

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 17th February, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

SPECIAL KAMUKUNJI TO BE HELD IN THE SENATE CHAMBER ON
WEDNESDAY 18TH FEBRUARY 2015 AT 11.00 A.M.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to communicate that tomorrow Wednesday 18th February, 2015 at 11.00 a.m. we will hold a special *Kamukunji* in this Chamber. So, all Senators must be present.

Thank you.

PAPERS LAID

THE BUDGET POLICY STATEMENT
AND
THE MEDIUM TERM
DEBT MANAGEMENT STRATEGY

Sen. Mositet: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday 17th February, 2015:-

1. The Budget Policy Statement, and
2. The Medium Term Debt Management Strategy

Thank you

(Sen. Mositet laid the documents on the Table)

NOTICES OF MOTIONS

ADOPTION OF THE MEDIUM TERM DEBT
MANAGEMENT STRATEGY 2014

Sen. Mositet: Mr. Speaker, Sir, I beg to give notices of the following Motions:-

THAT, this House adopts The Medium Term Debt Management Strategy 2014 laid on the Floor of the House today Tuesday, 17th February, 2015.

ADOPTION OF BUDGET POLICY STATEMENT

THAT, this House adopts the Medium Term Budget Policy Statement laid on the Floor of the House today Tuesday, 17th February, 2015.

Thank you.

STATEMENTS

STATUS OF ELECTRIFICATION IN MAKUENI COUNTY

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise to seek the following Statement from the Chairperson, Committee on Energy. In the Statement, the Chairperson should state the following:-

- (i) The budget allocated for rural electrification in Makueni County for the year:
 - (a) 2012-2013;
 - (b) 2013-2014;
- (ii) The number of primary schools connected during the period in (a) and (b) above;
- (iii) State the reason(s) for the delay in the process during the period;
- (iv) The names of contractors who have been awarded contracts during the said periods and the projects completed;
- (v) Explain the reasons for the stalled projects in several areas in the County;
- (vi) State the reason(s) for the delay in connection and delivery of materials to the already existing connections, and lastly;
- (vii) State whether there are any efforts being made to enlighten the primary schools on the plans to connect them to electricity.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Chairperson of the Committee, Sen. Keter.

Sen. Keter: Mr. Speaker, Sir, I will respond in two weeks.

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

PROPOSED ALLOCATION OF LAND AT KANYONYONI IN KITUI COUNTY TO THE NIS

Sen. Musila: Mr. Speaker, Sir, I rise on a matter that has been going on for a long time. This is in relation to the proposed allocation of land at Kanyonyoni in Kitui County to the National Intelligence Service (NIS).

Mr. Speaker, Sir, you recall that on the 3rd of December, 2014, as we were just about to go on recess, the Chairperson of the Committee on Land and Natural Resources gave this House a Report in which the Committee found that the land in question was irregularly allocated to the NIS. If you recall, you ordered that no action should be taken to give this land as, indeed, it was found that it had been irregularly allocated.

Mr. Speaker, Sir, I am seeking your direction on this matter because since then, a lot has happened. I have documents here to show that the Treasury paid Kshs6,900 to the Ministry of Lands, Housing and Urban Development. For 400 acres, the Treasury has paid Kshs6,000. A letter of allocation has been issued. The Cabinet Secretary, hon. Charity Ngilu, has already signed a part development plan for that particular parcel where already we have, as I speak, ranchers who are going to be displaced.

Mr. Speaker, Sir, I am raising this matter now because it is a matter of concern. This is an era of land grabbing, but it is even more serious when our land is being grabbed by the Government. Therefore, I want the concerned Chairperson to ensure that this matter is investigated seriously and quickly so that this land is reverted to the people.

Mr. Speaker, Sir, you may be aware - and this is now known - the NIS has been going round the country grabbing land---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Did you hear the distinguished Senator from Kitui County, who is also the Wiper Party Chairman, declare that in our country, this is the era of land grabbing. Is there an era of that kind?

Sen. Musila: Mr. Speaker, Sir, I am surprised that the distinguished Senator can raise such an issue when he knows that schools' and churches' land has been grabbed. It is even more serious because those pieces of land are being grabbed by private developers. Our land is being grabbed by the Government of the Republic of Kenya.

Mr. Speaker, Sir, you may be aware that the NIS is grabbing land all over. They have grabbed land in Lamu, Laikipia and---

The Speaker (Hon. Ethuro): Order! Senator, proceed with the Statement.

Sen. Musila: Mr. Speaker, Sir, I am seeking your indulgence in ensuring that this matter is dealt with quickly and that the directions that you gave are adhered to. With that, this House can now go back and resolve accordingly that the land be reverted to the people of Kitui and that the letter of allocation issued to the Treasury is cancelled forthwith.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Vice-Chairperson of the Committee.

(Sen. Khaniri stood up in his place)

What is it Sen. Khaniri?

Sen. Khaniri: Mr. Speaker, Sir, the matter that has been raised by the Senator for Kitui County is a matter that was raised in this House and it was handled by my Committee. You will remember that you instructed us to convene a meeting of all the interested stakeholders. We had a meeting with the Cabinet Secretary, the NIS, the Governor and even the Senator himself and we eventually tabled a Report here with our recommendations.

The recommendations were very clear that this transaction was irregularly done and that it should be halted until the matter is thoroughly looked into. That is what you ordered.

What we are seeing here is impunity by the Government. This Government is setting a very bad precedence.

Hon. Senators: Shame! Shame!

The Speaker (Hon. Ethuro): Order, Sen. Khaniri! Are you responding now?

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

The Speaker (Hon. Ethuro): Okay, proceed.

Sen. Khaniri: Mr. Speaker, Sir, as I said, the Government is setting a very bad precedence, acting in impunity in total disregard of the rule of law. The Government is defying instructions from the court, court orders and even the Senate. We, as a Committee, stand by the Report that we tabled here. Therefore, there are no further investigations to be done by my Committee.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The Chairperson of the Committee on Land and Natural Resources has just informed us the names of the stakeholders who were consulted. In view of the provisions of Article 67 of the Constitution that speaks to the National Land Commission (NLC), was the Chair in order to leave out the NLC when we know that this matter rests with no other office than Dr. Swazuri's office?

The Speaker (Hon. Ethuro): Just before the Vice-Chairperson responds, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, having heard the response of the Chairperson of the Committee on Land and Natural Resources and the disgust with which he has expressed his concern over the impunity and irresponsible behaviour of the Ministry, especially the Cabinet Secretary and the NLC, would I then be in order to ask you to order the two to appear before our full House Committee to express their views on the same?

The Speaker (Hon. Ethuro): Sen. Abdirahman, are you on the same?

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

We have heard what has transpired with the Committee that is headed by Sen. Khaniri. It has been very difficult to even get the Cabinet Secretaries or any other Government officials to give their responses in the National Assembly and the Senate. Since this matter is unresolved, probably it could have been directed to the Committee on Implementation. This is the only way we could have enforced it. This is because many a time, Motions have been passed here and reports are brought here, but they are never enforced. Probably, we could use the Committee on Implementation to put on hold this matter and see how it can progress. That is my proposal.

Thank you, Mr. Speaker, Sir.

Sen. Khaniri: Mr. Speaker, Sir, on the two issues raised by Sen. (Dr.) Machage and Sen. Abdirahman, it is you to respond because Sen. (Dr.) Machage wants to know if we can summon them to the Committee of the Whole. He is seeking for your guidance. Similarly, Sen. Abdirahman wants this matter to be referred to the Committee on Implementation. Therefore, it is not in my purview to respond to that.

Mr. Speaker, Sir, to respond to the issue raised by the Senator for Kakamega County, I would like to say the following. If he listened to me very well and the HANSARD will bear me out, I said that we called all the relevant stakeholders, including the NLC, and they appeared before us. I just want to confirm that to him.

The Speaker (Hon. Ethuro): What Sen. (Dr.) Machage is asking of the Speaker can be done by the Vice-Chairperson of the Committee. I do not need to do it from here. The proposal by Sen. Abdirahman is in order, we have a Committee dealing with implementation of our resolutions. It is fair that the Implementation Committee gets seized of the matter and prosecutes it.

Sen. Musila: On a point of order, Mr. Speaker, Sir. I just want to draw the attention of the House to the fact that the Motion was not debated and passed so that it can go to the Committee on Implementation. You will recall that that was the time we were adjourning and the Chair simply gave a report and we reacted to it. It never went to debate. Therefore, there was no resolution passed. The Chair of the Committee on Land and Natural Resources said he was going to intervene during the period of recess. I am aware that the Clerk wrote to the Commission, but I am not aware of any response from them.

The Speaker (Hon. Ethuro): Let us establish the facts, then we can give direction tomorrow.

DESTRUCTION OF TURKANA ECO-LODGE AT KAINUK TOWN

Sen. Munyes: Mr. Speaker, Sir, I wish to request for a Statement from the Chairperson of the Departmental Committee on Security and Foreign Relations on destruction of Turkana South Eco-lodge at Kainuk Town.

I request the Chairperson to make the following clarifications:-

- (i) Explain the extent of destruction on the property.
- (ii) Explain the motive and the perpetrators of these serious crimes against Turkana County and its people.
- (iii) Confirm the number of National Police Reserve and civilians killed to date and explain the cause of these killings.
- (iv) State the steps being undertaken by the national government to compensate the affected families for loss of their loved ones and property.
- (v) Indicate the steps the Government will take to avert more killings and sabotage of this project and other projects like schools and roads in the County of Turkana.

Sen. Haji: Mr. Speaker, Sir, I request for two weeks because the Statements requires a thorough investigation on what has been raised by the distinguished Senator for Turkana County.

The Speaker (Hon. Ethuro): You may also confirm what we heard that as you went about your business, you were under attack.

(Loud consultations)

Order, Senators!

