

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 18th July, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

(The Speaker (Hon. Ethuro) consulted the Clerk-at-the-Table)

The Speaker (Hon. Ethuro): Order, hon. Senators! I am informed that we have a quorum. Let us proceed with today's business.

NOTICE OF MOTION

The Speaker (Hon. Ethuro): Sen. Nabwala, I do not see you stand in your place. I see you have a notice of Motion. Proceed to the Dispatch Box.

(Sen. Nabwala proceeded to the Dispatch Box)

Even if your notice is listed on the Order Paper, you still have to stand up to be recognized.

Proceed.

ESTABLISHMENT OF COUNTY PUBLIC HEALTH COMPLAINTS BOARDS

Sen. Nabwala: Mr. Speaker, Sir, I beg to give notice of the following Motion to the Department of Health:-

THAT, concerned with the rising cases of patient mistreatment, negligence and professional malpractice by medical personnel in public and private health institutions in Kenya which take the form of misdiagnosis, wrong decisions on treatment and prescription, medical or surgical errors, physical or verbal abuse, detention for inability to pay for

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services and alcoholism; aware of the devastating effects of such acts of commission and omission which have resulted in suffering, permanent injury or deaths of innocent Kenyans contrary to Articles 26, 43(1)(a) and 53(1) of the Constitution; concerned that most of those affected are the rural poor; further concerned that there are very few channels of addressing these abuses; the Senate urges the Government to establish public health complaints boards in all the forty-seven counties to address the systematic accountability issues that underlie rights violations in healthcare facilities in Kenya.

STATEMENTS

TERRITORIAL STATUS OF MIGINGO ISLAND

Sen. Haji: Mr. Speaker, Sir, I beg to issue a Statement on behalf of the Senate Majority Leader. Sen. Orendo requested a Statement in regard to the status of Migingo Island following the recent incident where a confrontation was reported between some administration police and the Uganda police officers. The hon. Senator requested to be informed of the position of the Government regarding the status of the island. He also requested to be informed which---

The Speaker (Hon. Ethuro): Order, Sen. Haji. I do not see Sen. Orendo around.

Sen. Haji: Mr. Speaker, Sir, he must be here.

The Speaker (Hon. Ethuro): Sorry, what did you say?

Sen. Haji: Mr. Speaker, Sir, I am waiting for your direction.

The Speaker (Hon. Ethuro): Do you have another Statement to issue?

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

The Speaker (Hon. Ethuro): Why do you not start on that one? In the meantime, Sen. (Prof.) Anyang'-Nyong'o is directed to deliver Sen. Orendo to the House for his Statement.

Sen. (Prof.) Anyang'-Nyong'o: To the House?

The Speaker (Hon. Ethuro): Yes.

Sen. (Prof.) Anyang'-Nyong'o: Much obliged, Mr. Speaker, Sir.

(Sen. Haji stood up in his place and murmured something)

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

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, because of the seriousness that we give institutions of this country, it is important that the public continues understanding that when the Speaker is addressing the House, an hon. Senator is completely out of order to stand there and interject, even before you give your direction. Is Sen. Haji in order?

The Speaker (Hon. Ethuro): He is completely out of order! I heard some murmurs. I thought he would repeat what he said. Obviously being Sen. Yusuf Haji, a man of long experience, he knew he would invite the wrath of the Chair if he repeated

what he said. So, he decided not to repeat what he said. I did not hear. Definitely, the intention was there. It is absolutely out of order, Sen. Haji.

Sen. Haji: Mr. Speaker, Sir, I apologise. I was trying to say I was waiting for your direction.

The Speaker (Hon. Ethuro): Proceed with the other Statement.

GOVERNMENT EFFORTS TO SUPPORT MIRAA TRADERS

Sen. Haji: Mr. Speaker, Sir, the hon. Senator who requested for this Statement is also not here.

The Speaker (Hon. Ethuro): Which Statement is that?

Sen. Haji: Mr. Speaker, Sir, the Statement was sought by Sen. Murungi on the issue of *miraa*.

The Speaker (Hon. Ethuro): Who is presenting the Statement for the Business of the Senate for the coming week?

(The Speaker (Hon. Ethuro) consulted the Clerk-at-the-table)

Hon. Senators, I note that there are many Statements that are currently outstanding. We have one on the Transfer of National Government Functions to County Governments. This should come from the Chairperson of the Committee on Devolved Government. There is also another one on Government Efforts to Support *miraa* Traders. I guess that is the one Sen. Haji wanted to present. The Statement was sought by Sen. Murungi. The Statement on Migingo Island was asked by Sen. Orengo, on behalf of Sen. (Prof.) Anyang'-Nyong'o. Since Sen. (Prof.) Anyang'-Nyong'o is here, we can proceed with it.

Proceed, Sen. Yusuf Haji.

TERRITORIAL STATUS OF MIGINGO ISLAND

Sen. Haji: Mr. Speaker, Sir, Sen. James Orengo, requested for a Statement with regard to the status of Migingo Island following a recent incident where a confrontation was reported between some administration police and Uganda police officers. The hon. Senator requested to be informed of the position of the Government regarding the status of the island and which security personnel occupy and govern Migingo Island and the circumstances that surround the confrontation that occurred between the two police services. Lastly, he requested to be informed of the efforts that are being made to resolve the dispute over the island and to ensure that the island remains an integral part of the territory of Kenya without any foreign forces occupying or administering it.

Mr. Speaker, Sir, I wish to state as follows:-

According to the Government of Kenya, the international boundary between the two countries is defined by the Kenya Colony and Protectorate (Boundaries) Order in Council of 1926 which clearly identifies Migingo Island as being in Kenya. The island was peaceful until 2004 when it was occupied by Ugandan forces that hoisted their flag and started harassing Kenyan fishermen.

Mr. Speaker, Sir, the circumstances surrounding the recent incident are that on 30th June, 2013, at around 2.00 p.m., three Administration Police Officers, all of Ugingo Island APC Camp, were assaulted by a Ugandan police officer in charge of Migingo Island, S.P. Rashid Ogare, when they went there for shopping, claiming that administration police officers were not part of the communiqué which was agreed upon by the two governments. The officer is alleged to have drawn his gun and ordered his men to get ready, besides roughing up the three officers and inflicting injuries as follows:-

1. APC Hassan Abdul Kadir sustained injuries on palms, neck and back;
2. APC Gideon Waruru sustained bruises on both legs;
3. APC Augustine Maina sustained bruises on both legs.

The officers went back to Ugingo Island and later went for medical checkup in Migori.

Mr. Speaker, Sir, it has been established that this conflict could have been a reaction by the Uganda police officers following an incident that had taken place earlier the same day where it is reported that superintendent of police, Rashid Ogare informed the officer in charge of police, Migingo Island, IP Richard Omayo that they needed to have their boat repaired and were proceeding to take it to Nyandiwa in Gwasii District, Homa Bay County. However, though the Kenya Police inspector complied, the AP officer in charge at the neighbouring Ugingo Island, Chief Inspector of Police Hamadadi advised IP Omayo that the Uganda police should observe the international code and not cross over to Kenya while armed and in uniform, and that they should be escorted by the Kenya Police to Nyandiwa.

Mr. Speaker, Sir, it was alleged that the Ugandan officer was incensed by this directive and thus declared the AP personnel based at Ugingo Island *persona non grata* on Migingo Island. It is further noted that the Uganda police have increased the number of officers to 35 though the agreement in the Joint Communiqué was that each country was to provide 12 officers thus creating tension between the two police services.

The interjection by the AP officer requiring that the Uganda police be allowed to seek repair services in Kenya on condition that they leave their fire arms behind and be escorted by their Kenyan counterparts was an informed decision. Apart from being an international norm, it was also advantageous to the Ugandan police considering the hostilities they have drawn upon themselves from among the Kenyan fishermen who have complained of being harassed by Ugandan police over the years.

Mr. Speaker, Sir, in an effort to resolve the incessant dispute over the territorial boundary between the two neighbouring countries, several meetings have been held which culminated into the signing of an agreement to launch a joint survey work along the waters of Lake Victoria on 11th May, 2009. On 8th July, 2009, however, a disagreement arose among the survey teams on the procedure to be followed. The Ugandan team insisted on the construction of boundary pillars before the survey work while the Kenyan team wanted the survey work to be carried out according to international standards before the construction of boundary pillars which is, in fact, the last stage in the survey process.

Mr. Speaker, Sir, consequently, the Minister for the then Provincial Administration and International Security and his Ugandan counterpart held a joint

ministerial consultative meeting in Nairobi from 25 to 26th July, 2011 where it was agreed that a joint survey exercise be completed within three months. In addition, police chiefs of the two countries met in Kampala, Uganda, in August 2011, where an elaborate memorandum of understanding spelling out the Standard Operating Procedures (SOPs) guiding the operations of the police officers from the two countries were developed. The SOPs have been used to guide the operations of the Kenya and Uganda police officers in Migingo. Similarly, the two technical survey teams met in Kisumu from 11th to 13th August, 2011, but failed to produce a report of the joint survey due to technical disagreements.

Mr. Speaker, Sir, as a way forward, the Government will continue to engage the Ugandan authorities for the joint survey team to resume in finalizing the beaconing of the boundary. To this end, the Ministry of Interior and Co-ordination of National Government has organized for a joint Kenya-Uganda border commissioners/administrators meeting to be held between 5th and 9th August, 2013 where this issue forms part of the agenda.

Thank you, Mr. Speaker, Sir.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I apologise on behalf of Sen. Orengo who is held up somewhere. But I will hold brief for him.

Having received the Statement from Sen. Haji, could he explain to the House why the Ugandan security forces have systematically been belligerent against both the Kenyan security forces and the residents of Migingo Island while negotiations are on-going to determine the legal boundaries in that area?

The Speaker (Hon. Ethuro): Let us hear from Sen. (Dr.) Machage. If we can be as brief as Sen. (Prof.) Anyang'-Nyong'o has been, the better for Sen. Haji.

Sen. (Dr.) Machage: Mr. Speaker, Sir, my name is Sen. (Dr.) Machage, not Sen. (Prof.) Anyang'-Nyong'o.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! Did the Chair call you Sen. (Prof.) Anyang'-Nyong'o? I thought I called out Sen. (Dr.) Machage. If I called out the name of Sen. (Prof.) Anyang'-Nyong'o, why did you respond?

(Laughter)

Sen. (Dr.) Machage: Mr. Speaker, Sir, it was on a light note. I apologise.

Migingo Island is in my county and hence the concern. The legitimacy of a Government is to protect, not only the security of its citizens, but also defend the boundaries of the country, in this case, Kenya. There has been a systematic ignoring of intimidation of my people in Migori County at Migingo Island.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! You are seeking a clarification, but you are now delivering another Statement.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I am building my case—

The Speaker (Hon. Ethuro): Please, do not do so. Yours is just to seek a clarification.

Sen. (Dr.) Machage: Mr. Speaker, Sir, could the Government tell this House if the boundaries between Kenya and Uganda at Migingo area are not protected because Migori County is predominantly in the opposition?

The Speaker (Hon. Ethuro): Yes, Sen. Musila.

KILLING OF 12 PEOPLE IN NYANYA
VILLAGE, KITUI COUNTY

Sen. Musila: Mr. Speaker, Sir, I thank Sen. Haji for the Statement. I had requested clarification on the issue of the 12 people who were murdered in my county at a place called Nyanya. It is about a month now since this unfortunate incident happened. The culprit is yet to be apprehended and continues to send Short Message Services (SMS) threatening villagers. As of now, he is still at large. What is the Government doing to arrest this criminal, so that the villagers of Nyanya are at peace?

DESTRUCTION OF BOUNDARY PILLARS BY
UGANDAN AUTHORITIES

Sen. Munyes: Mr. Speaker, Sir, it is surprising that pillars are being brought down by Ugandan authorities. I want clarification on the other pillars along the same border. We have the Ugandan escarpment that borders Turkana and West Pokot. What comprehensive demarcation is being undertaken to ensure that this border is demarcated and the pillars that were brought down and removed by authorities or pastoralists along this escarpment are reinstated and, therefore, put in the right position?

The Speaker (Hon. Ethuro): Let us have the last two clarifications from Sen. Kivuti and Sen. (Dr.) Khalwale.

Sen. Kivuti: Mr. Speaker, Sir, whereas the Government of Kenya spends so much money in collaboration with the Government of Uganda to do the survey work, could the responder clarify how much money has been spent, so far, on the demarcation works to establish the Kenyan boundaries? He should also tell us about the coordinates of the actual boundary position which, whether there is a beacon or not, the coordinates are factual.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, at Migingo Island, the bottom line is the resource called fish. Kenyans at Migingo want to have an opportunity to fish, and so do the Ugandans. Could the responder tell us why they have allowed Ugandan fishermen to enjoy protection from Ugandan police and we have refused to deploy Kenyan police to also protect Kenyan fishermen, so that they also enjoy the fish resource?

The Speaker (Hon. Ethuro): Sen. Haji, you can now respond.

Sen. Haji: Mr. Speaker, Sir, first, to respond to the question by Sen. (Prof.) Anyang'-Nyong'o on why Ugandan authorities have been belligerent in spite of the fact that various measures have been put in place to try and resolve the issue of Migingo Island, I agree with him that this matter has taken quite a while to be resolved. But since a meeting will be held between 5th and 9th August, 2013, hopefully, we will be able to reach an agreement.

On the question raised by Sen. (Dr.) Machage, Migingo Island is in Kenya. There is no question of whether people in the opposition live there, or not. If that is the case, the former Prime Minister is the leader of the opposition. It is wrong to believe that the people who inhabit there are from the opposition and that is why this matter is not being resolved.

Mr. Speaker, Sir, on the question raised by my mentor, Sen. Musila, as to why the “guy” who murdered many people has not been arrested, I pledge that he gives me more time since there were a number of issues that were requested. I have asked to be given the answers together with a number of other insecurity related issues that were raised. Hopefully, I will respond to this issue next week.

The Speaker (Hon. Ethuro): Sen. Haji, the other concern of your mentor is that as you take your sweet time, the one you call the “guy” is still threatening villagers. What are you doing in the intervening period, at least, to stop the threats?

Sen. Haji: Mr. Speaker, Sir, I know the police are following up this case. They are trying to trace him because he is hiding somewhere. One of these days, he will resurface and they will be able to arrest him. I will even advise them to use the current technology to reach him wherever he is hiding.

Mr. Speaker, Sir, on the issue raised by Sen. Kivuti on the amount of money that was spent on the survey, this is a totally new question. I am not in a position to respond to it.

