will not cost any disaster. Since we are here to protect counties and look after the interests of the counties, it would be wrong for the Senate to assume the role of protecting the national Government as opposed to the county governments.

I do not want to belabour this point. However, I think it will go terribly wrong on record that we abandoned our constitutional duties to give resources to the counties and taking care of the criteria laid down in Article 203 of the Constitution by letting counties function properly.

With those remarks, I beg to move.

**The Chairperson** (Sen. Kembi-Gitura): I will propose the question. You need to remember that we are at the Committee Stage.

*(Question of the further amendment  
to the Schedule proposed)*

**Sen. Murungi:** Mr. Chairman, Sir, Sen. Orengo is very right to move an amendment to the amendment. This matter should be seen in the whole context of the journey which we have travelled to arrive at where we are tonight. You will remember that there was a *kamukunji* which was held. The *kamukunji* had to be adjourned so that there could be further consultations in our Committee on Finance, Commerce and Budget. That is one of the matters that were extensively discussed in that Committee. I know there are those who are saying that we, as Senators, should not be seen to be compromising. We should not be seen to be negotiating with the Executive or with the National Assembly. It is in the interest of our own counties for us to honour the agreement made by our elected representatives in these Committees. The figure of Kshs226 billion which is in the amendment proposed by the Committee, given the fact that we have also amended Section 5, so that the Level 5 Hospitals are now going to be allocated more funds by the national Government is a fair allocation to our counties and should be supported.

So, I oppose the amendment to the amendment.

**Sen. Hassan:** Mr. Chairman, Sir, I want to support a further amendment to Sen. Kagwe's amendment on this basis. You do recall that last year we went to the Supreme Court and we were called all the lofty terms: "Angels of Devolution, Defenders of County, the Alpha and Omega of everything else. This is an institution that should appear to protect counties. What angels are they come in the most unexpected of circumstances? When a child does not think it is not going to have a Christmas and the angel comes with a magic band and the child suddenly has a beautiful dress and goes to the Christmas ball. Angels do things that others do not expect them to do. So, what we need to do as angels now is to do the magic thing and ensure that counties get adequate resources. It is not dispute that our counties suffer almost a state of insolvency based on the debts they have inherited from the national Government. They are unable to pay these debts. In fact, we passed a resolution here to facilitate our counties in the payment of the debts, but they have not been paid. The counties have enormous financial burdens. Minus an amendment that gives them adequate resources that is empirical, we will not be able to perform our role as the Senate.

**The Chairperson** (Sen. Kembi-Gitura): Your time is up!

Sen. Mositet.

**Sen. Mositet:** Mr. Chairman, Sir, when I heard one of the Senior Members Sen. Orendo coming with a further amendment and knowing what we have gone through the whole afternoon, to me, it is just like going backwards. It is like we are again reinventing the same debate which I thought the honourable House had debated and we were coming to a very nice conclusion.

Each and every person here is a protector and a custodian of the county. We feel that we should do everything to make sure that our counties get resources. I remember that we, as a Committee, went and sat down with the Senate Minority Leader. He had also proposed that we should have a *Kamukunji*. The *Kamukunji* came up with a resolution that the Committee needs to come up with a proper report to minimize debate. I feel that we should not go back. So, I plead with my good friend, Sen. Orendo to drop his further amendment. As of now, we have already amended and agreed to make sure that the Level 5 Hospitals are well-catered for. For that matter, I beg the House not to support the further amendment.

**Sen. Khaniri:** Mr. Chairman, Sir, I rise to support this amendment by Sen. Orendo in the strongest terms. I want to remind my colleagues that the task we are undertaking today, that is, the passage of Division of Revenue Bill is one of the cardinal responsibilities of this House. We, as Senators, our main responsibility is to represent counties and protect their interest and the interest of their governments. It is our business to ensure that these county governments get enough resources, so that they can carry out the duties allocated to them.

Mr. Chairman, Sir, the CRA is a constitutional commission that is strongly anchored in the Constitution. One of the duties is to advice this House on division of this revenue and they did so. We do not know where the figure of Kshs226 came from. There have been explanations here, but they have not been satisfactory to some of us. Let us go by the figure that we were given by a commission that is established by the Constitution.

I support.