I have two Communications to make then we will straightaway go to the Committee of the Whole, that is, Order No.9 then we come back to Order No.8. You remember we said that we shall be expediting our business. It is important that we do so.

MESSAGE FROM HIS EXCELLENCY THE PRESIDENT

NOMINATION OF JOSEPH KIPCHIRCHIR BOINET FOR APPOINTMENT TO THE POSITION OF INSPECTOR-GENERAL OF POLICE

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to the provisions of Standing Order No.41(1) of the Senate, I wish to convey a Message from His Excellency the President asking Parliament to approve Joseph Kipchirchir Boinet for appointment as the Inspector-General of Police. In the message, His Excellency the President conveys that in exercise of powers vested in him under Article 245(2)(a) of the Constitution and Section 12(2) of the National Police Act, 2011, as amended by Section 11 of the National Police Service (Amendment) Act, 2014 and further amendment by Section 86 of the Security Laws (Amendment) Act, 2014, he nominates Joseph Kipchirchir Boinet for appointment to the position of the Inspector-General of Police.

Hon. Senators, Article 245(2)(a) of the Constitution states:-

“The Inspector-General is appointed by the President with the approval of Parliament”

Further, Section 12 of the National Police Service Act, No.11 of 2011 as amended by Section 11 of the National Police Service (Amendment) Act, 2014 and further amendment by Section 86 of the Security Laws (Amendment) Act, 2014 states:-

“12(i) Pursuant to Article 245(2)(a) of the Constitution, the Inspector-General of the Service shall be appointed by the President with the approval of Parliament.

(ii)The President shall, within 14 days after a vacancy occurs in the Office of the Inspector-General nominate a person for appointment as an Inspector-General and submit the name of the nominee to Parliament.”

Hon. Senators, I wish to note that this is the first time that the two Houses of Parliament are required to approve the appointment of a candidate to a public office. Therefore, as you can expect in such situations, there are grey areas or uncharted waters with respect to the process. However, as Senators are aware, the Houses of Parliament are not helpless as the Speakers are empowered to deal with such scenarios. Consequently, in order for Parliament to effectively conduct the vetting process, the Speaker of the National Assembly and I, have consulted on the best way of facilitating Parliament to discharge this important duty. In the interest of the economy, efficiency and cognizant of the Standing Orders of both Houses and the requirements of the Public Appointments Parliamentary Approval Act, 2011, we have agreed to proceed as follows:-

(i) That the vetting of the nominee for appointment as Inspector-General of Police shall be conducted jointly by the Committees of the two Houses mandated to deal with matters of national security. The vetting process will, therefore, be conducted by the Standing Committee on National Security and Foreign Relations of the Senate and the

Departmental Committee on Administration and National Security of the National Assembly.

(ii) That the Chairpersons of the two Committees will co-chair the joint sittings and the secretariat will comprise officers of the two Houses.

(iii) That the quorum of the joint sittings will be the respective quorum of each of the Committees as stipulated by the respective Standing Orders.

(iv) That as contemplated under Rule 96 of the joint rules, unless a decision is reached by consensus, any vote to be taken in the joint sitting of the Committee shall be by separate Houses. This will ensure that the numerical difference of the individual Members representing the Houses in the joint sittings has no effect on the decisions of the joint sittings of the Committees.

Hon. Senators, Section 8(1) of the Public Appointments Parliamentary Approval Act, 2011, states that:-

“Unless otherwise provided in any law, a Committee shall consider a nomination and Table its Report in the relevant House for debate and decision within 14 days from the date on which the notification of the nomination was given in accordance with Section 5”.

Section 9 of the Act further states that:-

“If after the expiry of the period for consideration specified in Section 8, Parliament has neither approved nor rejected nomination of a candidate, the candidate shall be deemed to have been approved”.

In this regard, the period on the matter that is now before Parliament starts running tomorrow and in order to facilitate the commencement of deliberations, the first sitting will be held in the main Committee Room in County Hall, on Wednesday, 18th February, 2015, at 9.30 a.m. They should Table the joint Report on or before Thursday, 26th February, 2015, to enable the Houses of Parliament to dispose of the Report in good time.

This message, therefore, together with the resume of the nominee, stands committed to the Standing Committee on National Security and Foreign Relations of the Senate, sitting jointly with the Departmental Committee on Administration and National Security of the National Assembly.

I thank you.

(Applause)

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a Point of Order, Mr. Speaker, Sir. I have two points of order; one is to seek for your indulgence and the other one on your Communication. As you said, this is uncharted waters, could you clarify further where we shall go because the Report that comes here will only look for a decision to adopt any report or to reject it? If the two Houses adopt, then the officer would have gotten the job. If they reject, the officer would have lost the job. Could you clarify what would happen if either of the Houses rejects and the other one approves?

My second point of order which was for your indulgence was that you had given me an opportunity to seek for a Statement, but you overlooked me on the screen. Could you allow me to request for that Statement before we go to the next order?

The Speaker (Hon. Ethuro): I thought I had Sen. Orengo before Sen. Musila. It shall be in that order.

I was looking to my left, when I looked to my right and if Sen. Haji is still persists, he may just be lucky to be counted as well.

Sen. Orengo: Mr. Speaker, Sir, I rise under Standing Order No.33, to seek leave of the House and the Chair to move the adjournment of the Senate for the purposes of discussing the following--

(Loud consultations)

The Speaker (Hon. Ethuro): Proceed Senator.

What is it, Sen. Khaniri?

Sen. Khaniri: On a Point of Order, Mr. Speaker, Sir. You just delivered a Communication from His Excellency the President and Members were seeking some clarifications. Sen. (Dr.) Khalwale rose on a point of order and sought some clarifications. There are other Members who want to seek further clarification on the same. Sen. Orengo is raising---

The Speaker (Hon. Ethuro): Order! Just be brief Senator. Sen. Orengo is raising a different matter. That is the point and you are right. Therefore, let us entertain interventions on the message from the President.

Sen. Musila: Mr. Speaker, Sir, I was raising an issue on point of order like Sen. (Dr.) Khalwale because you had also allowed me two issues and I raised only one. As I stood to raise the second one, you went to another matter. Will I be in order to request that we exhaust yours and then go back to Statements?

The Speaker (Hon. Ethuro): Sen. Musila, I thought good neighbourliness has certain advantages; one of them is that we are within earshot. Sen. Khaniri had raised the issue that we only entertain interventions for this one, I will come back to yours at some stage if I will make it.

What is it, Sen. Haji?

Sen. Haji: On a Point of Order, Mr. Speaker, Sir. If you are talking about Kapedo, we were never attacked. I am shocked to hear somebody asking me whether we were attacked because we were not attacked. For the benefit of the House, the meeting was very cordial. We did not have any problem with both--

The Speaker (Hon. Ethuro): Order, Senator! We wanted to know whether you were attacked or not. We are happy that you were not under attack.

On the issue raised by Sen. (Dr.) Khalwale, the first scenario both Houses rejecting, you have already determined yourselves that it fails. The question is: if one House approves and another one does not approve, what happens? It is still rejected, so both Houses must approve for the nominee to be carried.

Yours and the one by Sen. Musila - I know many other Senators had requests for Statements - I had explained earlier that we have resolved together that we give Bills priority. That is why I said after the end of my next Statement, we will go into the Committee of the Whole, so that we can dispose of Order No.9 then we come back to Order No.8. If that Order is concluded before the expiry time, then we will go back to Statements. If not, then the Statements will be entertained tomorrow.

I hope I am clear.

COMMUNICATION FROM THE CHAIR

SCHEDULE FOR THE PROCESSING OF THE BUDGET POLICY STATEMENT 2015 BY THE SENATE

Hon. Senators, as you are aware, the legislative budget cycle for 2015/2016 Financial Year and the Medium Term has begun with the submission of the following four documents to Parliament, yesterday 16th February, 2014.

The four documents are:

(a) The Medium Term Budget Policy Statement (BPS) 2015, which contains proposals for the 2015/2016 fiscal framework, showing the projected revenues and proposed expenditure ceilings as well as the economic indicators guiding budget formulation;

(b) The Medium Term Debt Management Strategy, 2015, which shows the total indebtedness of the country, the proposed borrowing to finance the 2015/2016 Budget and strategies of ensuring that the country's debt remains sustainable;

(c) A legislative proposal on the Division of Revenue, 2015, seeking to anchor in law the amount of national revenue to be divided between the national Government and the devolved level of Government (vertical division of revenue); and,

(d) A legislative proposal on the County Allocation of Revenue, 2015, proposing the exact amounts due to each county or central division of revenue.

Hon. Senators, Section 25(7) of the Public Finance Management Act, 2012, provides that the BPS should be passed by Parliament within 14 days. This means that both Houses of Parliament should have dispensed with the BPS as well as the Medium Term Debt Management Strategy (MTDMS) by 3rd March, 2015, so as to allow the smooth interface of these documents with the subsequent budget documents, which include the introduction of both the Division of Revenue as well as the County Allocation of Revenue Bills in Parliament. This will also allow sufficient time for the respective county fiscal strategy papers to be aligned with the BPS, as provided in Section 117(2) of the Public Finance Management Act, 2012.

In light of the limited amount of time occasioned by the strict deadlines in the processing of both the BPS as well as the MTDMS, a schedule that will guide the processing of both documents in the Senate has been prepared and is available at the Journals Office. I now direct that it be made available to all Senators. I would like to remind the hon. Senators that we must abide by the Budget cycle.

I thank you for your attention.

NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

SHUTDOWN OF NTV, QTV, CITIZEN TV AND KTN STATIONS

Sen. Orengo: Mr. Speaker, Sir, I rise under Standing Order No.33 to seek the leave of the House, to move the adjournment of the Senate for the purposes of discussing the following issue as a definite matter of urgent national importance. The issue is the shutting down of NTV, QTV, Citizen Television and KTN stations, notwithstanding the Constitution of Kenya which establishes Kenya as a sovereign Republic based on foundational and essential values and principles of governance, including human rights, equality, freedom, democracy and non-discrimination.