My naughty friend, Sen. (Dr.) Khalwale – it is good the Chair did not hear me!

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Haji! I would have allowed that to pass on two accounts, assuming that I did not hear. But I heard you. I was also hoping that, that friend will also complain, but he has not. Since I heard you, you need to withdraw the word “naughty”.

Sen. Haji: Mr. Speaker, Sir, I withdraw and apologise. *Naomba msamaha.*

Our citizens in Migingo Island are being protected. As I said earlier, there are already police officers on the island. They are giving our fishermen the protection they require, both individually and in their fishing undertakings. As long as they do not cross to areas where we do not have jurisdiction, we will continue to protect them.

Mr. Speaker, Sir, the issue of pillars is a new question. However, what I know is that before I left Government, a decision had been made to reinstate all our boundary pillars. This had been done with Ethiopia. The second stage will be with Uganda, Tanzania and, finally, Somalia. This exercise is ongoing and will be reinstated.

It is unfortunate that pastoralists are the worst victims of this because they tend to use spears and destroy the pillars.

Sen. Kivuti: On a point of order, Mr. Speaker, Sir. The Senator has not addressed my issue.

The Speaker (Hon. Ethuro): I am glad you spoke before I gave you a chance. He said that this is a new issue and that he would seek more information. That is the time you should have sought new information. That matter is settled there.

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. Thank you for this opportunity. I listened to the Chairman, Sen. Haji, talk about the issue of transition. As my history and the issue of Migingo serves me--

The Speaker (Hon. Ethuro): Order, Sen. Okongo. We concluded that matter. The next statement is from Sen. Haji.

GOVERNMENT EFFORTS TO SUPPORT
MIRAA TRADERS

Sen. Haji: Sen. Kiraitu Murungi requested for an official statement from the Government on;

- (i) whether *miraa* is a drug or a cash crop;
- (ii) what challenges *miraa* farmers and traders are facing regarding marketing the crop within Kenya and internationally, especially in European markets; and,
- (iii) what the Government is doing to mitigate these challenges.

I beg to reply.

Miraa is a plant whose fresh leaves and soft twigs are chewed to release the juice containing cathinone and cathine. *Miraa* is a cash crop since it is planted and marketed for commercial purposes. It has deep root and cultural and economic importance to the community concerned particularly the producers. Any effort to regulate its production, sale and consumption will call for the involvement of key stakeholders, including the community, political and civic leaders. The Government is aware that the main challenge that farmers and traders of *miraa* are facing is that the local and international drug control agency is pushing for the ban and control of *miraa* consumption.

To mitigate these challenges, the Government will form a taskforce to conduct an in-depth study on the production, sale and consumption of *miraa*. The taskforce will facilitate dialogue with the relevant stakeholders, including the affected communities and policy makers in order to come up with sustainable interventions.

Sen. Murungi: Mr. Speaker, Sir, I would like to thank the Senate Leader of Majority, through Sen. Haji, for the statement they have given. However, the statement is erroneous and totally or grossly inadequate. You have heard the Senator saying that *miraa* contains two chemical drugs, cathine and cathinone which is not correct.

I have a report done by the British Home Office as late as July 2011. This report is a major study of *miraa* that reviews all the research that has been done on that subject. The report concludes that *miraa* does not contain cathinone, but contains cathine which is not a dangerous drug.

Since the Government seems not to have read this, I would like to lay this report on the Table for the Government to read.

(Sen. Murungi laid the document on the Table)

There was a law passed in 1994 by the Parliament of Kenya; The Narcotic Drugs and Psychotropic Substances Act, 1994. This is the one that defines what is a dangerous drug in Kenya, and what is not. This law has not been changed, amended or repealed.

Could the hon. Senator inform us on what basis the doubt on whether *miraa* is a cash crop or a drug continues when the law that was passed by Parliament is very clear? *Miraa* is not a drug. Could he state very clearly whether the Government is following the law, especially the Narcotics Drugs and Psychotropic Substances Act, 1994?

Could I ask two other clarifications, or should I wait for him to respond?

The Speaker (Hon. Ethuro): You have to complete. Once you leave, you are done.

Sen. Murungi: Thank you, Mr. Speaker, Sir. That was the first one. There is number two---

The Speaker (Hon. Ethuro): Order! Those are already two clarifications. The Chairman must comment on whether he has read the report or not. The second one is about the law.

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

Sen. Murungi: Mr. Speaker, Sir, I will allow, but not now; it can wait.

Secondly, the purported ban of *miraa* by the British Government is contrary to the law and to medical and scientific evidence as stated in the report that I have just tabled. Indeed, the Minister herself said that her own Advisory Council of Drugs, had not advised on the ban on *miraa*.

Since that ban is illegal and *miraa* producers are organizing themselves to file a case in London to challenge the Minister's illegal ban, could the Senate Leader of Majority inform this House whether the Government will support *miraa* farmers to file the case in the UK just as it did in supporting the Mau Mau file their case in the UK?

Finally, since it is the fundamental root of every Government to protect the fundamental interests of its citizens, what is the Government doing to protect *miraa* farmers in Meru whose economy is on the verge of collapse? We are going to be driven into poverty as the taskforce goes to work. We do not know how long it will take.

I would like to now be informed by the *emeritus* Attorney-General Amos Wako.

The Speaker (Hon. Ethuro): Order, Sen. Murungi! It is only the Chair who allocates time. You can only allow to be informed during your time. You cannot exhaust your time and allow others to inform you. Who is Sen. Wako informing? You have already exhausted your time. So, we will get someone else.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. I rise to plead with you because Sen. Amos Wako is the longest serving Attorney-General in the Commonwealth. He knows more than anybody else. Therefore, I think it is in the interest of this country to allow him to inform us about the legality of this ban. This is just a plea.

The Speaker (Hon. Ethuro): While I appreciate your plea, we do not change Standing Orders on the basis of pleadings. For all the reasons you have suggested, Sen. Amos Wako has 101 ways available to him to inform the House, but definitely, not through you.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I would like to thank the Chairman, Sen. Haji, for that response. I come from Mandera County. We are consumers and not producers of *miraa*. I would really be surprised if anybody came here and said that *miraa* is not a drug. *Miraa* is a drug and the worst possible form of drug. Anybody who has eaten *miraa* cannot issue that statement.

The Speaker (Hon. Ethuro): Order, you are not Sen. Haji. You should seek a clarification, but not to put a statement to the House. Seek the clarification in an appropriate manner.

Sen. Billow: Mr. Speaker, Sir, I would like to seek a clarification on these grounds. The reasons that the UK Government, the Netherlands and all other Governments, including our own National Agency for the Campaign against Drug Abuse (NACADA), gave for calling for the ban of *miraa* was that it was socially harmful and that it is a drug.

I would like to seek a clarification from Sen. Haji on whether, indeed, the reasons for banning are not economic, but the effects it has on the health of families and individuals?

Could he clarify that? That is the main reason it was banned, but not because of economic reasons.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Is it true that chewing *miraa*, having been assumed to have negative health effects, is not in any way different from smoking tobacco and drinking alcohol that is smoked and drunk in large amounts in the UK? Would that be the only reason why we should ban an innocent stimulant in the UK which is not different from the caffeine that you find in coffee? This is not different from *mukombero*.

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you may conclude.

Sen. (Dr.) Khalwale: Thank you Mr. Speaker, Sir. I am a promoter of African culture and, indeed, it is not only in the culture of the Ameru that we have this kind of unique herb, but also amongst us; the people of Western province, who have a stimulant in the name of *mukombero*. If the Government does not come out, all our men will die because they rely on *mukombero* during difficult days.

Sen. (Dr.) Machage: Mr. Speaker, Sir, could the Chairman, Sen. Haji, tell us the actual scientific name for *miraa*? Could he also give us a list of the documented or purported side effects of *miraa*? Is it true that included in the side effects are reduction of sexual drive, enhancing of peptic ulcers and, therefore, cancer and insomnia, which is loss of sleep?

The Speaker (Hon. Ethuro): Except for the rest, the one of the scientific name is not a clarification. So, you may wish to ignore it. You clarify an issue that was raised in the Statement. The issue of the scientific name had not been a subject of the Statement.

Sen. Muthama!

Sen. Muthama: Mr. Speaker, Sir, I come from Eastern Province and have a great interest in this matter. *Miraa* was consumed from the day Kenya became a nation. Why was that chemical analysis not done before Kenyans started consuming it? Why is it being done now? The Kenyan Government has not imposed this ban. Sen. Haji is actually telling us that the analysis that was done in the UK is what Kenya is going to abide by. Is he really in order to tell us that what was stated by the UK; that *miraa* is not a substance

that should be used in Kenya or anywhere else in the world, is what we are going to act on? This is an economic power.

The Speaker (Hon. Ethuro): Order! You have made your point.

Sen. Wako!

Sen. Wako: Mr. Speaker, Sir, thank you for giving me this opportunity. I want to state here that it is I, as the Attorney General, in 1994, who crafted that Act and moved it in Parliament, and it was enacted. At that time, we had to get the latest list of prohibited drugs from World Health Organization (WHO) and similar organizations. *Miraa* was not one of them. Secondly, somebody during the Second Reading in the National Assembly, I believe that it was somebody from Nyanza, tried to move an amendment to include *miraa* on the reasons now being stated. But I opposed. I said that it was not scientific enough for it to be a prohibited drug. But I want to tell you that there is one person to whom the Meru people should be very grateful. When the Member of Parliament from Nyanza stood up to say that they should include *miraa*, one Mr. Kalweo jumped up and ran from the Government side to the Opposition side and almost attacked that Member of Parliament. He asked him: "Do you want to kill my people?" That was the end of that.

But what I wanted to---

The Speaker (Hon. Ethuro): Order! Order, Sen. Wako! That kind of information is not useful to this House. I do not want my Senators to be crossing the Floor and attacking others.

Sen. Wako: Mr. Speaker, Sir, I agree with you. He was found out of order by the then Speaker. In fact, he was thrown out of the House for the rest of the afternoon.

Mr. Speaker, Sir, this is what I want to inform Sen. Haji and it may be useful. Some of those substances, including even cocaine and other drugs, which are prohibited under that Act, actually with the developments in Europe and other developed countries, are now being found to be useful for purposes of medicine. Some of those countries that are prohibiting *miraa*, like the Netherlands, parts of Germany, Scandinavian countries and so on, actually can take those drugs, but in a controlled atmosphere. There are places where you can go and take them. So, is it in order---

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

Sen. Wako: Mr. Speaker, Sir, I will accept the information.

Sen. Murungi: Mr. Speaker, Sir, I would like to inform Sen. Wako that *miraa* is not banned in the Netherlands because it is a dangerous drugs. It is banned in the Netherlands because it is said to encourage loitering and littering in the city. But as the report says, there is no country which has banned *miraa* on any scientific evidence.

The Speaker (Hon. Ethuro): Order! The two of you, Senator for Meru and Senator for Busia, cannot be informing each other all the time. Sen. Wako, I have been quite generous to you given all the accolades that you were given by the Senator for Meru. I think that you have exceeded now my generosity. Just conclude and resume your seat.

Sen. Wako: Mr. Speaker, Sir, thank you very much for that generosity. I was trying to ensure that it is done before I complete and that is why I rushed. Had I sat there and everything was completed, you would have ruled me out of order. It is precisely because of the reasons the Senator for Meru has given that I think that *miraa* should not

be banned. That should inform whatever studies that the Government is going to undertake on this one. I believe that we should go beyond just the issue of studies and way forward. But this is a matter that can be raised up at the relevant councils within the European Union.

The Speaker (Hon. Ethuro): Order!

Sen. Haji, first, I want to confirm that the document tabled by Sen. Kiraitu Murungi is not acceptable within the Parliamentary way in which we accept documents. Sen. Kiraitu is a senior Parliamentarian in many respects. Apart from a small top page of Home Office, the document must be authored by somebody who must also sign it. There must be some ownership of the document. So, this is just a good study for those ones who are interested. But the document is inadmissible for our purposes of debate. So, I would urge the Chair of the Committee to ignore it.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. The world has changed. There is a lot of technology. This document is now available through the internet and the Government can access it. So, requiring us to go to England to get a signed document, for this day and age, is really not appropriate. The document is authentic. I think that time has come for us to look at those practices.

The Speaker (Hon. Ethuro): Order! Sen. Murungi, you are only making your case worse. Your own Speaker was part of the team that amended the Communications Act. We actually included soft copies. So, all you need is to produce the website, so that we know the source. There has been a previous ruling even in the last Parliament to that effect. So, it is you who needs to change. You do not need to go to London. Just know how to submit documents to Parliament.

Let us proceed, Mr. Chairman.

Sen. Haji: Mr. Speaker, Sir, regarding the question raised by my worthy friend, Sen. Murungi as to whether *miraa* contains cathinone or not, I am neither a scientist nor a doctor. So, I am not able to answer. But the answer that was given to me is that it does contain it. Notwithstanding all those things, the taskforce that will be appointed will give people - both the growers and members of the public who feel the side effects of *miraa* - the opportunity to go and give their views when the time comes. Therefore, I will appeal that we should give the taskforce time to do its job.

Mr. Speaker, Sir, as to the side effects of *miraa*, I do not know whether those who spoke did so from experience. Those who have that experience will appear before the taskforce and tell it what they know about *miraa*.

Mr. Speaker, Sir, regarding the issue raised by Dr. Machage, I will not answer directly. I do not know whether he has chewed *miraa* before to be able to ask these questions. Again, I will urge that we give time to the taskforce to be able to answer those questions.

Mr. Speaker, Sir, regarding Sen. Wako's Bill of 1994, I feel rather intimidated when he says that one Member jumped from one corner to the other. I am sure that I will not fight with my brother, Sen. Murungi. Therefore, I think that I should be spared, because I have some experience also about these things. As the person answering the question, I do not want to mix my own experience and what the experts think about it. Let us wait until the taskforce comes into being.

GOVERNMENT POSITION ON CHEKARIGA-
TUNAI-MITUNGUU-MERU TOWN ROAD

Sen. Elachi: Mr. Speaker, Sir, I beg to give a Statement that was asked by the Senator for Meru regarding the Government position on Chekariga-Tunai-Mitunguu-Meru Town Road.

Mr. Speaker, Sir, the Senator had asked who the contractor is. The contractor of the above project is Intex Construction Company Limited; and the commencement date of the project was 18th June, 2012. The completion date is 17th December, 2014; a 30-month contract period. The contract sum is Kshs4,677,635,582. So far, the contractor has been paid Kshs837,786,982, which is about 17 per cent of the contract sum. The Government has budgeted Kshs450 million for this road in this financial year.