**Sen. G.G. Kariuki:** Mr. Chairman, Sir, I sympathize with my friend, Sen. Orendo, because the intention they had this afternoon is still there. Everybody is justified to bring an amendment where necessary. However, let us look at the implication. What we were trying to avoid this afternoon is what we are now trying to revive.

Mr. Chairman, Sir, we are told here that we have to pass this amendment whether there is any implication or not. We should pass it because the CRA has supported this idea. We had a Committee and other Committee Members, including the Senate Minority Leader. He is a Member of the Committee. We respect all Members of the Committee and we expected that they are not going to bring us on head on collision with the National Assembly again. Why do we enjoy fighting just for the sake of it? Last time we fought, but their decision carried the day. Even today, if they had all agreed with our Committee and the other Members of the National Assembly---

**The Chairperson** (Sen. Kembi-Gitura): Order! Your time is up!

Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Chairman, Sir. When the first black American President came to Africa, he said that Africa needs strong institutions, not strong leaders.

Mr. Chairman, Sir, this afternoon, we have consistently been supporting this Bill because we believe in a strong institution called the Committee of Finance, Commerce and Budget. By extension, a strong institution called the Senate and the CRA. Now, what happens? We are real time politicians and things have changed. When the Government came before the Committee, they told us that if we do not accept Kshs226 billion, they will be forced to borrow Kshs36 billion so as to bridge the budget deficit; that they have no other money. I want hon. Kagwe to understand me. We pushed them on the Kshs76 billion, if you can remember; the one on "other national services." They told us that those ones will be shown in the budgetary estimates. Now, a few hours ago, the Government decided to pay Anglo Leasing Kshs1.4 billion; where has that money come from? So, whereas some of us are committed to institutions, somebody else---

**The Chairperson** (Sen. Kembi-Gitura): Time up!

Sen. Mungai.

**Sen. Mungai:** Thank you so much, Mr. Chairman, Sir. With a lot of respect to Sen. Orendo, I am surprised that we seem to be going backwards, because this is a matter that we were discussing. We discussed it and we literally agreed that there is the Kshs226 billion and the Kshs10 billion; making it Kshs236 billion. It is, therefore, not very okay if we go backwards, unless we want to apparently come out of this House tomorrow morning.

Mr. Chairman, Sir, look at the Constitution. It talks about 15 per cent being the amount that is supposed to be the least, Kshs238 billion works out to a total sharable revenue of Kshs1.6 trillion. That is if you look at the figures in that way. So, what I believe is that this is a matter that we are supposed to apparently just say "look, no more amendments; let us pass it." Because if a cow has no more milk, it has no more milk!

Thank you, Mr. Chairman, Sir.

*(Laughter)*

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

**The Chairperson** (Sen. Kembi-Gitura): Sen. Wetangula, why do I think you have contributed to this Motion?

**The Senate Minority Leader** (Sen. Wetangula): No, I have not, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): You have not?

**The Senate Minority Leader** (Sen. Wetangula): Not at all!

**The Chairperson** (Sen. Kembi-Gitura): Well, in that case it is your turn now.

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): You have two minutes.

**The Senate Minority Leader** (Sen. Wetangula): Very quickly, Mr. Chairman, Sir; one, I support the amendment proposed by Sen. Kagwe on the Schedule. Two, I support the amendment that is proposed to further amend the Schedule by Sen. Orengo for the simple reason that the CRA recommended Kshs279 billion scientifically and authoritatively under the Constitution.

Two, Mr. Chairman, Sir, every Senator here who has spoken, including those who are opposing, said they want more money to the counties. That is what Sen. Orengo is proposing. Thirdly, if we really want to help our counties, then we have to send more money there. It is a day of shame for the Government - who recently came to Parliament seeking an approval to pay Anglo Leasing – beating a retreat and going to pay Anglo Leasing by decree!

**Hon. Senators:** Shame! Shame!

**The Senate Minority Leader** (Sen. Wetangula): It is terrible shame, Mr. Chairman, Sir. In fact, that is a violation of our Constitution. Nobody in this country can run our affairs by decree.

Lastly, Mr. Chairman, Sir, the reason we should raise more money and send it to the counties is because of the wastage you see being engaged in, in recreating, strengthening and sending out provincial administration contrary to the provisions of the Constitution. We need to give more money to our counties.