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Order, Senators! I am satisfied that you have raised sufficient numbers. Therefore, we will slot this business beginning 5.30 p.m. to 6.30 p.m.

Sen. Orengo, in order to make that gratitude be real, you may wish to be the temporary Whip, to ensure that there are sufficient numbers for the other business also to be dispensed with and in good time. This is because we want Order Nos.8 and 9 to be dispensed with today.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS FROM
MBOONI GIRLS HIGH SCHOOL

The Speaker (Hon. Ethuro): Hon. Senators, I wish to acknowledge the presence of students from Mbooni Girls High School, Makueni County, who are visiting the Senate. We want to welcome them in our usual manner to enjoy the proceedings of this House.

(Applause)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Chairperson
(Sen. (Dr.) Machage) took the Chair]*

THE FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO.36 OF 2013)

The Temporary Chairperson (Sen. (Dr.) Machage): We are now in the Committee of the Whole.

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The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson, Sir. As a matter of etiquette in the Chamber, did you notice that as you were taking your position to bow to the House, for us to sit to transact business, Sen. Sang, Sen. Ochwang'i, Sen. Karue, Sen. Chiaba and Sen. Kuti were firmly ensconced in their seats, which is not in keeping with our Standing Orders? When the Chair of Committee is taking his position, all Members are supposed to be upstanding until you bow in respect to either side before we take our seats.

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, indeed. I also noticed that when I bowed, Sen. Wetangula and others did not bow back.

(Laughter)

I also took note of the behaviour of the named Members. But you are at liberty to name them so that I can use all the power bestowed on me, if you think that it is necessary. Since he is good enough today, he does not want to go to that extreme. I, as your Chair, will be polite enough just to say: Do not repeat. Follow our Standing Orders. I think that is enough on that.

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of Order, Mr. Temporary Chairperson, Sir. The House is now in the Committee of the Whole and we shall be voting. The Opposition is seriously disadvantaged during voting because of the demise of the late Sen. Otieno Kajwang. The Independent Electoral and Boundaries Commission (IEBC) was able to conduct a successful election where our candidate won, but the Government Printer or whoever it is, has not gazetted the name of the Senator-elect for swearing in. So, before we vote, could the Senate Majority Leader explain why Senator-elect, Moses Otieno Kajwang, was not gazetted so that he can be sworn in, for us to enjoy our usual majority as the Opposition in this House?

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! To my knowledge, the Senate Majority Leader does not head the Government Printer Department. If you want that answered, then you have to seek a Statement so that you can get the mandate of the House to have a reply. As you have put it, I am tied and there is nothing that I can do. This House will have that one Member less, unfortunately, affecting the Opposition. We will live with it.

We are now on Order No. 9, Committee of the Whole. We will start with Clause 3 of the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013)

Clause 3

Sen. Ndiema: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(a) In sub clause (1) of the proposed new section 2A by deleting the words "Fertilizer Board of Kenya" and substituting therefore the words "Fertilizer and Animal Foodstuffs Board of Kenya".

(b) by deleting the proposed new section 2B and substituting therefore the following proposed new section-

Functions

of the

Board 2B. The functions of the Board shall be to-

(a) regulate the fertilizers and animal foodstuffs industry in Kenya including the production, manufacture, packaging, importation and marketing of fertilizers and animal foodstuffs;

(b) regulate the importation of raw materials for the manufacture of animal foodstuffs;

(c) promote the manufacture of fertilizers and animal foodstuffs in Kenya;

(d) advise the national and county governments on-

(i) the procurement, importation and efficient and timely distribution of subsidized fertilizers and animal foodstuffs;

(ii) establishment of retail outlets of fertilizers and animal foodstuffs in the counties; and

(iii) development of policies related to the manufacture and distribution of fertilizers and animal foodstuffs;

(e) inspect and test fertilizers and animal foodstuffs to ensure their quality and safety;

(f) license manufacturers, distributors and retailers of fertilizers and animal foodstuffs on the recommendation of the Director of Agriculture and the Director of Veterinary Services;

(g) promote, in collaboration with stakeholders in the agriculture industry, research on fertilizers and animal foodstuffs; and

(h) ensure that fertilizers and animal foodstuffs imported, manufactured or distributed in Kenya meet the standards of quality and safety as prescribed by law.

(c) in the proposed new paragraph 2C-

(i) in sub clause (1) by-

(a) inserting the following new paragraph immediately after paragraph(b) -

(ba) the Principal Secretary in the Ministry for the time being responsible for livestock or a designated alternate not being below the level of Deputy Secretary;

(b) deleting paragraph (e)

(c) deleting paragraph (f) and substituting therefore the following new paragraph-

(f) one person nominated by the Council of Governors;

(d) inserting the following new paragraphs after paragraph (f) -

(fa) the Director of Veterinary Services;

(fb) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;

(ii) by inserting the following new sub clauses immediately after sub clause (2)-

(2A) The Cabinet Secretary shall ensure that not more than one-third of the persons appointed under subsection (1) are of the same gender.

(2B) A person appointed under subsection (1) shall hold office for a period of three years and may be re-appointed for a further nonrenewable term of three years.

(d) by inserting the following new clause immediately after clause 2M

Annual report

2MA. (1) The Chief Executive Officer shall cause to be prepared an annual report setting out the activities of the Board.

(2) The Chief Executive Officer shall submit the report referred to in subsection (1) to the Cabinet Secretary not later than two months after the end of each financial year.

(3) The Cabinet Secretary shall transmit copies of the report to the Senate and the National Assembly within three months after receipt of the Report.

Mr. Temporary Chairperson, Sir, this amendment proposes to rename the proposed Fertilizers Board of Kenya to be the Fertilizers and Animal Foodstuffs Board of Kenya. This is because the board is intended to regulate both fertilizers and animal foodstuffs.

The same Amendment is also necessary so as to make the regulatory and advisory board in the fertilizers and animal food stuff sector as opposed to a board also being involved in the actual business of importation, procurement, manufacture and sell of fertilizer and animal foodstuffs. There would be conflict of interest if the Board were to be a player in marketing as well as being a regulator.

Since the board as currently constituted does not have a representative from the animal sector yet it is supposed to regulate animal foodstuffs, this amendment proposes that the Principal Secretary in the Ministry of Agriculture Livestock and Fisheries or a designate be in-cooperated into the membership of the board to cater for the interests of the animal sector.

The other rationale for the above two amendments are to ensure that counties are also presented in the board, while at the same time retaining a lean membership in the board. The Director of Veterinary Services is expected to provide the board with technical expertise in the fertilizer and animal foodstuff sector for purposes of quality and safety of fertilizers and animal foodstuffs.

Research in the fertilizers and animal foodstuffs sector is important to ensure that standards of quality and safety are maintained, and to promote innovation in this sector. It is, therefore, proposed that the board should have a representative from the agricultural research sector to promote and enhance research in fertilizers and animal food stuffs. The other rationale is to comply with Article 27 of the Constitution which requires that not more than two thirds of the members of an appointive body be of the same gender.

Mr. Temporary Chairperson, Sir, the rationale is that the Committee noted that the Bill does not provide for a term of office for the chairperson of the board. The proposed amendment, therefore, proposes that the chairperson holds office for a three year term which may be renewed once.

Finally, the Committee noted that the Bill does not provide for a reporting mechanism for the board. For purposes of promoting transparency and accountability, the Committee, therefore, proposes that the board reports annually to the Cabinet Secretary and to Parliament.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Senators, I will hold on the Division until all the Clauses have been discussed.

Clause 10

Sen. Ndiema: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 10 of the Bill be deleted and substituted therefore by the following new Clause-

10. Section 16 of the principal Act is amended by deleting the words “one thousand shillings or to imprisonment for a term not exceeding one month and for a second or subsequent offence to a fine not exceeding three thousand shillings” and substituting therefore the words “five hundred thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding one million shillings”.

Mr. Temporary Chairperson, Sir, the Principal Act was enacted in 1967 and has been amended minimally since its inception. The penalties in the Act are very lenient and not deterrent enough for wealthy offenders such as illegal manufacturers or importers of high value and large quantities of fertilizers and animal foodstuffs. The Committee proposes to enhance the penalties so as to make them deterrent to all offenders.

((Question of the amendment proposed))

Clause 2

Sen. Ndiema: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended in sub clause (b) in the definition of the word “Board” by deleting the words “Fertilizer Board of Kenya” and substituting therefor the words “Fertilizer and Animal Foodstuffs Board of Kenya”.

Mr. Temporary Chairperson, Sir, this amendment proposes to rename the proposed Fertilizer Board of Kenya to be the “Fertilizer and Animal Foodstuffs Board of Kenya”. This is because the Board is intended to regulate both fertilizers and animal foodstuffs.

(Question of the Amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention.

Sen. Obure: Mr. Temporary Chairperson, Sir, could I seek a clarification?

The Temporary Chairperson (Sen. (Dr.) Machage): What is it, Sen. Obure?

Sen. Obure (Spoke off record)

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Obure! The Senate passed---

Sen. Obure: Mr. Temporary Chairperson, Sir, I was just seeking clarification.

The Temporary Chairperson (Sen. (Dr.) Machage): Well, I am tied by the Standing Orders; I cannot revisit it. I wish you had raised it earlier.

Sen. Obure: Okay.

The Temporary Chairperson (Sen. (Dr.) Machage): We will now go to Division on Clauses 3, 10 and 2 which have proposed amendments. We will then move on to Clauses 4, 5, 6, 7, 8, 9, 11, 12, 13 which do not have proposed amendments and then we conclude with the Title and Clause 1.

Could the Division Bell be rung for only five minutes?

Hon. Senators: Why five minutes? Ring it for two minutes.

The Temporary Chairperson (Sen. (Dr.) Machage): There is a suggestion to ring the Bell for two minutes. Ring the Division Bell for two minutes only.