Mr. Speaker, Sir, the scope of the work and progress is as follows. The new road will have a carriageway of 6.1 metres width and 1.5 metres wide shoulders. The side ditch shall be trapezoidal with invert levels being at least 1.0 and below the road formation level. The works contract of the road project has been divided into two sections. In terms of progress, the contractor has mobilized the engineers on the road. Within the road, the accommodation of the resident engineer, his senior and junior staff has been arranged on rental basis at Mitunguu, Nkubu and Meru by the contractor, and are furnished and occupied. The eight project vehicles were supplied as required; one station wagon and a four wheel drive twin cab pickup are being used by the Kenya National Highways Authority (KENHA). The rest are used by the resident engineer's staff. The station wagon used by the resident engineer and which had an accident and one four wheel drive twin cab pick-up that broke down have both been replaced.

In terms of materials, the contractor's existing quarry site is at kilometres 24 plus 800 LHS adjacent to the road. This is currently in use. A new quarry has been identified at kilometre 64 plus 020 RHS. Aggregates have also been sourced at the Intex Quarry in Isiolo. The material sites in use for fills are kilometre 49 plus 970 LHS, kilometre 63 plus 300 RHS and kilometre 63 plus 500 LHS. Materials of sub-base are at kilometre 53 plus 800 LHS and kilometre 65 plus 250 RHS.

Mr. Speaker, Sir, with regard to the payments, as I said, I know that the Government has delayed in terms of disbursing the money. Therefore, that is why the contractor is a bit slow. But I also know that the contractor has not done his work. I believe that by September, the Government will have given the contractor the amount that he needs to continue with the work.

The Statement is signed by Eng. M.S.M. Kamau, the Cabinet Secretary.

The Speaker (Hon. Ethuro): The Senator for Meru.

Sen. Murungi: Mr. Speaker, Sir, I wish to thank you. I was actually trying to help the Senate Majority Leader because this road is in his county and the progress is extremely slow. But let me thank the Government, through the Chief Whip, for the information that they have given us.

Mr. Speaker, Sir, I have only two concerns; one, that the progress being made by the contractor is extremely slow and I think there is need for it to be accelerated. On the payments that have been made to the contractor, out of a contract sum of Kshs4 billion,

only Kshs800 million has been paid and we are half way through this contract. So, the clarification I want to seek is; is the Government going to pay the contractor the amount that is owed so that the contractor can accelerate the work as soon as possible? As I said, the contractor has only done 11 per cent of the work and we are mid way through the contract. What steps is the Government taking to ensure that the contractor who is behind schedule, catches up with the schedule and moves to complete the contract within the contract period?

The Speaker (Hon. Ethuro): Is there any other request for clarification?

Yes, Sen. Karaba? Let us take all requests for clarification so that you can take all of them at a go, Sen. Elachi.

Sen. Karaba: Mr. Speaker, Sir, thank you very much. Roads of this nature are not only in Meru. We have roads which are taking too long to be completed. Some of them have even taken 20 years. I know you are aware that there is a road from Sagana-Kutus-Kerugoya-Karatina which has been under construction for the last three years. What happened is that culverts are put, and within a week, they are removed. They put soil in one patch and after a week, they remove it and put quarry waste. That is the practice and exercise for that road and many other roads. Can we urge the Ministry of Roads, through the Chief Whip, to make sure that once road construction is started, it is completed on schedule?

The Speaker (Hon. Ethuro): Sen. Elachi.

Sen. Elachi: Thank you, Mr. Speaker, Sir. I want to say that the Government, through KENHA, indeed, is committed. As for the Mitunguu Road, the Government will be making the next disbursement of funds on the 17th of July, 2013. In fact, I believe, he will be getting his money today as per the records. In terms of the period that the contractor was given, within the agreements of the contract, the contractor has not been given any extension time. I believe he understands that he has to finish the road by 2014.

Mr. Speaker, Sir, we have three different contractors of roads within the Government institution. We have KENHA in charge of highways. The Cabinet Secretary is, indeed, the same person who worked on roads in the last Government. Therefore, I know that he is a committed Cabinet Secretary and there is no doubt he will deliver as he has promised.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Halima.

LACK OF CCTV CAMERAS IN MAJOR CITIES

Sen. Mohamud: Thank you, Mr. Speaker, Sir. As you know last week on Thursday, I sought a Statement from the Chairman of the Committee on National Security and Foreign Relations and he promised to give it today. I want to know why he has not given my Statement as promised.

Thank you, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Ethuro): That is correct; the Statement was on lack of CCTV cameras in major cities, especially Nairobi. Where is Sen. Haji?

Sen. Elachi, Sen. Haji could answer for everybody else and not for himself!

Sen. Elachi: Mr. Speaker, Sir, I will look for the Chairman. But indeed, I will also give a commitment to the Senator that he will answer to the House within one week.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): There was also a Statement which was sought by the Senator for Meru on the Provision of Security to County Assembly Speakers, which should be a fairly straightforward matter.

PROVISION OF SECURITY TO COUNTY ASSEMBLY SPEAKERS

Sen. Elachi: Mr. Speaker, Sir, I know that the issue of county assemblies is not only of concern to this House, but the whole country. We know every State Officer who works in a situation like the County Assembly Speakers need security. Therefore, the Government very soon will be deploying the security officers to all country assembly speakers.

The Speaker (Hon. Ethuro): Sen. Elachi, House Business must be taken very seriously. The issue of all of us knowing is too obvious; a Statement was sought on 4th July and the Senate Majority Leader made a commitment that it will be due on 11th July. So, we wanted a full response. If you did not have it, it is just good to ask for some more time. But just to come here and say “it is important; we know; we will do it---” That was the purpose of the request for the Statement. We wanted to know why you have not done it. Let us hear from the one who sought the Statement, the Senator for Meru.

Sen. Murungi: Thank you, Mr. Speaker, Sir. The HANSARD will bear me out. Today was the deadline for these three Statements to be delivered. I had sought statements on the road, *miraa* and the security for the speakers of county assemblies in the 47 counties. The first two have been answered. However, I do not know how he can forget the most important of them all, which is the security for the speakers of the county assemblies.

Mr. Speaker, Sir, we did emphasize that even DCs and DOs are having security. I, therefore, do not understand why important county assembly officials like the speakers could not be provided with two administration police officers when there are administration police officers all over. We need a very specific answer on this issue. I know the Senate Leader of Majority is in his office. Can he be asked to come and answer?

(Laughter)

The Speaker (Hon. Ethuro): Sen. Elachi?

Sen. Elachi: First of all, Mr. Speaker, Sir, the Senate Majority Leader is not in his office. I know he was called for an important meeting. That is why he is not here. But I want to say that we will give a conclusive answer on Thursday, next week, on this issue.

The Speaker (Hon. Ethuro): Sen. Tiole Ndiema.

RISING CASES OF INSECURITY IN TRANS NZOIA COUNTY

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I also asked for a Statement on the Security Situation in Trans Nzoia.

The Speaker (Hon. Ethuro): Yes, you did, but yours is due next week.

Yes, Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, can you help us by expressing yourself in the strongest terms possible on this matter?

The Speaker (Hon. Ethuro): Sen. Elachi, what did you respond to for the CCTVs?

Sen. Elachi: Mr. Speaker, Sir, I think that my party leader today has a bone of contention with the Senate Majority leader. I have just said very clearly that on Thursday, the Government and the Senate Majority Leader in this House will give a conclusive answer on this matter.

The Speaker (Hon. Ethuro): Sen. Elachi, it is not that your party leader has any bone of contention with the Senate Majority Leader. Indeed, the fact that you are the Chief Whip already means that there is no bone of contention. The issue that Sen. Murungi and many other Senators are raising, and which the Chair wants to underscore, is that Statements are sought on the Floor of this House, Chairs make commitments on when they will bring them and we have always been generous that you would even request a week or two weeks. Usually, at the very beginning, we have no problem with giving you whatever time you wanted. But once you commit yourself, the honorable thing to do is to deliver the commitment. If you cannot, the House is entitled to know why. So, I think what we are objecting to, one, is for the responsible Chairs or the Senate Majority Leader basically to disappear and, then, he sends you and you have no answer or apologies to make. For you, it is just a continuation; you are just seeking extension of time without any explanation. Surely, the Chair cannot allow that to happen. This is a House of hon. Senators where they represent counties and their people. So, we demand answers and answers must be given when they are supposed to be given. I think Sen. Murungi, that is strong enough!

Sen. Elachi: Mr. Speaker, Sir, indeed, my apologies. Regarding the Statement I have given today, I want to commit myself and I will follow up.

The Speaker (Hon. Ethuro): Good.

Hon. Senators, the other Statement which is due--- I thought there was some communication, especially for the one for Sen. (Prof.) Lonyangapuo; the Chairs were here, but they did not see it. So, they actually sought leave from the Chair to leave. So, we have agreed about next week. Let us take the last one from the Deputy Senate Leader of Majority.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 23RD JULY, 2013

Sen. Elachi: Mr. Speaker, Sir, hon. Senators, pursuant to the provisions of S.O. No.43(2), this is to present to the Senate the Business of the coming week.

The Rules and Business Committee will meet on Tuesday, 23rd July, 2013 at 12.00 p.m. to schedule business of the Senate for the week commencing Tuesday, 23rd July, 2013.

The Senate will continue with business on today's Order Paper that will not have been concluded. The Senate will also commence debate on a Motion by Sen. (Prof.) Anyang'-Nyong'o calling upon the Registrar of Political Parties to release funds to political parties and Sen. Kagwe's Motion on enhancing the capacity of county assemblies and equipping them with the necessary tools.

On Wednesday 24th July, 2013, in the morning sitting, the Senate will continue with business that was not concluded on Tuesday 23rd July, 2013. The Senate will also commence debate on a Motion by Sen. Nabwala concerning rising cases of patient mistreatment, negligence and professional malpractice by medical personnel in public and private health institutions in Kenya.

In the afternoon sitting, the Senate will continue with the business not concluded on Tuesday and Wednesday morning. The Senate will also consider the County Allocation of Revenue Bill, Senate Bill, Bill No.1 of 2013, Clause by Clause in the Committee of the Whole.

On Thursday, 25th July, 2013, the Senate will continue with business not concluded on Wednesday afternoon and consider any other business scheduled by the Rules and Business Committee.

I hereby lay the Statement on the Table.

(Sen. Elachi laid the document on the Table)

The Speaker (Hon. Ethuro): Good. Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

Sen. Elachi: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of S.O. No. 123, the Senate resolves that the publication period of the National Flag, Emblems and Names (Amendment) Bill, 2013, be reduced from fourteen days to thirteen days.

Mr. Speaker, Sir, the Bill comes at a time when we know we have confusion in terms of protocol, when we know that within the Constitution we do not have some of the names we hear today. There is confusion, especially when you look at how the governors behave in the counties and the citizens are confused about what is happening. It is important that the Senate now puts things in order and assists the citizens to understand the respect that we have given to different emblems that we have in our Constitution and

those who are allowed to use them and those who are not. It will also bring in a new level of respecting the different institutions we have.

I beg to move.

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

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

Sen. Kajwang: Mr. Speaker, Sir, I have listened to the reasons advanced by the Deputy Senate Majority Leader as to why we should approve the reduction of the publication period from 14 to 13 days, but I heard her only state how important this Bill is and how urgent it is. But I did not see the reason why we must reduce the days by one day. I thought that would be the explanation we require so that we make up our minds whether to accept it or not.

The Speaker (Hon. Ethuro): Maybe that was delegated to the Seconder. Your point will still be valid after hearing the Seconder of this Motion.

Sen. Murungi: Mr. Speaker, Sir, I rise to second this Procedural Motion. We do not need to re-emphasize the need for us to comply with the Constitution because we have said that this House is a House that is guided by the Constitution and the rule of law. There is urgency and importance in this matter. This is a reduction of only one day. It is really inconsequential and immaterial. The purpose of publication is for public input and I think within 13 days that have been availed, all the necessary input and participation will have had ample opportunity and, therefore, there will be no major public prejudice towards reducing the publication period by just one day.

I beg to second.

Sen. Kajwang: Mr. Speaker, Sir, I still stand on a point of order that I earlier raised. Even the eminent hon. Sen. Murungi, the King of Meru, has not explained why one day should be reduced, other than saying that one day is a short time. What is it? What is the urgency that makes us alter our rules by reducing the time by one day? That has not come out clearly. Maybe you could just rule that they have not convinced us and then we conclude.

Sen. Elachi: Mr. Speaker, Sir, based on the business that we have, I plead with the House because I know we are about to go for recess. Therefore, I request that we reduce it by one day.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. Should we allow Sen. Kajwang to abuse the Standing Orders of this House by making comments that he should be making in his contribution under the disguise of a point of order? Whatever he has to say, he should say it in his contribution.

The Speaker (Hon. Ethuro): Indeed, I want to agree completely with Sen. Murungi that the issue canvassed by the Leader of Delegation from Homa Bay County does not warrant a ruling from the Chair. Was it just a point of order for purposes of some mischief in the procedure or some misleading information being given by the Proposer and Seconder of the Motion? What Sen. Kajwang is trying to do is argue that he is not satisfied. You are allowed, but that should form an opinion on whether you want to support the Bill or not, but it is not a breach of the Standing Orders. He even went further to request the Chair to rule that he is not convinced so the Motion should not proceed. That is not for the Chair, but for the membership of this House to decide. So, I will do my

job, which is to propose the Question after being satisfied that the Motion has been moved and seconded.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I stand to support this Procedural Motion for only one reason, in addition to the ones that have been advanced: This House is aware that this matter, in a sort of reverse way, appeared to come up in the National Assembly and the main accusation was that the Senate was sleeping on the job. If we discharge this matter with the speed being suggested today, then our junior brothers in the lower House will realize that we are up to the task.

I support.

Sen. Kajwang: Mr. Speaker, Sir, I accept your ruling, which is the correct ruling, only that I am not convinced that we should reduce the time for publication from 14 days to 13 days, without any proper justification. There is some very good wisdom in why we fixed the publication period at 14 days. It gives the stakeholders time to read, analyze, comment, advise us, write to us and so on. So, for that reason, the 14 days have always been the custom and not only customary, but also procedural in our Standing Orders. So, to reduce them, you must have a very good reason. Not that we are sleeping on our job because we are not and not that this is urgent because it is not, at least, there must be a reason. We are being watched by students of debate in universities and secondary schools. They might be asking the reason advanced by the Senate Majority Whip for reduction of time by one day. It must be really persuasive. I have listened carefully and I think we should stick to our rules. I thought the Senate Majority Whip was going to say something like this. That this is the last sitting day of the week and that the next sitting day is Tuesday. So, if it is read today, the time will start running and maybe convince us to deal with it before we go home on recess; something like that. But to come here and try to persuade us without convincing us, is not right.