I support the amendment.

*(Applause)*

**The Chairperson** (Sen. Kembi-Gitura): Sen. Muthama.

**Sen. Muthama:** Mr. Chairman, Sir, I stand to support this amendment. After getting Kshs279 billion, part of the money I want, first, to be given to Laikipia. I want to see the Senator for Laikipia saying “no, we do not want it!”

*(Laughter)*

Mr. Chairman, Sir, I want that money to be given to Nyeri. I want to see the Senator for Nyeri saying he does not want that money. I want that money to go to Kajiado and then Baringo counties. I want Senator Mositet to stand and say in front of all the Maasais that he does not need that money!

*(Laughter and applause)*

Mr. Chairman, Sir, all we want here is to benefit people of this great country. I beg to support, Mr. Chairman, Sir.

*(Applause)*

**The Chairperson** (Sen. Kembi-Gitura): Sen. Tiole Ndiema.

**Sen. Ndiema:** Thank you, Mr. Chairman, Sir. I support the further amendment because that would ensure that the counties get what will enable them to operate.

Mr. Chairman, Sir, we had earlier seen that what the counties will be getting is about 22 per cent. Basing it on the 2009/2010, I see a danger or constitutional crisis when the figures are audited and it is shown that, in fact, they were much higher. We might end up in a situation where the counties were actually given less than 15 per cent.

Mr. Chairman, Sir, the figures that were declared by the Cabinet Secretary (CS) for the Treasury, this is a constitutional requirement that if the amount will go up, then the difference will be shared with the counties. I also see a danger where the national Government, at some point, will owe a lot of money to the county governments, which it might not be able to share.

**The Chairperson** (Sen. Kembi-Gitura): Time up!

**Sen. Ndiema:** Thank you, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Finally, Sen. Bule; you have two minutes.

**Sen. Bule:** Mr. Chairman, Sir, I really appreciate the good job that has been done by my best friend, Sen. Orengo. But, actually, since politics is all about interests, I have a special interest in this Bill concerning Tana River. So, I really appreciate his good job, but I oppose due to that reason.

*(Laughter)*

My appreciation is for the good job; the amendment is there and it is not timely; that is why I oppose it. I have my interests in this Bill because politics is all about interests. That is what I mean; it is all because of Tana River.

Mr. Chairman, Sir, I beg to oppose the amendment.

**The Chairperson** (Sen. Kembi-Gitura): Thank you very much. I will now put the question, and then we will go to Division. The question is; that the proposed amendment to the Schedule by the Committee on Finance, Commerce and Budget be further amended as proposed by Sen. Orengo in his amendment.

Now, are we clear? That is the question that I have put. I have already put it and I just want to know whether we are clear that we are now proceeding to Division to vote on the amendment by Sen. Orengo. The procedure is as follows; if it goes through, it pre-empts the proposed amendment by Sen. Kagwe and the Committee. Therefore, we will not vote on it again. If Sen. Orengo's amendments go through, that is the amendment because it has amended the one that was put by the Committee for Finance, Commerce and Budget. If it fails to go through after we have taken the vote on the division, then it falls. We shall then revert to Sen. Kagwe's amendment, which shall then be debated and the question shall be put. I think that is clear.

So, the Division Bell may be rung for eight minutes.

*(The Division Bell was rung)*

**The Chairperson** (Sen. Kembi-Gitura): Order, Members. I want to make two remarks.

One, the Gazette Notice for today, 15<sup>th</sup> May, 2014 says the only business shall be what we are doing now. After mid night, we cannot do anymore business because that is another day. So, we have to finish the business of the House in the next one hour. It is important to note that.

The second and more important thing to note is that we must have the threshold of 24 Members. I know we are tired, but I am requesting that we finish this exercise together so that before mid night, we are through and we have voted. Remember we have to vote for the whole Bill. It is only six clauses plus the Schedule.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Chairman, Sir, we do not have the required numbers to vote. We have 22 Senators, including yourself.

I order that the bell is rung for another eight minutes, so that we get the remaining two Senators.