(The Division Bell was rung)

Could we have the doors closed and the bars drawn?

(The doors were closed and the bar drawn)

Hon. Senators, have you logged in? Look at the Board to see whether your number has been logged in. The number present is reading zero; can you log in again, please? We will now have only 30 seconds to vote; vote now.

Hon. Senators: *Imezima!*

The Temporary Chairperson (Sen. (Dr.) Machage): It is all right now; you have 30 seconds to vote.

Hon. Members, there is a technical problem, that is why we are taking a little longer. It is not your Chairperson who is analogue.

(Laughter)

You just wait. One thing you may have realized is that the present number 46 is not the correct figure. That is the first mistake which we have realized, so there is a big technical problem with the machine.

So, could we use manual voter where hon. Senators are assisted voters?

An Hon. Member: The term "manual voter" is better.

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Members, I will announce the results later. Remember we had some amendments on Clauses 3, 10 and 2. We will start with Clauses 4, 5, 6, 7, 8, 9, 11, 12, 13, Title and Clause 1.

(Clauses 4, 5, 6, 7, 8, 9, 11, 12, 13, Title and Clause 1 proposed)

DIVISION**ELECTRONIC VOTING**

(Question, that Clauses 4, 5, 6, 7, 8, 9, 11, Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, Pokot County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mositet, Kajiado County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; and, Sen. Wako, Busia County.

NOES: Nil

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators! The results for the un-amended Clauses are as follows:-

AYES: 29

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 29 votes to nil)

(Clauses 4, 5, 6, 7, 8, 9, 11, 12, 13, Title and Clause 1 agreed to)

Clauses 3, 10 and 2

(Question that Clauses 3, 10 and 2 be amended as amended proposed)

DIVISION**ELECTRONIC VOTING**

(Question, that Clauses 3, 10 and 2 be amended as proposed, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kisasa, Kilifi County; Sen. (Dr.) Kuti, Isiolo County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, Pokot County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mositet, Kajiado County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; and, Sen. Wako, Busia County.

NOES: Nil

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators! The results for the amended Clauses are as follows:-

AYES: 30

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 30 votes to nil)

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

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

(Clauses 3, 10 and 2 as amended agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Hon. Chairperson, Sir, I beg to move that the Committee doth report to the Senate its consideration of the Fertilizer and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Senators, for the purpose of saving time, we will not report. We will go to Order No.9 (ii); The Statute Law (Miscellaneous amendments) No.2 Bill (National Assembly Bill no.33 of 2013).

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No.2) BILL
(NATIONAL ASSEMBLY BILL NO.33 OF 2013)

Clause 2

(Question that Clause 2 be part of the Bill, proposed)

The Temporary Chairperson (Sen. (Dr.) Machage: Again, as we did earlier, I will not put the Question until we finish all the Clauses. As you may have realized, we have a Schedule and there are many amendments. So, I will deal with them just as we deal with clauses.

The Temporary Chairperson (Sen. (Dr.) Machage: There was a proposed amendment on this. Chairperson of the Committee on Legal Affairs and Human Rights, are you still interested?

Schedule

Provisions relating to the Transition to Devolved Act No.1 of 2012

Provisions relating to the County Governments Act No. 17 of 2012

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT, the Bill be amended in the Schedule-

(a) in the proposed amendments to the Transition to Devolved Government Act, 2012 (No. 1 of 2012) by deleting the proposed new subsection (5B) proposed to be inserted in section 23;

(b) in the proposed amendments to the County Governments Act, 2012 (No. 17 of 2012)-

(i) by deleting the proposed amendment to section 26(2);

(ii) by deleting all the proposed amendments to section 54;

(ii) by deleting the proposed new section 139;

Mr. Temporary Chairperson, Sir, in the Statute Law (Miscellaneous Amendments)(No. 2) Bill (National Assembly Bill No. 33 of 2013), the National Assembly had inserted Clause 5(b), which sought to state as follows:

(a) Where the Authority determines the county government meets the criteria for the transfer of functions under Section 24, it shall propose a programme to support and strengthen the capacity of that county government, which shall be implemented by the national Government in consultation with the county government, to enable the county government performs the transferred function.

(b) In transferring the function under this Section, the Authority shall determine the specific component of each function to be transferred.

Mr. Temporary Chairperson, Sir, it was the feeling of the Committee under the law, that the question of determining the functions is the mandate of the Senate. In an attempt to put Clause 5 (2)(b) in this Act, the National Assembly was taking away the power of this Senate, to be the only person who can determine whether a function can be

transferred and whether there is enough capacity. That is the reason we have proposed to amend and delete that section for being illegal and unconstitutional.

Thank you.

(Question of the amendment proposed)

Provisions relating to the County Governments Act No. 17 of 2012

The Temporary Chairperson (Sen. (Dr.) Machage): Chair, Committee on Legal Affairs and Human Rights, do you have an amendment?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, in the proposed Statute Law (Miscellaneous Amendments) (No.2) Bill National Assembly Bill No.33 of 2013) Section 26(2), the National Assembly had sought to reduce the number of wards from 15 to 10, which would be the wards that would constitute a county for purposes of the first general election under the new Constitution.

After reading this Clause, it was obvious that the National Assembly overlooked the fact that elections that we completed in 2013 were the first general elections and, therefore, this amendment was superfluous. We have proposed to delete because it is unnecessary.

Thank you.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well.

(Question of the amendment proposed)

I will put the Question at the end.

(The Serjeant-at-arms withdrew the Bar)

The Temporary Chairperson (Sen. (Dr.) Machage): Order! Serjeant-At-Arms, who ordered withdrawal of the Bar? You are messing me up. I did it on purpose. You do not take my authority onto your hands. Could you put it back and do not repeat that mistake next time.

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, what is it Sen. Mutula Kilonzo Jnr?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, there was an omission on my part. I thought you would call me for Clause 2(ii) and (iii). That is why I did not explain the reasons for the amendments. I will take three minutes only.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well, I will give you the exception.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, the National Assembly in attempt to amend Section 54 of the County Governments Act was circumventing the proposed Sen. Sang Bill by proposing to have a county forum to coordinate development activities which would be chaired by the governor. The purpose of this amendment was to defeat what we had done as Senate. Therefore, it was our view

that this was a mischievous amendment and we need to delete it because we have already passed law on this issue.

Lastly, the National Assembly had also proposed quite mischievously to add a new Section to the County Governments Act which states as follows:-

“Until a new law relating to opposing of rates and charges is enacted, the county governments with necessary modifications continue to impose rates and charges under the existing law and framework.”

Mr. Temporary Chairperson, Sir, the Constitution under Article 209 gives specific mandate to counties on the taxes and imposition of charges that they can make.

This amendment was, therefore, attempting to reverse the constitutional order by allowing counties to start levying charges that were being levied before the promulgation of the Constitution. We, as the Senate, and the Committee on Finance, Commerce and Budget have stated that the charging of levies by counties which are not entertainment, as provided under Article 209, are all illegal because there is no existing legislation. This amendment is a mischievous attempt to have a section which gives county governments a right to start levying charges which would be against the Constitution. Therefore, we propose to amend and delete Section 139 for being unconstitutional.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. For purposes of the HANSARD, I allowed the Member to read that out. However, Sen. Mutula Kilonzo Jnr., the Members ahead of you had read mischief. They had made that proposal.

The Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, could you tell us why you want to amend the provisions relating to Agriculture, Fisheries and Food Authority Act No. 13 of 2013?

Schedule

Provisions relating to the Agriculture, Fisheries and Food Authority Act, 2013

Sen. Ndiema: Mr. Temporary Chairperson, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Agriculture, Fisheries and Food Authority Act, 2013 -

(a) in the proposed amendment to section 5(1) by –

(i) deleting the word “chairman” in the proposed amendment to paragraph (i) and substituting therefor the word “chairperson”;

(ii) deleting the proposed amendments to paragraphs (f), (g), (h) and (k);

(iii) deleting the proposed amendment to paragraph (i);

(iv) inserting the following rows immediately after the proposed amendment to paragraph (a)–

Delete paragraphs (d), (f), (g), (h) and (k);

Delete paragraph (i) and substitute therefor the following new paragraph–

(i) eight persons, being farmers representing farmer organizations in the major crop subsectors in Kenya appointed by the Cabinet Secretary in consultation with the Council of County Governors;

(b) by inserting the following new rows immediately after the proposed amendment to section 5(1) –

- s. 5(2) Delete.
- s. 5(3) Delete.
- s. 5(4) Delete the expression “(i)” appearing immediately before the word “shall” in the prefatory clause.
- (c) in the proposed amendment to section 5(4) by deleting the proposed new paragraph (a) and substitute therefor the following new paragraph –
 - (a) be a person who –
 - (i) holds a degree from a university recognized in Kenya; and
 - (ii) has knowledge and experience in agriculture, finance, law, administration, human resource management or such other expertise as the appointing authority may consider relevant.
 - (d) by deleting the proposed amendment to section 10(2);
 - (e) in the proposed amendment to section 16 by inserting the words “and which shall not exceed ten percent of the levy” immediately after the words “Cabinet Secretary” in the proposed new subsection (4).
 - (f) in the proposed amendment to section 42 by inserting the words “subject to any other law or regulations made under this Act and” immediately after the words “Cabinet Secretary”.
 - (g) by deleting the proposed amendment to paragraph 9 of the First Schedule to the Act.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, even if we are at the Committee level, it is still part of the plenary. So, you must observe Standing Orders.

We have all read your amendment, but you need to explain why we need to have that amendment. You need to explain. If you have nothing to explain, tell us so.

Sen. Ndiema: Mr. Temporary Chairperson, Sir, I was trying to save time since most of the Members have read.

The Temporary Chairperson (Sen. (Dr.) Machage): I call Sen. Murungi to help you a little.