I oppose.

Sen. (Dr.) Machage: Mr. Speaker, Sir, apart from expression of mischief, this Motion has no purpose. Really, if there was a serious matter in terms of reduction of the number of days, then we would talk about reducing by a whole week so that the Motion is debated in good time. However, giving a token of only a day to, please, the Mover of the Motion and show the period has been shortened is not good enough.

Sen. (Dr) Khalwale: On a point of order, Mr. Speaker, Sir. Is my medical senior in order to suggest that this is an attempt to, please, the Mover when the logic is as follows: The publication day was on 5th July. If you add 14 days, that means that it matures on 19th. However, if you add 13 days, it matures on 18th which is today.

If you look at the Order Paper, you will see that if this Motion goes through, then the Bill will be due for First Reading today. We are, merely, making the House tidy. This is not a question of pleasing the Mover.

Is he in order to suggest that they are pleasing me?

(Laughter)

The Speaker (Hon. Ethuro): Order, let me dispose of that first. I do not see any anomalies in your senior suggesting that the days are being reduced to please you. That is his opinion. It is up to you to give a contrary opinion.

Sen. (Dr.) Machage: Thank you Mr. Speaker, Sir. Indeed, my junior colleague who is professionally very qualified and eloquent in this House should desist from taking small tokens like one day. He is worth more than that.

We know that there is a problem with titles. Some people have addressed Governors as; His Excellency and His Majesty. Some have even referred to someone as *hayati*. If the purpose is to save them from that title in one day, then there might be some justification to this. However, I think that this Motion is taking this House for a ride because a request has been made to reduce the number of days on this Motion. That difference of 24 hours is insignificant.

I beg to oppose.

Sen. Ong'era: Thank you, Mr. Speaker, Sir. I beg to oppose this Procedural Motion. The reasons being advanced are not reasonable. Standing Order No.123 says that should the Senate want to amend from 14 days to a shorter period---

I stand to be corrected by Sen. Murungi because as we learnt in the School of Law, this has to be reasonable. The reasons that have been advanced are not reasonable. We have just been told that reducing the days by one day does not make a difference. So, if we made them 14, this would not also make a difference. I join the sentiments expressed by the Leader of Delegation from Homa Bay, the Leader of Delegation from Migori and oppose this.

Sen. Bule: Bw. Spika, nashukuru kwa kunipa fursa hii. Mimi nikiwa Seneta wa Tana River sina pingamizi yoyote juu ya Hoja hii. Naunga mkono Hoja hii kwa sababu mambo ya siku moja ni tofauti na ya siku nyingine. Hata madakika huwa yanatofautiana.

Mhe. Seneta aliyezungumza mbele yangu alisema siku moja haiwezi kuleta tofauti yoyote. Siku moja inaweza kuleta mabadaliko. Hata dakika moja inaweza kuleta mabadiliko. Wale ambao wamesema siku moja ipunguzwe katika Hoja hii walilenga kuonyesha wakati una umuhimu wake.

Upishi haufai kuendelea kila wakati. Tusiwe tunapinga mambo kila siku. Siku moja ikipunguzwa, tunaweza kuitumia kufanya mambo mengine muhimu. Ni lazima tuwe waangalifu wa wakati. Wakati ni muhimu.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Given that this is a Procedural Motion; considering that we have a very important Bill to discuss this afternoon, the County Allocation of Revenue Bill; would I be in order to ask that you put this matter to rest, vote on it and take a decision instead of spending time debating on whether we should shorten the period or not?

Sen. G.G. Kariuki: Mr. Speaker, Sir, I would like to join my colleagues who are trying to find out why we are reducing the days from 14 to 13.

The Mover of the Motion did not do some consultations because if she did, then she would have been told that we are reducing the days so that we move to the First Reading. If we are moving to the First Reading, then I see no problem. However, nobody

here has told us that we will immediately move the Bill. I would support it if the Bill were to be moved now.

If not, I beg to oppose.

The Speaker (Hon. Ethuro): Order, hon. Members. Before I put the question, arising from the intervention by Sen. Khaniri, this is a Procedural Motion. Therefore, we should dispose of it. However, owing to the interest in terms of the opposing and supporting views, it is important, under those circumstances to allow a bit of ventilation. That ventilation is taking us somewhere.

First, I want to confirm that one day may appear insignificant to those who are particular, especially if you are a member of the medical profession where levels of confidence are higher than normal. If you recall, we passed our Senate Calendar. Therefore, we have a few days between now and the time we should be going on recess. In fact, the chief Opposer of the Motion gave a better reason. I agree completely that the Mover and the Senator destroyed their own argument. However, the Opposer gave the argument to the Mover.

When you commit a Bill to the First Reading that is the time when it is formally introduced to the House and goes to the Committee. The Committee has up to 30 days. So, if we do not start on it now and dispose it off before we adjourn, considering that we also have other Business for the House, it will run late. That was the rationale of bringing the First Reading to today so that from next week, it will be before the Committee. The Committee, we have directed, should work in good speed so that it can bring its report before we discuss it. That was for clarification.

COMMUNICATION FROM THE CHAIR

CONCURRENCE OF THE NATIONAL ASSEMBLY ON BILLS UNDER S.O No.145

The other issue I want to communicate to Members is that as the House Committee commits itself to fidelity and the rule of law, I wrote a letter to the Speaker of the National Assembly on 12th July on concurrence on whether a Bill concerns counties or not. This is important for you so that as you proceed, you can know that we have asked for the concurrence. I would also like to confirm that there has not been any feedback.

However, we will proceed because we have communicated according to the law. The procedural Motion does not affect counties. Therefore, everybody has a vote here. However, when it comes to the Bill itself, the Leader of a Delegation or the designated person will vote.

(Question put and agreed to)

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I thank you for quickly noting the inadequacies in the response by the Senate Majority Leader regarding the reasons for reduction of the publication period of the Bill as specified in the

Procedural Motion. Thank you for the advice regarding this Motion that you have given to the House.

BILLS

First Reading

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Standing Committee)

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL

(Sen. (Prof.) Kindiki on 17.07.2013)

(Resumption of Debate interrupted on 17.07.2013)

The Speaker (Hon. Ethuro): Sen. Karaba had the Floor and he has a remainder of 20 minutes.

Sen. Karaba: Thank you, Mr. Speaker, Sir, for giving me this chance. At the rise of the House yesterday, we were debating the County Allocation of Revenue Bill.

Mr. Speaker, Sir, I was trying to implore the Senators and House at large that much as we talk about revenue allocation, we should also talk about the source of the same revenue, so that we can enhance and make sure that we collect enough money from the same sources and allocate it to the various counties. We also attested that it is important not to kill the hen which lays the golden egg. At this juncture, I was able to articulate that counties which have the capability of producing enough to generate the necessary revenue, should have the national Government doing what we call protection of the same, so that they can continue generating more. We need to have this money collected. We need to have the roads along the Coast improved, so that we can have more tourists coming. This will ensure that we get more foreign exchange, which can then translate into revenue which will be allocated to the counties. In areas where we produce coffee, tea, rice and other cash crops, it is important to have roads and factories constructed. This will ensure that the commodities that are produced there are taken to domestic and international markets, through access roads, which must be maintained by the Government. In this case, I would suggest that the counties which produce these commodities and generate more revenue, like Kirinyaga County, be allocated more money, so that they can continue generating more revenue. So, the Kshs3.2 billion which has been allocated to Kirinyaga County is not enough. That is the reason we are even proposing that the Kshs210 billion which is the allocation to all counties, should be increased. Therefore, if all factors of production are to be considered, we can say that

there is need to appraise and upgrade those factors of production, so that they can produce more.

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

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

Madam Temporary Speaker, we also have problems in the counties. The staff who have been recruited there require a lot of training, so that they can manage the finances that they have been given. We hear a lot about what happens in the counties, where budgets are not well done. Some of them are even including vote heads which are not necessary to the residents of the counties. We have heard about how some budgets have allocations for luxury cars, entertainment and sodomy. I think that all those budgets need to be properly done. They should have---

Sen. Sang: On a point of order, Madam Temporary Speaker. Is the Senator for Kirinyaga in order to mislead this House that there are some counties which have allocated monies to promote sodomy? If he has information, he should table it in this House.

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, do you have evidence to table?

Sen. Karaba: Madam Temporary Speaker, we read about it in the newspapers.

The Temporary Speaker (Sen. Ongoro): Order! Newspapers cannot be a source of parliamentary debates in the Senate. You must withdraw that and apologize. You must make reference to facts that you can support.

Sen. (Dr.) Khalwale: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Do you need to be informed?

Sen. Karaba: Madam Temporary Speaker, I will require information from my friend, *Daktari*.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, allow me to inform the distinguished Senator from Kirinyaga that, indeed, he is right. In Bungoma County, Kshs50 million was allocated to pornography.

Sen. Karaba: Madam Temporary Speaker, I need not substantiate, because---

The Temporary Speaker (Sen. Ongoro): Those are two different things, Senator. You made reference to sodomy and Sen. Khalwale is talking about pornography.

Sen. Karaba: Madam Temporary Speaker, they are very much related, going by my English.

The Temporary Speaker (Sen. Ongoro): Okay! Proceed.

Sen. Karaba: Madam Temporary Speaker, going by my English, sodomy and pornography are two very related subjects.

Madam Temporary Speaker, what I am trying to suggest is that we must scrutinize the budgets that are made by the counties. This is because if we allow them to go the way they want, it means that every other time we will increase their allocations and this money will be misused. In the end, that money will not go to meet the desired

needs of the residents. That is why we need to know the budgets of the counties before even the Kshs210 billion is increased.

Madam Temporary Speaker, we need to think about how to sustain production, especially given the vagaries of weather. Sometimes we have shortage of rain and diseases and these are not catered for in the allocation. Therefore, I would suggest that we increase the Kshs210 billion to what was deleted. We had anticipated it to be even more than Kshs258 billion, so that subsidies can be given, especially during the time of distress and when we think that all is not well in the counties. It is, therefore, up to the Senate to consider increasing the money which is allocated to the counties, so that those counties which have problems arising from weather and so on, are compensated.

Madam Temporary Speaker, I beg to support.

Sen. Wako: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Bill; the County Allocation of Revenue Bill.

Madam Temporary Speaker, I speak with a very heavy heart, because this is a case where we, as a Senate, are caught between a hard place and a rock. As we all know, very much as we can justify that the amounts being allocated to the counties must be substantially increased, in this Bill we cannot do that because the cake is given. That cake is given under the Division of Revenue Bill. As you know, this House is challenging the unconstitutionality of the procedures leading to the assent of that Bill by His Excellency the President. We are, in fact, saying that it was completely wrong, constitutionally, legally, morally or otherwise, for the role of the Senate, which is set out very clearly under our Constitution, in respect of that very Bill, to have been completely frivolously left out by the National Assembly. It was wrong for the National Assembly not to have considered what the Senate had done, in respect of that Bill. It was wrong for the Speaker of the National Assembly, having agreed that this is a Bill concerning the county governments, to have changed his mind without even the courtesy of informing this Senate formally. He changed his mind from what he had originally told this Senate. So, it is with that heavy heart that I rise to contribute to this Bill.

Madam Temporary Speaker, obviously, our discussion on this Bill is completely without prejudice to the case that we have filed in court, challenging the Division of Revenue Bill. We are doing so because we respect the Constitution and law. As the saying goes, whether or not, you like the law, you must respect it. So, for as long as the Division of Revenue Bill is the law, to the extent that the Head of State assented to it, until it is declared unconstitutional by the court or otherwise amended properly, we have to proceed on the basis of the allocation given in totality to the counties, which we are now going to share out under this County Allocation of Revenue Bill. I wanted to make that clear, because there should be no misunderstanding whatsoever that we are somehow, in any way, compromising our case which is before the court. We are just doing so because of the fact that, that law is still law and has not yet been declared unconstitutional.

Madam Temporary Speaker, also, the counties have need for this money and are not going to be given anything until this County Allocation of Revenue Bill has been passed. Therefore, we owe it to our constituents, the counties, to pass this Bill. But in so

passing the Bill, we do hope that if we do succeed in our constitutional application, then a way will be found and must be found, in which we can revisit this issue of reallocation.

Madam Temporary Speaker, for example, in my own Busia County, we were expecting about Kshs4.2 billion allocation, based on the figure that the Senate had agreed on, and passed on to the National Assembly. But because we had to go back to the Kshs210 billion, we now have to do with Kshs3.5 billion, which is inadequate to meet the needs of Busia County. So, our position is that we are doing this so that, at least, the county governments can begin moving as we sort out the constitutional issues in court, as we also sort out other constitutional issues by way of amendments and so on, which we are currently discussing.

Mr. Speaker, Sir,

Hon. Senators: Madam Speaker!

Sen. Wako: Madam Speaker, Sir---

(Laughter)

The Temporary Speaker (Sen. Ongoro): Order! Sen. Amos Wako, we expect you to lead us in all these matters. You cannot make that kind of a mistake.

Sen. Wako: Madam Temporary Speaker, the problem is that the Senator for Homa Bay is confusing me.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Are you implying that you are confusing me with the Senator for Homa Bay?

Sen. Wako: No, Madam Temporary Speaker. What I am implying is that I should have been looking at you rather than the Senator for Homa Bay.

The Temporary Speaker (Sen. Ongoro): Very well. Do that.

Sen. Wako: Thank you very much, Madam Temporary Speaker.

Coming back to the Bill, my heavy heart is on that constitutional issue.

My other heavy heart, Madam Temporary Speaker, is on the fact that we, as a Senate, are not really discharging our constitutional mandate by enacting this Bill. To this extent, Article 202 of the Constitution of Kenya speaks very clearly about the equitable distribution of resources between the two levels of Government. It is very, very eloquent there that our job should be to ensure an equitable distribution of resources between the two levels of Government. Then, Article 190(1) of the Constitution states that:-

“Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.”

The Parliament referred to here is the Senate.

Madam Temporary Speaker, we shall enact this law, but in enacting it, I know for certain that we, as a Parliament, are not giving county governments adequate support by this legislation yet the Constitution requires us to give the counties, through legislation, adequate support. That is why when we succeed in court, we must revisit this issue for

the period of this financial year and find a way to allocate more resources to our county governments so that they have adequate support.