*(The Division Bell was rung)*

**The Chairperson** (Sen. Kembi-Gitura): Order! Can we, please, sit down? Can the Bar be drawn now? I have already put the Question, but for the sake of good order, like I explained, we are voting on the amendment proposed by Sen. James Orengo, to amend the amendment to the Schedule as proposed by Sen. Mutahi Kagwe. That is the Question that I have put.

Can we now go to the Roll Call voting on the amendment by Sen. James Orengo? The Teller for the Ayes is Sen. (Dr.) Khalwale and the Teller for the Noes is the Senate Majority Leader.

*(Hon. Senators proceeded to vote)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Chairman, Sir. Please clarify.



**The Chairperson** (Sen. Kembi-Gitura): Order! Order! I will allow this once. It is very important that we understand each other, and I am going to explain it to you.

Sen. Mutahi Kagwe moved an amendment to the Schedule as it appears on the Order Paper. After he moved it, before it was debated, Sen. James Orengo, as he is entitled to do under Standing Order No.138 (3), moved an amendment to that amendment. We have debated that amendment by Sen. James Orengo to increase the figure to Kshs279 billion. It is on that Motion that we are now voting. If you vote “Yes”, Sen. Bule, it means that you are voting for Sen. James Orengo’s amendment. If you vote “No” it means that you are voting against Sen. James Orengo’s Motion. Are we clear?

Now, we are going to start again, because I do not want anybody to say that they were misled or did not understand.

Let us go to the Roll Call again!

**Sen. Bule:** Mr. Chairman, Sir, I am very sorry. I vote “yes”. I vote “no.”

**The Chairperson** (Sen. Kembi-Gitura): What is your vote?

**Sen. Bule:** Mr. Chairman, Sir, I said “no,” but I am very sorry.

*(Laughter)*

*(Hon. Senators proceeded to vote)*

## DIVISION

### ROLL CALL VOTING

*(Question, that the Schedule be further amended  
as proposed by Sen. Orengo put and the  
Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; and, Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. (Dr.) Khalwale

**NOES:** Sen. Bule, Tana River County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang’a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Lesuuda, Samburu County; Sen. Mbuvi, Nairobi County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; and, Sen. Sang, Nandi County.

**Teller of the Noes:** Sen. (Prof.) Kindiki

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 13

**NOES:** 14

**ABSENTIONS:** Nil

*(Question negatived by 14 votes to 13)*

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

*(Question, that the words to be inserted  
thereof put and negatived)*

*(Debate on Sen. Kagwe's amendment resumed)*

**The Chairperson** (Sen. Kembi-Gitura): Sen. James Orengo's amendment is lost. We will now revert back to Sen. Kagwe's amendment.

**Sen. Kagwe:** Mr. Chairman, Sir, I had already moved the amendment. I suggest that we go on and vote.

*(The Division Bell was rung)*

**The Chairperson** (Sen. Kembi-Gitura): Order, hon. Senators! We only have 35 minutes to finish our business. Here are the Tellers: For the Ayes – Sen. (Dr.) Khalwale and for the Noes Sen. (Prof.) Kindiki.

Could you, please, draw the Bar and close the doors?

We are going to Division and we are going to vote on the amendment by Sen. Kagwe as on the Order Paper. So, can we have the roll call? Just for clarification, if you vote "yes," you are voting for that amendment and if you vote "no" you are voting against it.

*Schedule*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question, that the Schedule be amended as  
proposed by Sen. Kagwe put and the  
Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule; Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen.

Kagwe, Nyeri County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Dr. (Sen.) Khalwale.

**Noes:** Nil

**Teller of the Noes:** Sen. (Prof.) Kindiki.

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, the vote is in and the results are as follows:

**AYES:** 27

**NOES:** 0

**ABSENTIONS:** Nil

*(Question carried by 27 votes to 0)*

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

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

**The Chairperson** (Sen. Kembi-Gitura): Next Order.

Please, open the doors. We only have 30 minutes and we need to finish this business within that time.

Sen. (Eng.) Muriuki, you can now move your amendment.

**Sen. (Eng.) Muriuki:** Mr. Chairman, Sir, I beg to move the following amendment.

### *Schedule*

**Sen. (Eng.) Muriuki:** Mr. Chairperson, Sir, I beg to move the following amendment:-

THAT, the Schedule be further amended by inserting the following new paragraph in row (a) (national allocation) immediately below the paragraph reading Equalisation Fund.