Sen. Murungi: Mr. Temporary Chairperson, we received proposals of these amendments from the Ministry of Agriculture, Livestock and Fisheries and we have discussed them at our Committee. The amendments are very simple. They relate to composition of the Agriculture, Fisheries and Food Authority. In the amendments under Section 5(1), the proposal is that we delete the word “chairman” and replace it with the word “chairperson” because the chairman could be a man or a woman. Therefore, chairperson is a more inclusive term.

The other amendments relate to the inclusion of the stakeholders within the organisation. That is why there is a proposal that we have more farmers’ representatives being incorporated in the authority that was previously the case. You can see there are eight persons being proposed who are farmers representing farmer organisations in major crop sub-sectors. They will be appointed by the Cabinet Secretary in consultation with the Council of Governors. The Council of Governors is being brought in because agriculture is now a devolved function. The authority had previously conceived this Bill which was passed in 2013. The law was seen purely as a national function and there was no representation from the counties. Therefore, with the new eight representatives, the counties will be properly represented.

The other amendments relate to qualifications of the persons who are being nominated by the Cabinet Secretary. It is being proposed that the Chief Executive Officer (CEO):-

- (i) holds a degree from a recognised university in Kenya, and;
- (ii) has knowledge and experience in agriculture, finance, law administration, human resource management or such other expertise as the appointing authority may consider relevant.

The amendments, therefore, are intended to improve the capacity and representation in the composition of the Agriculture, Food and Fisheries Authority.

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, what is it, Sen. Haji?

Sen. Haji: Mr. Temporary Chairperson, these are eight persons who are farmers representing farmer organizations in the major crop sector and no livestock. Livestock should be included. It is one of the major economic sectors in this country.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Haji.

One, you could have come up with that observation after I propose the question on the amendment by the Committee.

Two, as a Senator, you have that legal mandate to propose your amendments. Therefore, your argument may not hold water because you want an amendment on an amendment. Allow me to propose the question, then you may present what you have in mind if it holds water. However, it means you have to write to Chairperson a list of what you want included. I will entertain your amendment. You could write to the Chairperson immediately.

Let me now propose the question.

(Question of the amendment proposed)

So, Sen. Haji, you can now stand.

Sen. Haji: Mr. Temporary Chairperson, Sen. Murungi has explained to me that there is another amendment about livestock. Therefore, I withdraw.

The Temporary Chairperson (Sen. (Dr.) Machage): Since it went into the HANSARD, I would rather the Chairperson gives that explanation so that it also goes into the HANSARD.

Sen. Murungi: The concerns are appropriate. However, I would like to point out that the Agriculture, Fisheries and Food Authority cannot deal with livestock. It only deals with crops and fisheries. Therefore, we cannot incorporate the amendment which is being sought by the Sen. Haji because that is for another Act.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well, well explained.

Provisions Relating to the Crops Act, No.16 of 2013

Sen. Murungi: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT the Bill be amended in the Schedule in the proposed amendments to the Crops Act, 2013 by inserting the following new row immediately before the proposed amendment to section 9(2) –

Delete the word “biodiversity” appearing immediately after the words “the National” and substitute therefor the word “Bio-safety”.

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Murungi, could you explain?

Sen. Murungi: This is a very simple amendment to the Crops Act, 2013 and we are inserting the words “bio-diversity” after the word “national” and substituting the word “bio-safety”.

There have been concerns that we are not addressing food safety issues under the Crops Act. It is being proposed the authority does not just deal with issues of biodiversity, but also bio-safety. So, it is just an addition.

The Temporary Chairperson (Sen. (Dr.) Machage): Thank you for the explanation. The word “simple” is relative as you may know.

(Question of the amendment proposed)

Provisions Relating to the Kenya Agricultural and Livestock Research Act, No.17 of 2013

Sen. Murungi: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule in the proposed amendments to the Kenya Agricultural and Livestock Research Act, 2013 –

(a) in the proposed amendment to section 6(1) by deleting sub-paragraph (i) and (ii) in the proposed new paragraph (i) and substituting therefor the following new subparagraphs –

(i) one farmer representing the interests of livestock farmers;

(ii) one farmer representing the interests of crop farmers;

(b) by deleting the proposed amendment to section 6(3).

Mr. Temporary Chairperson, Sir, this is where the concerns of Sen. Haji are being taken care of; the composition of Kenya Agricultural and Livestock Research Authority is being changed so that we can include a representative for the interest of livestock farmers and another representative for the crop farmers.

The Kenya Agricultural and Livestock Research Act is the act which consolidates all the research institutions in the country under one research authority. As previously composed, there were no farmers representatives in those institutions. The amendment is to bring in farmers representation in the research institutions being created. There is one farmer representing livestock farmers and one representing crop farmers. We are expanding the composition.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): We will proceed to the end and put the Questions later.

Now listen to the Questions carefully. Please log in now. You have 30 seconds to vote. I hope you are voting. Sen. Murkomen, are you voting? Where are the manual voters? I will read the results late because we have another question to take. Can you log in for this Question?

DIVISION

ELECTRONIC VOTING

(Question, that the provisions relating to the Land Adjudication Act Cap.284, the Urban Areas and Cities Act (No.13 of 2011), the Transition to Devolved Government Act (No.1 of 2012), the County Governments Act (No.17 of 2012), the Agriculture and Fisheries and Food Authority Act (No.13 of 2013), the Crops Act (No.16 of 2013) and the Kenya Agriculture, Livestock Research Act, (No.17 of 2013) be approved put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans-Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators! I wish to announce the results of the Division as follows:-

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

So, the “Ayes” have it.

(Question carried by 31 votes to nil)

Title, Clause 1 and Clause 2

ELECTRONIC VOTING

(Question, that the Title, Clause 1 be part of the Bill, and Clause 2 as amended be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Karaba, Kirinyaga County; Sen. Khaniri, Vihiga County; Sen. (Prof.)

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Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators! I wish to announce the results of the division as follows:-

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to nil)

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 as amended agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its consideration of The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

**REPORTS, CONSIDERATION OF REPORTS
AND THIRD READINGS**

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)
(No.2) BILL (NATIONAL ASSEMBLY BILL No.33 OF 2013)

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013) and approved the same with amendments.

Sen. Murungi: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. G.G. Kariuki seconded.

(Question proposed)

(Question put and agreed to)

Sen. Murungi: Mr. Temporary Speaker Sir, I beg to move the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 33 of 2013) be read a Third Time.

Sen. G.G. Kariuki seconded.

(Question proposed)

The Temporary Speaker (Sen. Murkomen): Senators, I have to remind the House whether this is a matter concerning counties. So, the Chair shall consult and then get back to you.

*(The Temporary Speaker (Sen. Murkomen)
consulted the Clerk-at-the-Table)*

The Temporary Speaker (Sen. Murkomen): Hon. Senators, as you might have noticed, I should have alerted you that, that was the Third Reading, unlike the first proposal that I made during Reporting. So, at the Third Reading, is when we are passing the law. Considering that it is a matter concerning counties, we will go into division as it usually is. For the record, I would like to say that we are now at the Third Reading.

Let the Division Bell be rung for one minute. Can the Whips confirm to me that we have the numbers? The Bell being rung is for both Bills. So, in the next stage, we will just continue with the voting.

(The Division Bell was rung)

The Division Bell can now be stopped. Draw the Bar.

(The door was closed and Bar drawn)

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You can now start logging in. I will give you directions as when to vote.

DIVISION

ELETRONIC VOTING

*(Question, that the Statute Law (Miscellaneous Amendments)
(No.2) Bill (National Assembly Bill No. 33 of 2013)
be now read a Third Time put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Kisasa, Kilifi County; Sen. (Dr.) Kutu, Marsabit County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County and Sen. Wako, Busia County;

NOES: Nil

Order, Senators! The results of the Division are as follows:-

AYES: 29

NOES: Nil

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 29 votes to nil)

(Applause)

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

The Temporary Speaker (Sen. Murkomen): Where is the Chairperson of the Committee to report on the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013)? Chairman, you can use the Dispatch Box to save time.

THE FERTILIZERS AND ANIMAL FOODSTUFFS
(AMENDMENT) BILL (NATIONAL ASSEMBLY
BILL NO. 36 OF 2013)

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Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, a Committee of the Whole has considered the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013) and its approval thereof with amendments.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Where is the Mover?

(Sen. Hassan spoke off-record)

Sen. Murungi: Mr. Temporary Speaker, Sir, I think you should rule Sen. Hassan out of order.

Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. G.G. Kariuki Seconded

(Question proposed)

(Question put and agreed to)

Sen. Murungi: Mr. Temporary Speaker, Sir, I beg to move that The Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013) be now read a Third Time.

Sen. G.G. Kariuki Seconded.

(Question proposed)

The Temporary Speaker (Sen. Murkomen): Hon. Senators, before I put the Question, I would like to remind you that this is a Bill concerning counties and, therefore, we will go to Division. I had already announced earlier that the Division Bell that was rung was meant for the two Bills. So, we will go straight to the voting.

Prepare to vote; you have 30 seconds.

DIVISION

ELECTRONIC VOTING

(Question, that the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013) be now read a Third Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisasa, Kilifi County; Sen. (Dr.) Kuti, Isiolo County;

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Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mositet, Kajiado County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, TaitaTaveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators – Sen. Wako, and Sen. Mugo. The result of the vote is as follows:-

AYES: 29

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 29 votes to nil)

(Applause)

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

What is it Sen. Orengo?

POINT OF ORDER

DEFERRAL OF THE MOTION OF ADJOURNMENT UNDER STANDING ORDER NO. 33

Sen. Orengo: Mr. Temporary Speaker, Sir, I want to seek your indulgence. I had been granted leave to move a Motion on a matter of urgent national importance. It was scheduled to start at 5p.m, but there were possibilities of starting at 5.30p.m but in view of the Motion under Order No.8 and the importance thereof, I am seeking your indulgence that I move the Motion tomorrow rather than today so that we can deal with this particular Motion under Order No. 8, with your permission.