Madam Temporary Speaker, I say there is no adequate support because--- I will leave the details of figures here and there to the masters of the game, who are here – there is Sen. (Dr.) Khalwale here, Sen. Kiraitu there; there is Sen. G.G. Kariuki there – you know, they have mastered these figures and they will be analyzing them. I will speak only in very general terms, Madam Temporary Speaker, Sir---

(Laughter)

An hon. Senator: It is Madam Speaker!

Sen. Wako: Madam Temporary Speaker, I am sorry for my---

The Temporary Speaker (Sen. Ongoro): You are excused!

(Laughter)

Sen. Wako: I am sorry!

Madam Temporary Speaker, right now, we have different signals from the Government on what functions have been transferred to the county governments. Because sometime ago – and it was widely reported and we heard it with our own ears – communication was made in support of the fact that the Government is committed to ensuring that the county governments do operate; it was reported that all the functions had been transferred to the county governments; all of them! Then, yesterday in the morning on television and also before us, the Secretary for Devolution actually clarified that and said that what was meant by that statement was that it was the intention of the Government to transfer the functions which are set out in the Fourth Schedule of the Constitution; the intention! But the actual transfer is not yet completely done. But, then, stopping there, nobody could really tell us, if it is really so, what functions have been transferred and what have not been transferred. So, right now as we are talking, we are really in the dark as to what functions have been transferred to which counties, and so on. We are really in the dark as to what costing was done in respect of those functions because, as we know, Article 15 of the Fourth Schedule clearly states that before any function is transferred, there should be a criteria which must be met by the county governments in respect of that function to show that it is able to perform those functions. When it was said that everything was transferred, that was clearly in contradiction to the articles of the Constitution. When it was said that it was an intention and some functions had been transferred, we do not know!

(Laughter)

So, without knowing what functions have been transferred, when and where; without knowing the costing, how can we honestly know that the amount of money that we are now allocating is adequate? How can we know? Yet it is our responsibility to ensure that

through legislation, county governments are properly supported to function. So, that is a very big question mark there; we do not know what functions have been transferred.

Madam Temporary Speaker, I recollect that when we met the Secretary to the Treasury, he actually told us that they are operating on the basis that all functions had been transferred. But looking at the figures at that time, it was quite clear that the figure that we are now trying to allocate can barely meet the recurrent expenditures of the county governments. In fact, for a number of those counties – and I believe there are over 21 such counties– the figure was not even enough to meet the recurrent expenditures of those counties.

Madam Temporary Speaker, we are talking about the principles of a devolved government. A devolved government is not just there to provide jobs to people to work in whatever capacity; it is not just an employment bureau to provide jobs. The principles of the devolved government are to ensure that people and the communities in the counties self-govern themselves and can manage their own development. In fact, it is our belief that with the proper functioning of the counties, this country will develop faster economically and socially. Therefore, we are looking for money from the national Government to the counties which can now go to development expenditure. Consequently, to the extent that the figures here cannot even meet the recurrent expenditure of most counties, there is no item here which will go towards development. Now, are we, by enacting this, really supporting the county governments in their functions? That is the big question that must be asked. As I said earlier, Kshs3.5 billion in Busia County can barely meet anything. It can only meet the recurrent expenditure, and we have tried to push a few things here and there.

Madam Temporary Speaker, I say that we are cornered between a rock and a hard place because we have to enact this. I have noticed that the Senate Majority Leader, when he signed the memo and objects of this Bill, he actually mentioned very many shortcomings as far as this Bill is concerned. And yet we, as a Senate, must somehow, in spite of those shortcomings, enact and pass this Bill. That is why I want to emphasize again that we are doing it, but we anticipate that we shall be successful in the court case. If we are successful, we shall find a way of allocating more money to the county governments so that, at least, they can dedicate a portion of their budget to development expenditure.

Madam Temporary Speaker, it might very well be that due to time constraints and so on, we have to do this. But I think that when we start thinking about the next financial year, we should not make the same mistake – not the Senate – but the Government should not make the same mistake, or the constitutional organs should not make the same mistake. We should now do a proper budgeting and costing, knowing that this can be recurrent so as to give the county governments enough funds also for development expenditure.

Madam Temporary Speaker, before I sit down, although we recognize that the amount going to the county governments is barely enough, I think it is incumbent upon us – as the institution mandated to look after the interests of counties, as the House mandated to protect the interests of counties and their governments but, more importantly, as the institution which has an oversight role over whatever money goes

there – at least to state that the county governments, even if they receive that little, they should spend it wisely; and they should not squander it in unprocedural ways through corruption, other issues and so on. In other words, the little money they are going to get should be properly utilized.

Madam Temporary Speaker, you keep on hearing information here and there when you go round counties stating: “Oh, some money came from the Transitional Authority (TA) and we do not know where it has gone to, we do not know who has used it;” or “Somebody has just been given money, without any procurement, to go and deliver this or that.” I would like to inform county governments from this Floor that we, as a Senate, recognize that this money is not enough. But at the same time, we, as a Senate, have that oversight authority to ensure that whatever little there is should not be squandered in any way. It should be properly utilized and put to maximum effect. We shall play out our oversight role effectively, as set out under the Constitution, if they start misusing whatever little money they are getting. I know that my Vice Chair is very busy crafting some legislation on how that oversight role can be done; on how we can be involved, first of all, in the budgeting process and in that oversight role, both as Senators in respect of our respective counties, but also collectively as the Senate. That role is going to be played out.

Madam Temporary Speaker, I want to finish by telling the county governments that we know they are not getting enough money. We, as Senate, are going to fight for you to get more money out of the national cake; we are going to fight! But, at the same time, do not tie our hands by the misuse of the little money that you are going to get. That will not encourage us to ask for more.

With those few remarks, Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): Senator for Marsabit County; Sen. Hargura Godana.

Sen. Hargura: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this important Bill. This is a very important Bill. It is the first one which will get our counties moving and it is also the first Bill we are discussing here. Therefore, it is very important for us. It is also the first County Allocation of Revenue Bill we are doing, so it matters how we take off on this Bill.

Madam Temporary Speaker, Clause 6 of this Bill talks about it being based on functions which have been gazetted or which the Transitional Authority has transferred to the county governments. I am not aware of any gazette notice that gives the functions which have been devolved to the county governments. So, the Mover needs to tell us whether there is any gazette notice so that we can base our arguments on it. The only information we have is where the President says that all the functions have been devolved.

Madam Temporary Speaker, my question to the Mover would have been; what was used to determine that this Kshs198 billion we are discussing is enough to meet the functions of the county governments if all of them have been devolved. If you look at Fourth Schedule of the Constitution, most of the functions of the Government have actually gone to the county governments. The national Government remains with foreign affairs, security, defence, education and policy issues in some sectors. I am even

wondering where the 15 per cent came from because Article 203(2) talks of at least 15 per cent of the national generated revenue to go to the county governments. That basis of 15 per cent is not fair because if you have devolved more than half of the functions to the county governments, then how can you give them 15 per cent of the revenue? What does the national Government, which remains with less than half of the functions, do with 85 per cent? I think there is need to look at that and if possible raise it to maybe 50-50 or even up to 60 per cent to the county governments.

That not being the case now, I would like to bring to the attention of this House that we know that the county governments have already done their budgets. What was the basis of those budgets? How did they get their ceilings to actually do their budgets? We might be working on a Bill when somebody has already done what we are trying to do here. So, we need to know the basis of the county governments' budgets. The matrix that we are having here is what they are using or they had somebody else doing our role because it is the Senate which is supposed to come up with the allocation of revenue. The counties already have data which they used to work with to come up with their budgets. So, we need to look at that.

Madam Temporary Speaker, this Bill talks of comparison with the proposals by the Commission for Revenue Allocation (CRA) where it clearly says that CRA was proposing Kshs231 Billion while the National Treasury came up with Kshs198 billion. We know very well that CRA has come up with a formula. Now that it is not being followed, how sure are we that even this allocation in the matrix among the counties is actually based on any formula if the CRA formula was not followed in the first place? This allocation among the counties might not also be correct because we do not know what formula was used. The CRA gave the formula and it was passed in the last Parliament and now we are being given reasons why it is not being followed. So, what is being followed to generate this allocation which we are discussing?

In some sectors like the roads' sector, we have the issue of county roads and national roads. Normally, we have two components. We have the development and the maintenance component. The maintenance component is clear. The funding comes from the Roads Maintenance Levy Fund which is being managed by the Kenya Roads Board (KRB) and which is being shared among the authorities using a particular percentage. Another issue is the development component which is the major of the two. The Development component which comes from the Exchequer is normally with the Minister. Now that the roads have been split into county roads and national roads, there is no formula for sharing money meant for development among the two roads. I have confirmed from the authorities that there is normally no particular formula. This is something which remains with the Minister. He is the one who decides what goes where. That is why the development of roads in this country is skewed. It is the Minister who decides where the money should go and that is why the executive, which appoints the Minister, is the one which decides where the money goes. We actually need a formula of how that money meant for development should be shared so that we know that the money which the Ministry of Roads is getting goes to the county roads so that we can also have a formula of sharing it or including it in this. Right now, we do not know and that is where

we end up with our counties being given functions but funds are hidden somewhere. So, we need to get that development component.

Madam Temporary Speaker, my other issue with this Bill is the Equalisation Fund. We are told it is Kshs4.3 billion. For now that is what the law says because it is stated as 0.5 per cent but I am surprised that what is supposed to be equalization to heal the economic disparities among the counties is almost the same amount to what is going to political parties. The political parties fund is 0.3 per cent and the equalization fund to cure the economic disparities for the last 50 years is 0.5 per cent. This shows how serious we are taking the disparity. We are not serious about it and it has to be changed. This has to be something that can cure disparities like something close to 10 per cent.

When it comes to the matrix, the way it is presented, I do not know what the Mover of this Bill was trying to achieve when he came up with two columns; Column A and Column B. 15 per cent of the audited revenue is the minimum, then there is an additional and conditional allocation based on the formula. While we know we only have one equitable shared amount and the other amount comes from the Government whether conditional or unconditional, here we are having two columns which we do not understand. Why does somebody have to show us that we already have 15 per cent and there is an extra that we are being given. That should not have been there. I think we should have had two columns, one for the equitable share, which is in the Constitution, then the second one should be what we are getting from the national Government as either conditional or unconditional grants. This should not be county money because according to my understanding, what actually goes to the county is Kshs154 billion and the Kshs43 billion is targeting particular activities like the referral hospitals or ongoing donor-funded projects, which are also not throughout the country. Just to make sure that the column is not blank, you will find somebody getting Kshs100 million and others getting Kshs3 billion. So, it is better that such an issue comes out clearly so that we know what is actually due to us and which will apply across the country. Otherwise, it can also create disparities within the country when others are getting conditional funds and others are not getting and then we shall be told that it is what the Government said.

Madam Temporary Speaker, the other issue is about the usage of the funds, as others have cautioned. What is coming out clearly is that all the national Government staff or all the civil servants based at the county, other than the teachers and police officers, are supposed to be paid from this money. That is what the governors are telling us. That will basically mean that all the functions have been devolved. In my case, I am told that Kshs2 billion of the Kshs3 billion we are getting will go into recurrent expenditure. That is what the Government has been paying the civil servants. It is just a matter of transferring all the emoluments to the county governments.

The national Government has been crying over the wage bill. We have been told that the wage bill is about Kshs458 billion. More than half of that staff is going to the counties; but you are talking of Kshs200 billion in terms of wages and yet what we are given is Kshs198 billion. So, will you be able to pay the wages? We also have to check if there is a way the national Government can remain with payment of personal emoluments so that what goes to the county will just be recurrent in terms of running offices, facilitating staff to deliver services. We are told that the first thing that the Government is

offloading is the staff and they have even gone ahead to give a list, like we were told the other day by the Senator for Kitui that his governor has been given a list of 2,000 members of staff yet they have not even gone through all these issues of budgeting and even setting the ceilings. It is like the Government likes offloading the burden of dealing with personnel and that is why it is ready to give out lists before even sending the money. At the same time, if we are not careful, we might just be devolving the wage bill, as it has been said. If you have a wage bill of over Kshs200 billion and what you are sending is Kshs190 billion, then you might just be paying the wage bill and the governors will be set up for failure because they will not be able to deliver the services which the public expects of them.

Madam Temporary Speaker, mine is just to urge the Government that much as they want to devolve functions, they should also make sure that the necessary resources to undertake those functions are also devolved and that the 15 per cent, which I do not know by what means it found itself in the Constitution, because we never sat down and came up with a figure like that; we should have done an analysis of the cost of the functions which the Constitution intended to devolve. The 15 per cent should be based on something. When you come up with a percentage like that, then you expect the national Government to just give you 15 per cent and announce loudly that they have given us more than what the Constitution says. This figure of 15 per cent needs to be addressed. It needs to be changed to even 50 per cent so that justice will be done and the county governments are given enough funds. Right now, we are coming up with a situation whereby the national Government will remain with more money. The national Government has what used to be the Provincial Administration.

We passed a structure that came up with commissioners, among other things. Those people will have access to the 85 per cent. This will still be a system where the planning will be haphazard. You will have moved from those who will have done the planning to those who will be implementing; the county commissioners, all the way to chiefs. That will be a direct competition with the county governments. That is why there is a need to look at how the Government will spend the 85 per cent.

The Government has incapacitated itself on the ground. It has remained with money which it has to use on the ground. It may end up using people who are not qualified. We should implement what we have been running away from in terms of making sure that the people on the ground are the ones who decide their priorities and develop capacity at the county level. We will have a situation where we have capacity, people at the county but the monies with the wrong people.

Sen. Wamatangi: Thank you, Madam Temporary Speaker, for the opportunity to contribute to this very important Bill. I would like to begin by flagging off and highlighting one issue. I would like to inform my colleagues at the Senate that, indeed, our discussion and subsequent passage of this Bill is flagging ourselves to take on the most important journey and mandate of this House as bestowed upon us by the Constitution in Article 96. That is the role of oversight.

It is also worth noting that in the role of oversight, we will need a clear roadmap and guidance to execute it effectively as it is expected of us by the electorate. Before I

make much contribution, I would like to, not only highlight but to begin by making a disclaimer.

My disclaimer is that my support, with an amendment to this Bill is not tantamount to supporting the notion that was earlier created by the National Assembly that, indeed, this House does not have a role to play in the Division of Revenue Bill. Therefore, my contributions will absolutely be without prejudice.