- (a) Construction of County headquarter facilities, Kshs1.2 billion
- (b) THAT, the Schedule be amended by inserting the following the new footnote after footnote (2)

“For assisting three counties namely Nyandarua, Tharaka Nithi and Tana River (Who did not inherit any premises from the former local authorities or provincial administration that could be used for headquarters to start developing their own headquarter facilities, Kshs400 million each.)

Mr. Chairman, Sir, during the earlier debate before we came to the Committee Stage, we had gone through and we all expressed, including myself, the sentiments that whether we are giving Kshs226 billion or Kshs238 billion, it is still not enough for what should be going to the counties. The fact that this House last year looked at the amount of money which should be going to the counties and, if nothing else, to uplift those counties who are less endowed and also facilitate the counties which have got facilities to run. However, when it comes to premises, even with a House like this; if you had the House of Senate and you do not have premises at all, even with that Equalization Fund we are talking about, it means you are starting from very far. For that reason, I would wish to persuade my friends on the other side, not to vote “no”.

*(Laughter)*

When the Bill came from the National Assembly, the principal aspect which we are agreeing with in the Second Reading really is the division between the national Government and the county governments. So, in a way, we had already agreed on the Kshs799 billion on the basis that we shall have time to renegotiate and get the proper formula.

Mr. Chairman, Sir, I would like to persuade everybody in this House that I will be number one myself to make sure that whatever steps we take, in future, to make sure that the funds we would like to go to the counties actually go there; to get an arbitrary figure like Kshs226 billion, to me, I think it is totally unacceptable.

Mr. Chairman, Sir, what we are requesting for the three counties is that, please, bring us at least to the level where we have a House to step in. Our county assembly is now operating in a Church premise. The Governor’s office is house on top of a building. A few Members here have been to Nyandarua and they can bear me witness.

Mr. Chairman, Sir, with those few words, I beg to move.

**The Chairperson** (Sen. Mositet): Who is your seconder?

**An hon. Senator:** You do not need a seconder.

**Sen. (Eng.) Muriuki:** Mr. Chairman, Sir, I will ask Sen. Bule to second.

**An hon. Senator:** You do not need a seconder.

**Sen. Bule:** *Ninaunga!*

*(Laughter)*

*(Question of the further amendment proposed)*

*(Sen. (Prof.) Anyang’-Nyong’o stood up in his place)*

**The Chairperson** (Sen. Mositet): What is your point of order, Sen. (Prof.) Anyang'Nyong'o?

**Sen. (Prof.) Anyang'Nyong'o:** Mr. Chairman, Sir, would I be in order to ask you to put the Question so that we vote because of time?

**The Chairperson** (Sen. Mositet): I think it is the feeling of Members that we do not need to ring the bell.

**Hon. Senators:** That is mandatory!

*(Loud consultations)*

**The Chairperson** (Sen. Mositet): Okay; let me put the Question.

Hon. Senators, the Division Bell will now ring for eight minutes, as per the Standing Orders. I feel that we just need to vote, once for all, what is remaining. That means, actually, that we will have to vote for Clause 2, the Title and Clause 1, because there were no amendments on them. As for Sen. (Eng.) Karue's, which is the only Motion which had some amendments--- So, at least when we vote, you will just indicate if it is for the Schedule as further amendment by Sen. (Eng.) Muriuki; you will either vote "yes" or "no" for Clause 2, Title and Clause 1. So, you will vote four times. We will start with the Schedule, as amended by Sen. (Eng.) Muriuki; for Clause 2, Title and Clause 1 as they appear.

*(The Division Bell was rung)*

Order, Senators! I believe the bell has been rung and I think all the Senators are in the House. Can we go to the roll call voting, please?

## DIVISION

### ROLL CALL VOTING

*(Question of the further amendment to the Schedule  
as proposed by Sen. (Eng.) Muriuki put and the  
Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Bule, Tana River County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen.(Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Obure, Kisii County; Sen. Sang, Nandi County, Sen. Obure, Kisii County and Sen. Wangari, Nairobi County.