Sen. Billow: Mr. Temporary Speaker, Sir, because of the timelines, it is very important that we dispose of the criteria for the revenue allocation. I request you that we push his Motion to tomorrow and we finish this one, please.

The Temporary Speaker (Sen. Murkomen): Very well. I agree with Sen. Orengo and Sen. Billow that considering the weighty nature of Motion No. 8, which will be our next business and considering that we are also running out of time in so far as that Motion is concerned; and even considering that the commissioners for the Commission on Revenue Allocation (CRA) have been here patiently from 2.30p.m in anticipation of this very important debate; also considering the amount of interest that the Members have---. They have already expressed a lot of interest here; I think it is only fair that we postpone it to tomorrow.

In so far as the time that will be allocated tomorrow is concerned, I leave that to the decision of the Speaker tomorrow. But the decision is that we can postpone to tomorrow at a time that will be appointed by the Speaker because again, I do not want to anticipate whether we will start at 3p.m, 4p.m or at 5p.m. That is the discretion of the Speaker. But the Speaker today ruled that we shall canvass the issues related to the Adjournment Motion requested earlier by Sen. Orenge tomorrow.

What is it, Sen. Wetangula?

Now, sorry, the doors can be unlocked.

(The doors were opened)

Hon. Senators, let me make this request first, before Sen. Wetangula can proceed.

The Senate Minority Leader (Sen. Wetangula): But Mr. Temporary Speaker, Sir, you have already given me the opportunity.

The Temporary Speaker (Sen. Murkomen): You can stand there, it will be very brief.

Hon. Senators, please, ensure that you are available when the time comes for voting. We do not want to find ourselves in a situation that we are struggling.

(Loud consultations)

If the circumstance lead to a situation where we will have to vote, depending on what the whips will say, because of the interest already generated, we will go past 6.30p.m., because we have more than ten people who want to speak and that will be about 150 minutes. So, depending on the consultation between the whips who will approach the Speaker, then I will communicate to you that decision if it goes to tomorrow.

The Senate Minority Leader (Sen. Wetangula): Thank you for the opportunity. You have actually said the first part of what I intended to say. But I want to thank Members for having been in the House this afternoon to at least vote on three critical Bills. The next Motion is very critical in terms of timelines. I want to urge that since you have indicated that there are so many Members who intend to speak on it and we have no intention of curtailing Members from ventilating, we agree that tomorrow, voting on this Motion be the first item on the agenda so that we can be able to make progress.

Hon. Senators: *Sawa, sawa!*

The Temporary Speaker (Sen. Murkomen): Hon. Members, I think that is a fair request unless there is objection.

Sen. Haji: Mr. Temporary Speaker, Sir, this Motion does not lead us to taking a vote so that we should curtail debate on this one for the other one to come tomorrow. Why should we postpone voting on allocation of resources to our counties?

The Temporary Speaker (Sen. Murkomen): Order! I would want to request Members not to leave until they are sure that the decision we have made is for tomorrow.

Sen. Muthama: Mr. Temporary Speaker, Sir, we know what we went through so as to maintain the numbers up to now. To say that we will have time to debate this Motion and go to the voting, by the time we are through I want to assure this House that

we will not have enough Members. The best thing is to debate this Motion now and vote for it as the first item tomorrow.

The Temporary Speaker (Sen. Murkomen): Very well. Let us make progress. I understand the request by Sen. Haji, but considering the seriousness of this debate and the fact that counties want to make their voice known, we have already eight requests that will take us about 90 minutes and that is one-and-a-half hours which will be past 6.30 p.m. So, the best thing is for us to exhaust the debate today and vote tomorrow. The Speaker ruled that we shall take the voting tomorrow and it will be put on priority basis for purposes of voting. Senators should be informed that their being there tomorrow is very crucial for purposes of passing this Bill.

Sen. Hassan: Mr. Temporary Speaker, Sir, I want to thank you for this opportunity.

The Temporary Speaker (Sen. Murkomen): Order, Sen. Hassan. I initially thought that you wanted to rise on a point of order. You should wait because we have not reached that Order.

Next Order!

MOTION

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

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

(Sen. Billow on 12.2.2015)

(Resumption of Debate interrupted on 12.2.2015)

Sen. Hassan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to once again be able to share my thoughts on this second generation formula on revenue allocation. I have been very clear since I came to this House that we need to take a little more time to agree on a formula that best satisfies all the counties. With due respect to the Commission for Revenue Allocation (CRA), I think this particular formula has gone through consultations.

I made it clear when I was in Naivasha that it is inherent that those counties with enormous wage bills are given the necessary caution so that they can have finances for development. I do not mean to hold brief for my county, but it is the county that I represent in this Senate. Just recently, we saw the World Bank Report that puts development expenditure at Mombasa County at 1 per cent. For a fact, when you contrast that with Wajir County, it receives an allocation of an average of Kshs8 billion to Kshs9

billion. With that allocation, only slightly under Kshs2 billion constitutes the wage bill. Therefore, Wajir County in that allocation already has some Kshs7 billion to commit towards development. If you take a county like Mombasa, Kisumu and Nairobi, the allocation almost constitutes the entire wage bill.

One would expect that if you give an allocation that can only cater for the wage bill, then it is inherent that there is no money for development. For further determination of this formula, we need to belabor ourselves on how best we can spread what the Constitution says is equity which is different from equality. Equity means that we shall be able to take a sizeable responsibility of those counties so that counties are able to perform their functions.

Mr. Temporary Speaker, Sir, here, we have a personal emolument factor which has been put at 2 per cent, spread across counties. As Sen. (Dr.) Khalwale had observed when we were consulting in low tones here is that the only way that this can make sense is to look at those counties where they are burdened by wage bills and on account of those burdens, those counties could have that cushion so that we can then say that these are conditional grants for certain counties so that they can be able to perform their responsibilities more effectively.

On my third year in the Senate, I am hesitant to support this formula for revenue allocation because until that day we shall get that formula right, I do not think I will be discharging my responsibilities faithfully to the people of Mombasa, just because it looks good and just because there is general consensus. I know for a fact that it sets my county up for failure, ridicule and to a position that it has far less to commit to development and commit the entire budget to the wage bill. It is also important for me to exercise the honesty not to allow this erroneous misrepresentation that a certain county X which has in excess of Kshs7 billion is doing more development than a certain county Y, which literally has no monies committed to development.

Mr. Temporary Speaker, Sir, I would also hasten to add that certain counties which receive low allocations must also be creative. It is not enough to say that we are not getting the kind of money that we want from the CRA or the Treasury. We need to see how best we can be able to put mechanisms in place that will allow counties to generate revenue in a manner as to bridge that gap so that these counties are able to discharge certain responsibilities in excess of just payment of wage bills.

If the money increases, it is true that Mombasa County will have a little more money to spend on development, but that money increases evenly across the spectrum and, therefore, it does not solve the problem where the inequalities are witnessed. Devolution was not brought here to enhance equality but equity. Therefore, I believe that for equity to be realized and for counties to meet the expectations of the public, then it is important that we are flexible in our formula. This blanket sharing of revenue might miss the point in terms of revenue allocation.

Therefore, I think we need to do more and factor in wage bills. This also means that the Transition Authority (TA) and other Government agencies must help counties to evaluate their needs so that they do staff rationalization. You understand that it is a fairly emotive issue to terminate people's employment on account of rationalization.

I think there is need for us as we progress to ensure that these revenue formulas are equitable and that a lot more factors are put in the parameters. More of them should

be considered so that people can be able to meet some of their most basic obligations. I think I have expressed my reluctance in this Senate and that Sen. G.G. Kariuki can bear me witness that I have had issues with the formula for revenue allocation since I came to this Senate. I have voted against every Bill for revenue allocation in this Senate and, therefore, I do not think that this formula has changed much; it is just taking us back to where we were. The only thing that is delusionary is the fact that the quota will increase. Therefore, instead of getting Kshs4 billion, we will get Kshs5 billion. The wage bill is still at about Kshs4 billion and so we will have an extra Kshs1 billion. But almost everybody else has that increment across the board.

I also heard the Governor of Lamu say that Ksh.2 billion might not be enough for him. I do not know what formula he was using. We must also factor in some of those issues. It is not enough to say that Lamu has this kind of mass area, this population size and this is the index of poverty and that is it. Lamu has developmental needs. It is far behind everybody in Kenya in terms of infrastructure. It has no roads. It does not have many other amenities that have reached to other parts of this nation. People still commute on donkeys. Therefore, when you tell the people of Lamu that you have used very simplistic, equal share and population, you will definitely adverse them and put them in a situation where they cannot meet some of their development objectives.

Mr. Temporary Speaker, Sir, as I have said before, we must argue these points relative to what the national Government is allocating to our respective counties. Yes, here you are putting in Ksh4 billion or Ksh5 billion into a county. We want to know how much more is going to Lamu, Mombasa or Kwale counties because some counties have been dispossessed. The whole vision of devolution was about equity, which is a very controversial issue. The real doctrine of equity says: "Those who are worse off must be better off before those who are better off become well off." We constantly miss that point.

Do you think it is just about giving everybody equal share or looking at the population size? This continues to marginalize some of these areas and that is why you will give Ksh1.2 billion. Lamu's population will not explode overnight. It is not that they will breed and breed and get to five million people like other counties such as Nairobi which has infrastructure. So, what do you do to equalize Lamu County? The 0.5 per cent for Equalisation Fund is insufficient. We are using the same simplistic parameters again.

I think we need to scratch our heads a little more as a country. We cannot just use the same land area. Definitely if you have land area and we peg it at 1 per cent, you have distanced them from certain counties and given others an edge. I think we must also make this revenue formula with cognisance of what the national Budget will be allocating to various counties. May be it could be that you are getting Ksh2 billion as Lamu County and the national Government will put in Ksh10 billion, and therefore, bridge that gap. However, if that is not what we can visualise, let us go with what we have on the table.