I wish to acknowledge the fact that I join the House in expressing goodwill to the people of this country and to the counties that, indeed, we have been mandated by the Constitution to be guardians. I join them in that spirit such that when we contribute and discuss this Bill, we should do so, absolutely on the basis of ensuring that, indeed, the people of this country continue to enjoy the services and the lives they should enjoy as bestowed upon them by the Bill of Rights in the Constitution. However, there are very important issues that we should highlight as we discuss this Bill. One of the issues I will bring to the attention of this House is, indeed, the urgent necessity to review the parameters that are used to determine the amounts which are allocated to the counties as it is included in this Bill. I say this with a reason.

I will compare a Bill which has been presented here to one that has been discussed by the Parliamentary Budget Committee. I will use my County of Kiambu as an example. The Bill shows that Kiambu County is supposed to receive Kshs7.1 billion. Upon the application of the parameters which have been drawn by the Commission on Revenue Allocation (CRA), the allocation to my county drops to Kshs6.1 billion. That means that by sheer variance of those two comparisons, the Kiambu County lost a whole Kshs1 billion. That is notwithstanding the fact that, indeed, even if we were to receive the Kshs7.1 billion – I believe this is spread among all counties – the amount would be nowhere near meeting the needs leave alone the functions as devolved to the counties.

This also brings us to the other important issue that we need to flag and highlight. In the Constitution, it is provided that the share that is received by the national Government can be shared with the counties in a way of supplementing what has already been allocated to the counties. I would like to remind my colleagues of the necessity of ensuring that, indeed, when these funds have been allocated to the counties, they are spent prudently and responsibly. That is a constitutional mandate which has been bestowed upon this House. I would also like to highlight the fact that, indeed, according to the functions that have been devolved to the counties and upon receiving these allocations, it is clear that the funds that will be received will not be adequate.

Therefore, this Bill can only be passed on a very important condition. The condition is that we must move to discuss this Bill and subsequently pass it. The difference that will arise out of the costing of the devolved functions and the amounts received must be met by the national Government. The national Government must be ready, after these allocations have been received, to meet the difference between the cost of the functions and the amounts that will have been received. It is the only way that we will have acted responsibly as a House.

I also want to remind the House and the county governments of the necessity to be responsible in the process of making budgets. I would propose highly that in future, when county governments are considering their budget making teams, these teams must

involve and comprise professionals in budget making processes and financing, so that we do not have the kind of anomalies that we have seen in this Budget. To say the least, in this particular budget season, the cart was put before the horse. This is because the procedure of functions following cost was not followed. So, what we have is a budget full of guesswork and non-applicable estimates, because they are not commensurate to the functions that they intend to meet. Unless these anomalies are fully addressed, then we will virtually be going round in circles. We will claim that we have done our work, but at the end of the day, our people will be suffering.

Madam Temporary Speaker, as I finalize, I wish also to remind this House that as we pass this Bill, we even have a bigger constitutional mandate to ensure that these funds will meet the needs of the people who elected us into this House and the leadership of this country. This will ensure that the suffering that our people have been going through and their expectations that the process of devolution is going to bring about the change that was anticipated and is expected by the people who elected us, is realized.

Madam Temporary Speaker, with those remarks, I wish to support the Bill with amendments.

The Temporary Speaker (Sen. Ongoro): Order, Senators! This is a very important Bill and I would wish that all of us speak to it. The members of the various counties are eagerly waiting to hear what the Senators have to say about this. So, I wish to seek leave of the House that we reduce the time allotted to each speaker to a maximum of 12 minutes, so that all of us can speak to this Bill. Going by the silence, I take it that you are in agreement. Instead of having only two Senators speak, let us have as many Senators as possible. We can reduce the time to 15 minutes instead of 30 minutes. Is that reasonable?

Senator for Kakamega, take note that the time is now reduced by half.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, in the same spirit as those who spoke before me, I want to start with a disclaimer, that my support for this Bill is not tantamount to support of the devalued allocation, from Kshs258 billion to Kshs210 billion, as was done by the National Assembly. I, therefore, rise to support the exercise of horizontal division of revenue amongst our counties, but oppose the process that was used to arrive at the sharable revenue.

Madam Temporary Speaker, I would like to reiterate that counties deserve Kshs258 billion and not Kshs210 billion, as contained in the Division of Revenue Act. If passed without amendments, the Bill before the House this afternoon will be a great shocker to county governments. In fact, if you analyze these figures, it is only Kshs168 billion out of the Kshs210 billion that will be available to our governors to share out.

Madam Temporary Speaker, why do I say this? I would like to draw your attention on the matrix on pages 6 and 7. There is a column called Conditional Allocations. If you look at the sum total under that column, you will find that it amounts to Kshs43.9 billion. If you subtract Kshs43.9 billion from Kshs210 billion, you will remain with only about Kshs166 billion. This is because the balance of Kshs43.9 billion is not available to our governors. Yes, this is money which will be taken to the counties, but it is going to be used so as not to disrupt the current functions of regional referral hospitals where they are and other health facilities. If you compute this, it, therefore,

means that the Kshs166 billion on average, assuming that we were all to get the same, would amount to about Kshs3.5 billion. With Kshs3.5 billion, not Nairobi, Kakamega, Kiambu or even Bungoma will be able to do any development. They will simply spend all this money for purposes of paying salaries and other emoluments. To me, this is most regrettable.

Madam Temporary Speaker, as I regret this, I want to remember, with all due respect to my colleagues, hon. Senators and the leadership of the country, that the Jubilee Government, having locked out of the Executive appointments 39 communities out of the 42 tribes of this country, by way of Principal Secretaries and Cabinet Secretaries, could have redeemed itself by giving sufficient funds to those counties, so that they feel that even if their sons are not working with the Government, they were remembering and giving them funds. This is very important. I want to beg the pair of the President and his Deputy---

Sen. Wamatangi: On a point of order, Madam Temporary Speaker. Is it in order for Sen. (Dr.) Khalwale to impute by his statement that 39 communities out of 42 communities have been left out of all the appointments of Principal Secretaries? That is implying that only two communities have been appointed to the positions, and he knows that, that is not the correct position. Is he in order to mislead the House? The truth is out there that the people who have been appointed as Principal Secretaries are not from three communities. It is important for this House to uphold not only the truth, but also dignity, by making sure that the statements that we make can also be substantiated and upheld in principle and truth.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, this is why I started by pleading with my colleague Senators that this is without prejudice. You know, in Luo and Luhya culture, a woman belongs where she is married.

Madam Temporary Speaker, I want to speak to the issue of favouritism in this particular Bill. If you look at---

Sen. G.G Kariuki: On a point of order, Madam Temporary Speaker. Are you satisfied that Sen. (Dr.) Khalwale has substantiated his statement, as required by my colleague, Sen. Wamatangi?

The Temporary Speaker (Sen. Ongoro): I thought that he was in the process of still elaborating. Can you substantiate that and then proceed?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I had substantiated in very few words, and there is a rule in debate that a Member should not be repetitive. Your point of order is attempting to repeat what Sen. Wamatangi said and, therefore, it is null and void.

The Temporary Speaker (Sen. Ongoro): It is not upon you to give that verdict. Proceed with your contribution.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, thank you for the indulgence.

Madam Temporary Speaker, when I was campaigning, in fact, I used to say: "I am going to the Senate and will be there with James Orengo, Anyang'-Nyong'o, Otieno Kajwang', Kiraitu and Chris Obure." I never said that I will be there with Senators from that tribe or this tribe. I looked at these people as men and women of integrity, who would come here and refuse to shortchange any community in this country. Look at this

matrix, one, the weighting parameters in the formula for giving money to counties, my brothers and sisters; honourable Senators, is that population receives 45 per cent; poverty index receives 20 per cent and land area receives 8 per cent. When you look at this and visit the matrix critically, you look at Kakamega; it has been given Kshs6.8 billion and, at the same time, Kiambu has been given Kshs7.1 billion and Nakuru has been given Kshs7.4 billion in this matrix. What then begs an answer is that Kakamega is more populous; Kakamega is poorer; Kakamega is bigger than both Kiambu and Nakuru. If you doubt the population, please, do your research. I have come with me---

(Sen. Wamatangi stood up in his place)

The Temporary Speaker (Sen. Ongoro): Senator for Kiambu, we will give you your last point of order. Because we have now reduced the contributing time, let us allow people to debate.

Please, stick to referring us to the point of order and not to contributing.

Sen. Wamatangi: Madam Temporary Speaker, I will be very brief, but it is also important that the statements that are made here by Senators must be statements of fact. They should be statements that when one chooses to make them, as a Senator, he can refer to them and they can also be believed by the country. Now, when Sen. (Dr.) Khalwale says that Kakamega is more populous than Kiambu; he intentionally knows that he is not stating a fact as a Senator in this country. Kiambu is more populous than Kakamega!

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, which documents are you making reference to?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I would like to urge Sen. Wamatangi to take the trouble and do a bit of research. I wish to table, for your information, a document from the then Ministry of Planning and National Development that announced the population of Kenya, which shows the ten most populous counties in Kenya. It is as follows; Nairobi has 3.1 million; Kakamega - 1,660,000; Bungoma at number three has 1,630,000; number four is Kiambu with 1,623,000 and number five is Nakuru with 1,603,000 people. It is factual! I am not a tribalist; please, understand me. My tag in campaigns – just like you are called Mr. Wamatangi – I am called *mtetezi wa wanyonge*; *wanyonge wa Kakamega, Kiambu*, and everywhere, including Gatundu.

(Applause)

(Loud consultations)

The Temporary Speaker (Sen. Ongoro): Honorable Senator, you have to sustain your debate fully.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I have tabled an authentic document here showing the population spread in Kenya to prove this.

Sen. Wamatangi *(Spoke off record)*

Sen. (Dr.) Khalwale: Thank you. But since you were challenging me, I had to prove it. I do not want you to create enemies out of your community towards me.

The Temporary Speaker (Sen. Ongoro): Address the Chair, Senator!

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. The other sensitive issue about this population which was used to arrive at these figures – and I want to beg some of my colleagues from the north eastern part of the country and even Turkana--- We have counties like Mandera and Wajir which, in the population report, they were forced to go to court. Why was that? It is because the Government nullified the population results because they were inconsistent with the reality of the demographic forces that govern population.

Madam Temporary Speaker, it is sad that – when we are then informed by this population in Mandera and Wajir – Mandera should get Kshs5.6 billion compared to Bungoma, which gets only Kshs4.9 billion! If we are really Senators of Kenya, we must also do affirmative action to the people of Mandera because of the poverty and do affirmative action to the people of Bungoma because of their large population. The same applies to Vihiga, which has got a paltry Kshs2.5 billion as opposed to Mandera and Wajir, which have got Kshs5.6 billion and Kshs4.7 billion respectively. I want to beg honorable Senators to take time and look at this matrix. This matrix speaks for itself.

Madam Temporary Speaker, there is the case of the conditional allocation – money which is assumed to go to promote health services. Kakamega has been given Kshs1.4 billion; Kiambu, Kshs2.6 billion; Nyeri, Kshs3.7 billion; Murang'a, Kshs1.5 billion; Nakuru, Kshs2.6 billion; Kisumu, Kshs1.97 billion and Mombasa, Kshs2.6 billion. The reason I am giving these figures is because I want to expose the mischief that this conditional allocation is attempting to allow people in the Treasury to give money to undeserving counties. Take the example of Nyeri; Nyeri is being given Kshs3.7 billion as a conditional allocation to go, presumably, towards the Provincial General Hospital. I am a doctor of medicine; I know the health infrastructure in this country and there is no way the former Nyeri Provincial General Hospital can be said to be bigger than Mombasa Provincial General Hospital or Russia Hospital in Kisumu. Nyeri should have trailed this! What is more, if the reason why they are giving Kshs3.7 billion to Nyeri is because of the current ongoing construction of the Nyeri Teaching and Referral Hospital, then there should have been total disclosure as to how much money from donor funding is going to this hospital. You cannot favor one hospital as if people only get sick in one corner of the country as opposed to the others! This is why the Senate is there, and I am going to die defending social justice in this country; just like I would die if injustice is being visited on anybody.

Madam Temporary Speaker, I want to now go to the issue of utilization of these funds when they go to these counties. It is my collective shame, together with my neighbours, Otieno Kajwang, James Orenge, Prof. Anyang'Nyong'o, that governors of Luhya and Luo counties are bringing us great shame. They are the ones who are leading in spending on unhelpful and unnecessary projects. I want to beg them – and I would not be surprised if the Senator of Nakuru says so; because if you behave like that, it means you think that you are rich; they are not rich! They are rich with big stomachs, but they have poverty of ideas! These neighbours and brothers of mine are busy spending on

Prado's, living in posh hotels and charging it to the county governments. They are spending Kshs53 million in Bungoma and Kshs43 million in Kakamega on entertainment! In Bungoma, they are spending Kshs50 million on pornography! So that I am not challenged – I forgot it in the car – I am going to table the budgets of Bungoma and Kakamega counties in this House so that we give them full exposure. It is unfortunate! When the women of Kakamega give birth, they give birth because they have two breasts on their chests and, now, Governor Oparanya is saying that he wants to give Kshs100 million so that every woman who gives birth is given powdered milk. Has he looked in the bras and realized that the breasts of these women are not producing milk for him to misuse Kshs100 million, which could have been used to improve mother to child health in this particular county of Kakamega?

(Laughter)

Sen. Orenge: Mothers' milk is best!

Sen. (Dr.) Khalwale: Yes, a mother's milk is best. Even Sen. Orenge knows this because he is a father of many!

(Laughter)

Madam Temporary Speaker, the issue of wrong priorities is so painful that in Kakamega, where we do not have a shortage of land for the former municipal or county council; in fact, we have too much land. In Shikusa alone, we have 2,000 acres that is being used by prisons to feed all prisoners in Kenya. If the Governor can go ahead and allocate Kshs150 million for buying land so as to construct the county headquarters when we already have the former Provincial Commissioner's (PCs) premises that he can only move in tomorrow morning and occupy; he can go to the former PCs residence and move in. If he does not want the former PCs headquarters, he can go to the former municipal council headquarters or the former Kakamega County Council Headquarters, which are there and they are not in use. But they want to put up a facility using Kshs150 million so as to squander it!