**Teller of the Ayes:** Sen. (Prof.) Kindiki

**NOES:** Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy, Kwale County; Sen. Hassan, Mombasa County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Orengo, Siaya County and Sen. Wetangula, Bungoma County.

**Teller of the Noes:** Sen. Hassan

**ABSTENTION:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Khaniri, Kakamega County and Sen. Ndiema, Trans Nzoia County

**The Chairperson** (Sen. Mositet): Hon. Senators, the results are as follows for the Schedule as further amended by Sen. (Eng.) Muriuki:-

**AYES:** 17

**NOES:** 7

**ABSTENTIONS:** 3

Hon. Senators, the Noes have it. For the amendment to go through, we require about 24 Members.

*(Question negated by 17 votes to 7)*

*(Question, that the words be inserted be inserted,  
put and negated)*

*(Schedule as amended agreed to)*

*Clause 2*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. (Prof.) Kindiki

**Noes:** Nil

**Teller of the Noes:** Sen. Hasan

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**The Chairperson** (Sen. Mositet): Hon. Senators, the results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 27 votes to 0)*

*Clause 2 agreed to*

*Title*

*(Question proposed)*

### **DIVISION**

#### **ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. (Prof.) Kindiki

**Teller of the Noes:** Sen. Hasan

**The Chairperson** (Sen. Mositet): Hon. Senators, the results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 27 votes to 0)*

*(Title agreed to)*

*Clause 1*

*(Question proposed)*

**DIVISION**

ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesuuda, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwazo, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. (Prof.) Kindiki

**Teller of the Noes:** Sen. Hasan

**The Chairperson** (Sen. Mositet): Hon. Senators, the results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 27 votes to 0)*

*(Clause 1 agreed to)*

**The Temporary Chairperson** (Sen. Mositet): Hon. Senators, I now call upon the Mover to move.

**The Senate Minority Leader** (Sen. (Prof.) Kindiki): Mr. Chairman, Sir, I beg to move that the Committee doth report to the Senate its consideration of The Division of Revenue Bill (National Assembly Bill No.15 of 2014) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*



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

## REPORT, CONSIDERATION OF REPORT AND THIRD READING

### THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.15 OF 2014)

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole has considered The Division of Revenue Bill (National Assembly Bill No.15 of 2014) and approved the same with amendments.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move the Senate doth agree with the Committee in the said Report.

**Sen. Mositet** seconded.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is not a county matter now, but a procedural issue. So, I will now put the Question.

*(Question put and agreed to)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that The Division of Revenue Bill (The National Assembly Bill No.15 of 2014) be now read the Third Time.

**Sen. Orenge** seconded.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, during this debate a very important issue of which accounts to be used has arisen. I would like to say, at this point, that it is important that the two Speakers consult and see whether it is not possible to ask the Public Accounts Committee of the National Assembly to start with last year's accounts before they do the others.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, seeing that no other person wants to take the Floor, we will proceed to the last Division of the night. I will now put the Question, which is, that the Division of Revenue Bill (National Assembly Bill No.15 of 2014) be now read the Third Time.

Ring the Division Bell!

*(The Division Bell was rung)*

*(The Bars were drawn)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! Can we take our seats, please? I notice that the Bars have been drawn without instructions or authority. Why are we in a hurry? We are here until we finish the business tonight. We are in the process and will not stop. The doors may be closed now.

*(The doors were closed)*

We are going to our last Division. The Teller for “Ayes” is Sen. Boy Juma Boy and the Teller for “Noes” is the Senate Majority Leader (Sen. (Prof.) Kindiki).

*(The Division Bell was rung)*

## **DIVISION**

### **ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Hassan Omar, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wangari, Nairobi County; and, Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. Boy Juma Boy

**Noes:** Nil

**Teller of the Noes:** Sen. (Prof.) Kindiki

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 27 votes to 0)*

*(The Bill was read a Third Time and passed)*

**ADJOURNMENT**

**The Deputy Speaker** (Sen. Kembi-Gitura); Hon. Members, that marks the end of our business today. I want to thank all you, most sincerely, for what we have managed to do today, 15<sup>th</sup> May, 2014.

The House stands adjourned until Tuesday, 3<sup>rd</sup> June, 2014.

The House rose at 12.10 a.m.