Mr. Temporary Speaker, Sir, my reluctance continues because I do not see Lamu catching up with Mombasa or Nairobi counties as long as you continue to give them Ksh1.2 billion. Lamu needs to build a first class, if possible, a Level Five hospital but you cannot build a Level Five hospital with Ksh.1.2 billion because that function is now with the counties.

How else do you help counties to get to that level? You cannot use this formula without looking at what the historical context devolution came to redress. We miss the point. Even Elgeyo-Marakwet County needs to have the injection of certain capital. I think we need to do an audit or assessment of counties. We need to determine the progress indicators in various counties and what they need so that then this mapping can allow us to allocate resources.

If you talk about poverty, we know that there is poverty in Mathare and Kibera. You cannot just say that the counties which meet a certain index of poverty are the deserving ones. There is poverty in certain areas in Nairobi and, therefore, you need to do that kind of evaluation so that you scratch your head a little more to know that you cannot equalize poverty by saying that only those poor ones in Mandera will benefit from the Equalisation Fund. There are those who are also unfortunately poor in Nairobi. What do you do to enhance what we call social justice? That was one of the visions of devolution.

Mr. Temporary Speaker, Sir, initially, we could be simplistic and get away with this formula but I think in future formulas, we need to get a little deeper and explore our heads a little more. I am still not persuaded that this formula addresses some of the concerns and issues affecting counties. If you look at Mombasa County, for instance, which is a commercial hub, there is constant migration into this town, which puts pressure on the entire service delivery sector every other time. Are those indicators factored? That happens almost every day.

We need to have a more robust agreement and not just look at figures and say that this time round, we can use Ksh5.1 billion to pay salaries and have Kshs1 billion extra. We need to look at how we are going to develop this country and equalize it within that principle of equity so that people who are worse off become better off before those who are better off become well off. However, we are continuing to do the same thing.

Mr. Temporary Speaker, Sir, why did we fight for this Constitution? We need to go a little deeper. I think I am getting a little anxious that we have lost another opportunity for another two years. I will not vote for another two years for myself, because this is not just right. We need to ensure that we cushion counties from the pressures that come with development and the indicators. We should look at Lamu County and see how we can develop it in terms of some of the functions that have been devolved like health care. They need to build first class hospitals. How will they do it with Ksh2 billion? We need to see what the needs of these counties are and make further assessments before we convince ourselves that this formula really meets the expectations of devolution.

As the Senate moves on, we need to take a step back. Everybody might have missed the point on devolution. That is why we need that meeting with the Commission on Revenue Allocation (CRA), the Budget Office, the Senate, the National Assembly, the Ministry of Devolution and the Council of Governors, to reposition what devolution was all about so that we meet its expectations.

I oppose.

Sen. Haji: Thank you very much Mr. Temporary Speaker, Sir. I think the matter we are debating has been very eloquently articulated by Sen. Hassan. However, I wish to add a few more. I am torn between objecting to this Motion, but if I do so, what will be the fate of the County of Garissa and other counties in the country if they do not get this

money. If I have my say, I may not be able to have my way because whatever I am going to propose may be shot down by the majority who are benefitting from the current Constitution more than the marginalized areas of this country.

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

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

When Kenyans were articulating their desire to have a new Constitution, they thought that a lot of things that affect their day to day life would be addressed. However, I cannot blame the Committee at all because they have followed what is stipulated in the Constitution. I have a problem with the Constitution because it was tailor-made to benefit the majority in this country. When the Constitutional Review Committee was meeting in Naivasha, all the big provinces, then; Rift Valley, Nyanza and Western who had the President, the Prime Minister and Deputy Prime Ministers, were able to influence the outcome of the Constitution.

Madam Temporary Speaker, everywhere in this world, a country is known by its size and not its population. Today, China and India, which have the largest population are equal to Rwanda and Djibouti with only 200,000 people. So, when they decided that 45 per cent will be given based on population, they knew what they were doing.

Madam Temporary Speaker, to make it worse, the land mass in the country is well known by its size and boundary. However, they recommended that 88 per cent only should be considered for allocation of revenue. To add insult to an injury, when the Constitution talks about development factor, we know that the least developed areas of this country are the marginalised areas; the 14 districts which include Lamu, Tana River, Garissa, Wajir, Mandera, Pokot and many others. When Mr. Mohammed Elmi was appointed Minister of State for Development of Northern Kenya and Other Arid Lands, his Ministry was supposed to address the ills afflicting those areas. However, this Constitution is not addressing that.

Madam Temporary Speaker, when we talk about inequality as Sen. Hassan has said, there is a lot of inequality in the dispensation of the resources in this country. Unless this matter is addressed, we cannot talk about devolution. Devolution was supposed to address the problem of the people in the areas that counties serve. As Sen. Hassan has said, Lamu is one of the most marginalised parts of this country. If the people of Lamu will be denied resources simply because their population is small, then we will not do justice to them.

Madam Temporary Speaker, I now address the Coalition for Reform and Democracy (CORD). If CORD is talking about a referendum, please include in the referendum the question of marginalized areas and you will get our support.

(Applause)

That is the only way we can change the Constitution; to address the ills that are being perpetuated every day, every time and every year.

I move to the current problem of education in Garissa, Wajir and Mandera. It is hurting that Europeans came all the way from England by sea up to Mombasa. From Mombasa, there was no railway or road. Maybe they walked up to Nairobi and all other parts of the country to serve the King at that time. Why would Kenyans refuse to serve their own brothers in North-Eastern Province? All they are saying is rubbish. They are talking about being raped, where were they? Why did they not report to the police if that was true?

I am speaking with a lot of bitterness. This is one of the inequalities that we are talking about. I am appealing to this Government, if it is sincere and truthful to serving the country, to devolve education to Garissa, Wajir and Mandera and give the resources to those counties to enable us hire teachers from India, Pakistan and wherever we can get them if Kenyans are not willing to serve their own country.

We are not *Al-Shabaab*, neither do we support them. Why should we be punished for what the *Al-Shabaab* is doing in this country?

With those few remarks, I do not support.

The Temporary Speaker (Sen. Ongoro): Order. Thank you, Senator.

Sen. Mutula Kilonzo Jnr: Madam Temporary Speaker, the Commission on Revenue Allocation (CRA) was very clever when they proposed this formula because they knew that when we go to the meeting, any attempt to change the formula, even by 1 per cent, would affect counties. In the Committee on Finance, Commerce and Budget, we attempted to do permutation. We increased basic share to 30 per cent. This changed the formula in such a way that counties would be discriminated against. We picked population and attempted to also change it by either increasing or reducing and that changed the allocations in such a manner that counties like Mombasa complained.

Therefore, Senators, I want to tell you that we have done this inside out. This formula, the way it is and in the allocations, is the best remedy you can have for now. What we need to do is to suggest methods of how we can deal with this issue in more detail. I say so because if you, Senators, attempt to change the population formula, will you change the numbers? Those numbers exist in the books of this country. People have complained about population census. Our best bet as Senators is to say, instead of having the population census that was done before, if you have an issue with it, we recommend that the next time we have a formula like this, we have the correct population census.

How was poverty index arrived at? If you were to change the formula today and increase it to 20 per cent, if we agreed about, for example, moving it from 20 per cent to 18 per cent, one of the beneficiaries of the movement from 20 per cent to 18 per cent is Mombasa County because they are being considered on personal emolument. If you disagree with the poverty index either to increase or reduce it, you will have to reduce the personal emoluments factor which Sen. Hassan is talking about. If Mombasa County has a problem with wages, because it has employed as many staffs as possible, does that mean that it is the cleanest? Does that mean that it is the most efficient in terms of work?

The CRA has a mandate to tell us that as we cushion counties on their wage bill, we must also demand to see the services equivalent so that then when we are discussing this issue as the Senate, we do not personalise it to counties because it is possible that counties have employed ghost workers. Nairobi County is famous for it. Even though

Nairobi and other counties have a problem with wages, Nairobi is possibly the dirtiest city in the world.

Therefore, my proposal was, and has been that instead of the CRA providing us with a nice glossy book like this one, with figures and factors which we cannot amend, because we do not have the benefit of the details, instead of the CRA finding governors as the best persons to lobby or many other people who they have been taking pictures with, the persons that the CRA should have talked to at the first instance - we want to tell them since they are here - is the Senate of this Republic. Under Article 216 and 217, this is our work. They must stop cozying around with governors. Governors have opposed all our mandates except this one. They are very happy with this one. That is why the CRA is busy cozying around with them instead of lobbying with Senators because we are the people who decide on the revenue to be allocated to counties.

All governors have had a retreat with the CRA. When did they call Senators? Those are the things that we should be demanding for as opposed to saying we just want to amend it for the sake of it because when you amend it for the sake of it, it will have no formula and there will be no difference between the Senate and the CRA who have come up with this formula which they want us to adopt. It is called in legal terms and in Latin *fait accompli* – just give it to them, let them debate it and they would pass it because they have assumed we are not interested in the details. Who told them that we are not interested in the details? If they went to the County of Mombasa, what were they told? If they went to Makueni County, what were they told?

We had a very bright young lady who came to our Committee's public hearing and I want us to start speaking like that young lady. This is what she said: Instead of using 45 per cent block population, we should go the County of Nakuru and ask them what is it that the population of Nakuru requires? It is not the same thing that is required in Makueni, Kakamega or Bungoma. Similarly, we should go to a need based assessment---

Sen. Hassan: On a point of order, Madam Temporary Speaker. Is my brother, the Senator for Makueni, in order to say that this formula is a *fait accompli* yet it is within this Senate to either adopt or reject it?

The Temporary Speaker (Sen. Ongoro): Proceed, Senator.