Madam Temporary Speaker, the issue of ego-trips--- It is so unfortunate that the logic of calling facilitators in a particular workshop so that they talk to members of the county assemblies is lost. It is lost to our governors to the extent that 50 members of the County Assembly of Machakos are being sent to South Africa at the cost of the county government. Fifty members of the County Assembly of Nakuru are being taken to Uganda at the cost of the county government. Fifty members of the Nairobi County Assembly are now in the process of working on passports because they want to go to the United States of America (USA). We cannot support this, if, indeed, we are as provided in the Constitution, charged with the responsibility of protecting the interests of the counties. We must say no to the Governor of Nakuru, to the Governor of Machakos, the Governor of Nairobi and others who might be tempted to do the same.

The case of luxury residences - why would Governor Kidero set aside over Kshs200 million to put up a Governor's house? Why would Governor Oparanya set aside

Kshs50 million to put up a Governor's residence? Is this really the priority? These things are important. It is important to have a good residence for the governor but, surely, it is not a priority and it can wait for the county governments to take off. I want to use this time to congratulate former Minister and current Governor for Vihiga County, Governor Akaranga. This is the only Luhya Governor who has said that he is going to operate from his home because he lives in the county.

Finally, regarding the issue of revenue collection, for those who will speak after me, let us urge governors to beef up what we are taking to them with enhanced revenue collection from the sources that they have especially, in rich counties like Kakamega, Murang'a, Kiambu, Siaya, Kisumu, Mombasa, Nairobi and so on.

With those few remarks, I beg to support.

Sen. Nabwala: Madam Temporary Speaker, thank you for giving me this opportunity to add my voice to this very important Bill which touches on the allocation of revenue to our counties. The Bill before us states the amount that the National Treasury has allocated to counties as Kshs198 billion. When we look at the Bill and compare this amount to what the Commission on Revenue Allocation (CRA) had approved, there is a very big variance. The CRA had approved Kshs231.1 billion for the year 2013/2014. This is a constitutional body that is mandated to determine and approve revenue for counties and they have the parameters. The National Treasury does not have the parameters. So, the figure of Kshs198.7 billion approved by the National Treasury does not have a basis because we do not know how the figure was arrived at.

When we go into the details regarding the figures they have approved, the sharable income of Kshs154 billion to the counties is not sufficient. The CRA has approved Kshs251 billion, why would the National Treasury under-cut the counties? This is setting counties to fail. We have also been told elsewhere that counties are saying that they are not ready to take on the functions. It is our duty as Senators as we sit here, because each and every Senator here represents a county, so we should ensure that this money, however little it is, is devolved to the counties. We are already being told that some counties are not ready to take on the functions because they do not have capacity. This is something that the Transitional Authority (TA) should have put in place way back. So, we do not know why it is coming up this last minute. This makes us question whether there is political will to devolve functions to the counties.

Madam Temporary Speaker, when you also look at the Bill before us, Clause 6 says that the functions gazetted by the TA for transfer to the county governments in accordance with Section 23 of the Transition to Devolved Government Act shall form the basis for preparing the relevant county governments estimates of revenue and expenditure for the financial year 2013/2014. We, as Senators, have never seen the functions that were gazetted. We have not been given that as an appendix. That is what I expected whoever dished out this document to do, so that as we discuss and allocate these funds, we know what we are doing. Some of us have not seen the budgets for the various counties. How do you determine allocation when you do not know what you are allocating?

Madam Temporary Speaker, the National Treasury has also omitted the word "harmless" in this Bill. We saw earlier that when we allocate the Kshs198 billion, some

counties will not be able to get enough money. I would urge the House to bring an amendment to the Bill so that those counties that will have a deficit in their budgets, the national government should come in and fund those deficits. We are aware that for the first three years, counties cannot borrow and yet they are starting off on a deficit. So, how are they going to perform if they do not have sufficient funds to carry out their functions?

Also when you look at the schedule which we have been given and which is before the House--- According to the Inter-governmental Relations Act, it says in accordance with the fiscal responsibility principle of the national government, 30 per cent of the funds allocated to counties should go towards development. In the figures before us, they have not told us how much of the money they have allocated for development. What is the percentage? We need to know whether they have met that criterion of 30 per cent because it is in the Act.

The issue of capacity has also been raised elsewhere and the Finance, Commerce and Economic Affairs Committee was looking at that very seriously because it is coming at the last hour when we are being told that devolving functions may not be possible for some counties. That is why I am calling upon Senators to make sure that in their counties the functions are devolved together with resources because we may sit here and approve this money but at the end of the day, you will find that some counties have not actually received the money approved by the House. When the Bill was laid on the Table of the House, the Senate Majority Leader undertook that Kshs20 billion is going to be added to this figure so that when we bring the amendment, it will be included. We need to allocate the counties Kshs210 billion as opposed to what is in this Bill, that is, Kshs198 billion.

With those few remarks, I beg to support.

Sen. Mositet: Thank you, Madam Temporary Speaker. From the outset, I want my concerns to be very clear. For sure, our counties are looking upon us as Senators. The amendment we made to the previous Bill where we raised the minimum amount to be given to counties to Kshs258 billion is not the one we are discussing here. However, we want to be obedient to the law because this was signed into law. We will, however, support it with amendments.

My concern is very clear. The people of Kajiado are waiting to see whether the Jubilee Government will deliver what it promised to the people of this country. We know very well that for the economy of this country to pick very well, devolution must take place. We must take money down to the grassroots. We must make sure that development takes root in our counties.

Many counties are looking at their governors and the budgets that they came up with. The budget for my county is not very bad. Even though they did not have the capacity, they tried to address issues of development. My only concern is one. Since the Transition Authority was formed, all we have seen including what the Senator for Kakamega has said are people moving from one county to another probably to benchmark or to be taught how devolution should be carried out at the county level. I am wondering, since there are no funds at the counties, what monies they are using if not the money that was set aside earlier where we are told that after it was divided, every county got Kshs61 million.

I believe that the Transition Authority needs to guide the counties. The Authority should tell our governors and county assemblies not to be wasteful. As you know, for us to have meaningful development on the ground and for devolution to take place, we should not misuse funds. However, we should ensure that services are delivered. I feel that there are a number of grey areas in this Bill. By the time we came up with this Bill, it should have been very clear to us what the county executives and the county assemblies should do. What capacity were they supposed to have? I believe that the Transitional Authority was supposed to develop that. However, I hear that governors just sat and used some officers in the counties to come up with budgets. They used officers who are not qualified to come up with budgets. You will find that most of the work that is supposed to be done by the national Government has been factored in the county budgets.

I feel that even though we are discussing how we will be sharing revenue horizontally when allocations have already been done, we could be in for a rude shock. A lot of money could be going to the national Government. It would have been good for the Transition Authority to build capacity right from the start so that our people can come up with good budgets. Notwithstanding the monies that we will get, I challenge you, Senators, to do some assignment and find out how much money went to your counties. You will find that hardly a billion ever went to your counties. The Treasury used to make sure that once the budget has been read, the money would be released towards the end of the year. They would release about 30 per cent. The rest of the money would go back to the Treasury. This time round, if possible, let us have those funds being disbursed immediately to the counties. Let us not fear the issue of capacity in the counties. If they say that they will devolve all the functions, as long as they devolve funds, then we should accept it. Why do I say so? It is because I believe that where there was a project worth billions of shillings being carried out by the national Government, there was some good trickle effect on the economy of that area. The rate of youth employment in such an area is also on the rise. I feel that money that will be given to the counties should be released early enough so that counties can use it and we make sure that development projects are achieved.

As Senators, we should use county assembly representatives to carry out an oversight role. They are the ones who know what was passed by the assemblies. They will also be checking the executive - the governor and his cabinet - to see whether they are working to implement what was passed in the budget. It is upon us to ensure that we liaise with the county assemblies.

With those few remarks, I support since I do not want to break the law.

Sen. Obure: Thank you, Madam Temporary Speaker, for the opportunity. I am not happy with the County Allocation of Revenue Bill in its present form. I am not also comfortable with the fact that this Bill has been brought for debate at this particular time.

First, the functions of the counties have not been gazetted. Consideration and debate of this Bill is, therefore, not based on a solid and firm foundation. We are intending to allocate funds, purely on the assumption that they will be used to carry out certain functions that have not been specified.

Secondly, we are now in the Financial Year 2013/2014. We are allocating funds based on the accounts of the Financial Year 2010/2011. This is a long time ago. In

between, we had the Financial Year 2011/2012 which came and went and also 2012/2013 which came and went.

We know that the Gross Domestic Product (GDP) has grown considerably. Further, revenue base and collections have increased substantially. By basing these allocations on the Financial Year 2010/2011 although we know that these are the latest set of audited accounts, we are denying counties substantial funds to which they are entitled. I propose that in future, we should find a way of ensuring that this loss is minimized by ensuring that the national Government accounts are audited as soon as possible at the end of a financial year.

You will also recall that in this Senate, we considered the Division of Revenue Bill very comprehensively. We satisfied ourselves that the amount of Kshs210 billion that had been proposed was not enough to enable county governments to deliver all the functions assigned to them. In the circumstances, this Senate recommended an amount of Kshs258 billion. This was after consultations with all the relevant institutions, the Treasury itself, the Transition Authority and the CRA.

Unfortunately, we were rudely ignored and in fact, overlooked. As a consequence, every county will now lose an average of Kshs1 billion. In Kisii County, we will be losing Kshs1.4 billion. This is the money that we were hoping to use to carry out some urgently needed development works, including repair and maintenance of roads, provision of clean water and construction of health facilities for use by the citizens of Kisii County. Unfortunately, this is not to be.

Madam Temporary Speaker, we also know that as a consequence of this, many of the counties, particularly the large counties, will not be able to discharge all their functions and so, certain services will not be delivered. Those counties will run into deficits and others will simply fail to deliver certain services, thereby, leaving wananchi worse than they have been. That is a very regrettable and unfortunate situation.

Madam Temporary Speaker, I would like to make a little comment about the issue of conditional grants. My understanding of conditional allocations is that this is money being given to counties by the national Government and the counties are being directed to use it on specific assignments and functions. But look at the schedules which have been given to us. In particular, I want us to look at Column D and see how the conditional grants have been allocated to the various counties. In particular, I have observed that Nairobi County will receive Kshs7.4 billion under the conditional allocations, while Tharaka Nithi County, which is represented by the Senate Majority Leader, will only receive Kshs139 million. The issue which then arises is that which one between Nairobi County and Tharaka Nithi County requires this money? I think that the obvious answer would be Tharaka Nithi County, because that is where the poverty levels are much higher compared with other counties.

Madam Temporary Speaker, if you look at Nyeri County, it will receive Kshs3.6 billion while Trans Nzoia will receive Kshs193 million. Whatever this is meant to be and whatever formula has been applied, it is grossly unfair. I know that strong arguments were made to justify conditional allocations. But I am personally opposed to the principle of conditional allocations. If the national Government wants to give counties any money, it should be transferred to the counties and the county governments, which are

governments in every sense of the word, be allowed to use the money the way they would like. This conditional allocation is now being used to enhance disparities between counties, at a time when we want to narrow down these disparities and address the various complaints which we have heard before about areas being marginalized. I think that these conditional allocations are going to broaden these disparities.

Madam Temporary Speaker, looking at this schedule again, I want to make an observation. Take the 12 largest counties - I am talking about Nairobi, Nakuru, Kiambu, Kakamega, Mombasa, Turkana, Nyeri, Meru, Kisumu, Bungoma, Kisii and Mandera – where close to half the population of this country live. All the 12 counties are being allocated a total of Kshs75 billion, but look at what we have allocated the national Government. One Ministry alone, the Ministry for Interior and Coordination of National Government and the National Intelligence Service are receiving more than what we are allocating to the 12 largest counties of this country. Even the Ministry of Devolution and Planning is receiving more money than 12 counties of this country, where half of the population lives. This raises questions about our priorities and what we want to do really as a country. When it comes to the money collected from taxes and how we target this money to help this nation, have we got it right? I think that in future, we should even interrogate the budget of the national Government, to see if it reflects correctly our priorities and the manner in which we want to spend our money.

Madam Temporary Speaker, I am a very strong supporter of devolution. I believe that through devolution, we will be able to address the very many challenges facing Kenyans wherever they live in this country. I also believe that through the county governments, if given a chance and managed properly, we will be able to transform and, in fact, improve the quality of lives of our people. I appeal for more funds to be made available to the counties if we are going to achieve these objectives.

Madam Temporary Speaker, I know that this is the first time that we are going through this process. I also know that the counties need to be supported to start their operations. That is the only reason I would very reluctantly support this Bill. Otherwise, I think that we have not gotten it right. Let us hope that next time there will be improvements in this Budget process, to ensure that our priorities are reflected properly and more money is availed to the counties. I appeal also to the counties to use the little money that they have been given properly and effectively; to maximize on it and make sure that they also come out with their own plans to raise more funds from other sources.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Rotich Lesan.

Sen. (Prof.) Lesan: Thank you very much, Madam Temporary Speaker. I rise to make my observations on the first ever Bill in this Senate. It is unfortunate that the first ever Bill being debated in the Senate is shrouded in controversies, including a case at the Supreme Court.

Madam Temporary Speaker, before I make my observations, I want to take this opportunity to thank the teachers of this country for returning to the classrooms and enabling education activities to go on, thereby removing a burden from the Government so that we can concentrate on other activities.

Madam Temporary Speaker, without necessarily repeating what my colleagues have said, I would, at the foremost, want to support and agree with a lot of the Senators who have made their sentiments here. These sentiments are that the funds which have been devolved to the counties are inadequate. This fact is uniform throughout the country.

But, Madam Temporary Speaker, I want to look at this issue from a slightly different position and understanding; that, the capacities that we have had or the functions that we want to assume, that running a devolved government for the first time is ever going to be easy--- It is very difficult and if we want to understand how far we have come with the abilities that we have, we should, perhaps commend the governors for what they have done almost single handedly with Members of County Assemblies (MCAs) who sometimes do not even speak the language, let alone understand financial matters. I think the governors of this country – especially some governors that I particularly know – have tried the best they can with the support of the Transition Authority (TA) – which itself was not also capable of doing budgets efficiently- and come up with budgets. This is something we can learn from and we can move on from there, irrespective of some of the challenges that are there. So, I want to commend some of the governors who have done a splendid job and they have avoided some of those unnecessary expenses like entertainment, building mansions for themselves and all those other things. In particular, I am talking about the Governor for my county, Bomet. I had the opportunity to look at his budget and I think it is one of those budgets that could make do with the little money that we got, which is slightly under Kshs4 billion. This amount is inadequate.

Madam Temporary Speaker, I just want to refer to a few of the issues that may have been raised, but I just want to add a slightly new dimension on it. It is by law that the functions that are going to be done by counties will be requested by the counties. These functions fit a certain criteria; they will be gazetted and effected. I do not think there is any county here which is going to apply to the central Government, asking to be given the opportunity to pay salaries. I do not think there is any county which will want to do that. It is a requirement by law that these functions should be requested for and gazetted. So, I do not really think that some of the things that we could be talking about may apply directly until the law is applied as it is. So, I do not think counties would want to ask for that. Devolution requires that a function be transferred along with its funds. So, I should expect that for every single civil servant who is moved from the central Government and devolved to the counties, he must be devolved with his salary. Therefore, we should not have a reason to spend money allocated to counties on salaries. So, I think on some of these things, we can try and argue.

Madam Temporary Speaker, some of the things that are really going to give us a difficult time at the counties are the issues of outstanding debts. The budgets that we have here are three years old; from the 2010/2011 financial year. The auctioneers are not going to wait to have the accounts audited; they will be pestering the counties immediately. That is why I think these budgets should have been done based on what we know of the current revenues that the country is generating in order to safeguard and salvage some of the counties which will sink – irrespective of how much money we give them – in the debts that they have. So, these are areas that I think the unconditional grants would have

gone to so as to deal with these kinds of things, or the existence of the national Government coming in handy to help.

The other thing, Madam Temporary Speaker, that we should, perhaps, look at is to accept, for the time being, to use the formula that has been set to allocate the funds to counties. But we should be very careful next year and the following years because counties are suddenly going to grow differently because of the revenues that are going to be generated by different counties, depending on the natural resource endowment in those counties. So, in three years time, we are going to have a new form of marginalization happening again in this country and, therefore, we need to relook at the criteria upon which funds are going to be allocated. This is because, certainly, with the shift and new ways of generating revenues by the counties, we are suddenly going to have a lot of differences in the economies of these counties and it will bring a new form of inequalities in our country. Therefore, we need to pay attention to the formula used in allocating revenues as well as the quarterly report which the Government is going to give us on counties. So, I really think we should look at that as Senators, because our role is oversight.

Madam Temporary Speaker, as we debate this Bill, there is only a word, “oversight” for us, Senators, to look at. I want to thank my colleague, Sen. Sang – I know he is working on some legislation that is going to give us some teeth in the form of oversight so that we are able to actually participate and act as an early warning system for any misuse and wastage of some of those monies, because we can quickly evaluate the wastage and stop it without necessarily taking some of the counties down the drain.

Madam Temporary Speaker, the allocation of funds which has been done has used a certain criteria, but one of the items that is missing in the criteria is the preparedness of counties to run governments; and I mean “real governments” that will deliver services. This unpreparedness was not catered for and I want to suggest that some of the grants that we would want to give to some counties would not necessarily have to be in terms of financial grants. We can give grants in terms of expertise. We can send experts to some of the counties instead of finances because, perhaps, what some of those counties would need – and I think it is a lot of counties – is some expert advice on a lot of areas, especially in terms of financial management. So, some of the things that we need to be doing at the moment is to accept the very difficult situation we find ourselves in as we try to establish the new devolved governments. We should also try and use the expertise which is there. We should not necessarily be very critical, but we need to be very careful about the wastage, fraud, pilferage and some of those other things that could come in. I think that is our role as an oversight body, so that we can learn through lessons on where we go wrong in some of these things.

The last of the things that I want to mention, Madam Temporary Speaker, is on some of the institutions, for example, the existing parastatals in this country. There are some parastatals that stretch across the country while others are confined to certain counties only. We think that some of these parastatals are still very useful and they should probably be left, together with their finances, in the national Government so that they can operate. I am thinking of parastatals such as the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KERRA), which are going to be useful.

We still have parastatals like the Agricultural Development Corporation (ADC); we still have a big problem with the resettlement of Internally Displaced Persons (IDPs), who are not funded in any of the counties, and some of those are challenges that we will need to deal with. There is also the Tana and Athi River Development Authority (TARDA). These are institutions which fall in the category of parastatals that we think should be left alone in the national Government so as to deal with some of those functions. We should, in fact, enforce other parastatals, and one of the parastatals that I think should be enforced is the Kenya Medical Supplies Agency (KEMSA). KEMSA is one of those bodies that import all the medicine that we use in our country. It will be a long time before counties have the capacity to import relevant medicines and vaccines, to store them safely and ensure that they are useful. I think it is okay if we have a parastatal that is able to do this and which we can do business with.

Madam Temporary Speaker, regarding the issue of Column D in the allocation of these funds, you have heard that this is a suspect column. This is one column that we need to look at again. I personally think that this column should not be there as long as the national Government remains with 85 per cent of the revenue of this country. It can deal with those things we call “conditional” so that we can deal with funds that we can equitably distribute throughout the country without having to distribute some funds with a formula that is not well defined.

Lastly, we have been discussing this Bill which is talking about Kshs198 billion but in our minds, we know about the legally accepted amount which is Kshs210 billion. The last paragraph in this Bill is one of those things that do not make any contribution but is offensive. It is trying to explain in a very bad manner the differences between the National Treasury’s allocation and the allocations that have been done using the formula.

With those remarks, I want to say I support this Bill on condition that the amendments are going to go through this House and be passed and approved.

The Temporary Speaker (Sen. Ongoro): Siaya County, Sen. Orengo.

Sen. Orengo: Madam Temporary Speaker, as the previous contributor has said, I also want to say that I support the caveat that we support this Bill on the basis that there are going to be amendments and it was useful and necessary to hear the Senate Leader of Majority give us that assurance; that an appropriate time, this Bill will be amended so the allocations as contained in the Bill will be enhanced upwards.

I want to start from the beginning. For devolution to work, it will require political commitment on the part of all the players and this is not just the national government, the devolved structures of the county government but all Kenyans altogether, as we decided in this new constitutional dispensation that devolution is right for the country and that is the way we have to go. For it to succeed, I want to propose and submit that it will largely depend on the county governments themselves. If the county governments do not run those devolved structures properly, that is the beginning of failure. Indeed, it has been demonstrated in other countries where there are devolved structures that there are regions which can actually do very well even when the national performance overall in the economy is below average. I want to say that for the devolved systems of government to work, the county governments themselves must get it right. To get it right and I agree with other Senators who have contributed in this regard, they must run those county

governments on the basis of principles set out in the Constitution, avoid wastages, avoid corruption and avoid expenditures that cannot be justified.

In Nigeria, when they started having this devolved system of government, although they have gone beyond Kenya because they have a truly federal system, many governors ended up in prison. There are many Nigerian governors who are serving sentences in the United Kingdom (UK) having messed up their states. They ran away from justice and went to other countries. So, the systems of those countries where they ran to caught up with them. Since we have a constitutional provision that any county that does not run its affairs well, can be impeached or impugned, it is important that our governors and county governments begin on the right note.

The devolved systems of government are supposed to replace the structures of the national Government as it was at the beginning although there is now duplication. I want to say that the Provincial Commissioner or the District Commissioner could do with a Land Rover running around in a county and without escorts. This loud exemplification of consumption, that you are not a governor until you have a trail of vehicles, a big office or extra security, I want to submit that this is the wrong beginning. There was a time when I was so impressed in Dar-es-Salaam in Tanzania, when I was boarding a plane in Arusha. We waited for a few minutes then the Prime Minister of Sweden came, escorted by Mwalimu Nyerere. He was just sitting there and not even in the business class with his staff. That was the head of a whole government of a first world country sitting there. The leader of that government was just sitting there unnoticed in a public transport service.

So, I want to be convinced that the beginning of the end for the system of devolution may sometimes not come from the national government but from these structures. I have heard what many Senators have said here; that we may have had a false start in many of these counties. So, the governors should be able to look at the Constitution and find out why these devolved systems were necessary. It was to take resources to the ground, equitability and justice on the ground and also for self governance on the ground. Within those counties, what they require of the national Government to do, that is, fair distribution of resources, that even those counties, should show that they can do it better than the national Government so that within the county, the resources are shared in an equitable manner and even in terms of human resource where they should show that they must recruit people from all the areas.

Having said that, the money that has been given to these counties - it is true that this system of devolved government cannot succeed without resources; it cannot work. Talking about Kshs198 billion for 47 governments in an economy where the national Government is collecting more than Kshs1.3 trillion, then we must start asking ourselves some questions; where are the services required? Is it at the national level or the county level? The Government collects taxes in order to provide services. The Government may engage in capital expenditure like infrastructure in order to attract more investment but a lot of revenue collected by the Government is towards making sure that people get services. It has already ceded all the functions that are set out in the Schedule of the Constitution. These have been surrendered to the county governments. The county governments must be very careful because they may be set out for failure.

Secondly, it is upon this Senate to do an audit at some point and see whether all these functions, as they exist in the Constitution--- as we pass the County Allocation Revenue Bill, it is necessary to come up with an intervention in terms of another Bill to redress any deficit that may arise. Even the national Government, whenever it has a deficit, it uses additional Appropriation Bills. The Senate should not tie its hand that this allocation, as contained in the Bill, is cast in stone. Similarly, we cannot say that vertical sharing of revenue is cast in stone.

We can revisit the Division of Revenue Act if we find that these counties cannot work effectively without additional resources. We do not want the system of devolution to fail. If we fail, each one of us will be responsible because when we were being sworn-in, we said that we would defend the Constitution and the Senate particularly because we have been given the mandate to protect the counties. With this amount of money, I believe that we will, certainly, need to revisit the issue.

The other thing that we have not audited well, even though my colleagues have spoken to it, without being repetitive, is on indexes of population size as reflected in the figures. I think there is something that does not add up. I agree, entirely, with the Senator for Kakamega, in his global observation on what has ended up as figures for the respective counties. For instance, my county of Siaya is not just a land mass but there is a water mass with many islands to be taken care of. Some residents of those islands have not seen electricity or a motor vehicle. Some of the residents have not been out of the islands. If we audit these figures, we will find a reflection of what exists on the ground.

Permit me, Madam Temporary Speaker, to say in conclusion that it is the Jubilee Government that is in power. It is 100 days since this Government was sworn-in. I will compare what is happening to what happened after the 2002 General Election. In 2003, Kenyans were said to be the most optimistic people in the world. We were in a celebratory mood for nearly a year. However, now, for the first three months, the only thing we are having is problems. We are having problems with teachers and other groups.

I can tell you for a fact and you can take this to the bank that a Government that cannot negotiate with its people is not worth its salt. If it is a Government which for three weeks cannot negotiate with the teachers and agree--- I think that in the United States of America (USA), the conclusion will be quite the opposite. I remember when the late Senator Edward Kennedy had an accident with a lady in a car. They were trying to determine whether he was fit to be an American President in those kinds of circumstances. In my view, a Government with so much political goodwill arising out of what have been an electoral victory, although in my own opinion, the elections were worse than in the year 2007--- This was one of the stolen elections and now you can see what the Independent Electoral and Boundaries Commission (IEBC) is going through.

Sen. Chelule: On a point of order, Madam Temporary Speaker. I thought that Sen. Orendo was contributing to this Bill, but surprisingly, he is talking about the current Government that won the election. We all know that Jubilee won the election. Are we here to discuss this Government or the Bill?

The Temporary Speaker (Sen. Ongoro): What is out of order?

Sen. Chelule: Madam Temporary Speaker, is he in order to discuss this Government? I thought that we were here to discuss this Bill.

The Temporary Speaker (Sen. Ongoro): Your point has been noted.

Sen. Orengo, proceed.

Sen. Orengo: Madam Temporary Speaker, I think that if there is anybody who wants to teach me how to speak in the Chamber, you better go back to the many speakers who have been there before. You will realize that on all accounts, in terms of my contribution in this House, nobody has stood up to say that I am out of order, when I am speaking on a specific Bill like this one. The gracious lady should listen and learn how these things are done.

Madam Temporary Speaker, I am saying this because just today, the IEBC could not take an oath to swear and say that the figures that they were giving at the National Assembly were correct. Some of these figures that---

Sen. Elachi: On a point of order, Madam Temporary Speaker. Is the Senator for Siaya in order to say that since the IEBC were unable to give the results of the election, therefore, Jubilee stole the election? Are you in order?

The Temporary Speaker (Sen. Ongoro): Sen. Orengo, can you substantiate exactly what you mean by that statement?

Sen. Orengo: Madam Temporary Speaker, elections are about results. Even now when we take a division at the end of the day, you will stand up and say that you have received so many votes for the Ayes and the Noes have so many votes. The IEBC also is required to give results of the elections, and it has had more than three months to do so. It is in the public domain that this Commission cannot count any figures beyond 500,000. Once they get over 500,000, they get confused. If you are Jubilee---

(Sen. Elachi stood up in her place)

I am answering your point of order.

The Temporary Speaker (Sen. Ongoro): Let him exhaust the answer on your first point of order.

Sen. Orengo: Madam Temporary Speaker, let me finish this by saying that it is no longer in doubt that the IEBC has said that the difference between the Presidential election votes and those that were cast for Governors is a whopping 1.7 million votes. If that is the truth, it means that if these figures are wrong to the extent of 1.7 million, the issue of the last elections will never go away. We have agreed that you are in the Government, and I recognize you as a Whip, but you cannot take away my right to give my opinion that these elections were stolen.

Sen. Elachi: On a point of order, Madam Temporary Speaker. I think that the Senator for Siaya should really tell Kenyans whether the votes that we are talking about and the people--- A total of 12 millions Kenyans woke up and voted. They decided who would win and who would lose. I know that the Senator is my senior and I am learning a lot from him---

The Temporary Speaker (Sen. Ongoro): Point out what is out of order. Do not debate.

Sen. Elachi: Madam Temporary Speaker, is he in order to tell Kenyans that the six million votes that Jubilee got were just on paper and not people who voted?

Sen. Orengo: Madam Temporary Speaker, let me just finish this point by giving you one fact which you can take to the bank for free. There was one particular ballot book, which was only used by one person in Kenya, Mwai Kibaki, the former President of the Republic of Kenya, which got lost and the IEBC does not know where it went. Surely, if you want me to give more and more data on this, I can go on.

Madam Temporary Speaker, in conclusion, listen to what Sen. Khalwale was saying - and he knows these things – that even some of the figures that have been given in terms of conditional grants, if we do not audit them very well, you will find that what was done in the elections are now being done in the division and allocation of revenue.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Ongoro): Order, Sen. Orengo! Contributions to this debate will continue next Tuesday. So, those who have not spoken will still have an opportunity to speak.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time for interruption of business. The Senate, therefore, stands adjourned until Tuesday 23rd July, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.