Sen. Mutula Kilonzo Jnr.: I was very specific; *fait accompli* means that we were given this formula with only one option according to them. If we want to amend it, then we must also have a basis for doing so. That is why I said *fait accompli*. We have very little information and we have been given a formula. That is the basis upon which I said they are treating us like a *fait accompli*.

Madam Temporary Speaker, I want to go to a more substantive issue and that is why I said that the Commission on Revenue Allocation (CRA) must now look us straight in the eye and say whether they understand why we have a Senate in this Republic. I want to read Article 216 because their principal function is to make recommendations on the sharing of revenue. There is something else they have skipped, and I want to read it for the record since they are listening:-

“The Commission shall also make recommendations on other matters concerning the financing of and financial management by county governments.”

I underline and put it in bold. This Report should have had an index highlighting how our county governments have spent money so that when you give them 1 per cent fiscal responsibility, it is only in Kenya where you give somebody an incentive when you do not know what that is for. We have records in this Senate. Sen. (Dr.) Khalwale is here and he would confirm that counties have reduced their revenue collection. If we do not have those facts here in this Report, why are we giving them an incentive of 1 per cent? We are telling them that their work is to have financial prudence and act responsibly.

I am going to tell CRA again that Article 207 says in mandatory terms that there shall be financial prudence and accountability. Therefore, you cannot appear to be powdering governors and counties by telling them to collect money and that you have given them the incentive. We should tell them that it is their work to account for the money they have worked for. Therefore, this revenue sharing formula and the reasons given have not been given to us with a basis. They have given us two pages with no material to support. That is why under fiscal responsibility, that is what the Commission says. They are saying:-

“This parameter ensures that county governments take responsibility to ensure public resources are used prudently.”

We cannot babysit counties. That is the reason why counties are behaving that way. We are doing this under the backdrop that county governments have refused entirely to account. The county governments have issued injunctions on this Senate on every mandate we have except revenue sharing formula where the CRA is taking pictures with them. They do not realize that if they come to us; the Senate of this Republic because we are the people who are supposed to manage this; then the question of accountability will come naturally and will follow because they would have then told counties in this Report that if they want an incentive, the County of Narok, for example, collected Kshs1.097 billion from Mara and from Trans Mara US\$5 million. That information should be here so that we tell them that if they want to get a further allocation, then it would be given.

Madam Temporary Speaker, for purposes of emolument and fiscal responsibility, this should be a conditional grant. An incentive must be a conditional grant so that we can reward the people who are working and not move this across the board even for the people who are plundering public resources. Although I find myself in a difficult position as a Member of the Committee on Finance, Commerce and Budgeting to agree with this, I say that this is a transitional report. We must say so and tell the Republic so. This is a transitional report because the law under the Constitution provided that this second generation formula was a transitional one.

We must tell the CRA that they have let us down, as the Senate of this Republic, by giving us things that we cannot work with; things that we cannot critique, things that we cannot deal with; and, figures that we do not know where they have come from. They have come to sit here for the first time yet they have had an opportunity to call us to those nice posh hotels they have been calling everybody so that we can work with them on this.

Therefore, I support this formula with those caveats that we must tell the public that we have been given a formula too late in the day, and we have the Budget Policy Statement which includes this Report. By the time we are debating this, the national Treasury has already put this in the Budget Policy Statement (BPS), yet we have not

discussed it or passed it. When I say *fait accompli*, I mean it. They are treating us as if we are just an appendage.

Madam Temporary Speaker, I would support with those caveats so that in the next generation formula, they can remember that we told them those things.

An hon. Senator: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): I have not seen your card, Senator. Please log in if you want to intervene.

Sen. Murungi: Thank you, Madam Temporary Speaker, Sir.

(Loud consultations)

The Temporary Speaker (Sen. Ongoro): Order, Senators. We are in session.

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

The Temporary Speaker (Sen. Ongoro): Order, Senator. It is Madam Speaker.

(Sen. Khalwale laughed)

Sen. Murungi: Thank you, Madam Temporary Speaker. It is Sen. (Dr.) Khalwale who is confusing me. He is laughing as if he is in the village.

I rise to support this Motion but with certain reservations. I would like to recommend certain amendments. We need not have much problems with the formula being proposed by the CRA but I think it is a fundamental fact that it is the people who we represent. This debate about geography and demography has to be resolved in favour of demography. We are not against our brothers in the so-called marginalized areas. Another way should be found of compensating them but in areas where we have heavy concentration of population, we think the formula should tilt in favour of the people because we have to put the people first. Even in those areas where there are no people, can we really allocate resources irrespective of the land mass of a county? If there is no single person, what basis would there be for allocating resources?

My feeling is that CRA should have a look at this again and put more weight on the population. The proposed 45 per cent is on the lower side. We are talking about minimum 50 per cent, then other ways of affirmative action can be used. But from my county we feel that we are being marginalized, our population is made not to count. That is why we are receiving a raw deal as far as allocation of resources to the counties is concerned

Madam temporary Speaker, that is the only recommendation I would like to make. I want it to be known that the Commission on Revenue Allocation (CRA) is a technical body. They are technical advisors to the Senate. It is the Senate which makes this formula and we should be able to amend it ourselves. My proposal for the population is 50 per cent- but let other colleagues come up with other ideas and we come up with a new formula because we are not robots who have to dance to whatever our agents tell us. We have to come up with our own through the Clerk's Office, which we think should be more empowered. We should look at this formula and the Senate will make the final decision as to what the formula should be.

So, we should not be intimidated by the fact that CRA has made a very beautiful document, very well packaged. It can all be undone in this digital era, we can redo these documents at night and come up with better documents tomorrow. It is for the Senate to fix the formula and not the CRA. It merely makes a recommendation which the Senate can reject or adopt.

I am proposing that we adopt what they are telling us with amendments. I will also want us to look at Article 216 of the Constitution because the recommendations are not merely about allocating resources on the basis of population, poverty and all that.

Article 216 state that:-

- (1) “The principal function of the CRA is to make recommendations concerning the basis for equitable sharing of revenue raised by the national Government-
 - (a) between the national and the county government
 - (b) among county governments”
- (2) “The Commission shall also make recommendations on other matters concerning financing of, and financial management by county governments as required by the Constitution and national legislation”

We should not stop merely at the formula of making allocations on the basis of population and all the other criteria. There are these other recommendations. The question is: Where are those others under Article 216(2), in this Report? If we are not happy, we can send them back and ask them to come with a more comprehensive Report containing recommendations under Article 216(2).

One of the areas that are bothering us, is if you read Articles 216 and 96, the Senate is given very clear responsibility by the Constitution regarding those national resources. If you look at Article 96(3), it states that:-

“The Senate determines the allocation of the national revenue among the counties, as provided in Article 217, and exercises oversight over national revenue allocated to a county government”

Therefore, you cannot separate what is being proposed by CRA and our own law as the Senate because it is for us to follow up on those resources and make sure that they benefit the people in the counties. This is where I want to make an amendment to this Report. You all, as Senators, know that although we have a very clear mandate to promote and protect the interest of the counties, it has not been possible for us to do so because we have no capacity as this institution or as Senators to carry out our oversight functions as required by Article 96(3).

Similarly, how do we promote the interest of our counties if we are not able to meet the people in the counties to discuss with them because you are not representing yourself, you have to meet with the people, listen to them and take their recommendations? It tells me, under provisions on public participation that you can actively promote the interests which you have already heard from the people. Oversight is not merely a postmortem; there is also a pre-mortem. When they are making the plans, you should be there with your team to tell them this plan cannot work because it is putting too many resources here and there.

Madam Temporary Speaker, after the plans are approved, I believe you have heard about County Integrated Development Plans (CIDPs). They were all made in this country without any reference to a Senator. Precisely, you just read about mammoth

things which are going to be done in the media. Senators were not involved. Indeed, some of those ideas proposed in those CIDPs were merely a collection of old reports from the previous governments which were just desktop; there was no public participation. You heard what some governor did after preparing the report; they called people for lunch and that was the public participation, to read the reports to them.

The Senators have to be empowered, so that we can critically analyze those CIDPs, make the reviews and also participate in the budget proposals to make sure they capture the interest of the people in the county or whether we are merely building white elephants.

Madam Temporary Speaker, we have to follow up and monitor the projects that are being done in the counties. We cannot be waiting to cry after the monies have been spent or after the cows have left the *boma*. We have to be there so that we can put proper fencing. That is why I am saying that there is need for the Senate to be adequately resourced. In fact, even when I was in the civil society, we used to do a lot of projects and in every project, we used to put an administrative cost and a cost for evaluation and monitoring for us to know whether what we did was really making sense and whether we had an impact or not. We should leave some percentage of the money we are sending to the counties for the purposes of monitoring and oversight. I had already given an amendment to the Clerk to this effect; that an amendment to the Report of the Senate Standing Committee-

The Temporary Speaker (Sen. Ongoro): Senator, was your request signed by the Speaker?

Sen. Murungi: Yes, it was submitted more than two hours before. The Clerk who was here knows about it.

The Temporary Speaker (Sen. Ongoro): You cannot proceed until we see and sign it. Can I have it? There is no copy?

Sen. Murungi: I will give you the copy after I read it. I am proposing an amendment that the Report of the Senate Standing Committee on Finance, Commerce and Budget on consideration of the second generation criteria for resource allocation, 2015/2016, 2016/2017 and 2017/2018 be adopted, subject to amending the recommendation by:-

- (a) re-numbering the current recommendation which has no number as "1"; and,
 - (b) adding recommendation "2" and "3" as follows:-
2. THAT, 1 per cent of the resultant figure arising from recommendation "1" in each county in every financial year shall be reserved in the respective county revenue funds, to be utilized within the county for monitoring and evaluation of devolution, entrenching devolution, capacity building and any other purpose related to Article 96 of the Constitution.
 3. THAT, the Senate shall make regulations for management of the resources referred to in "2."

Those are the two amendments that we want to make. I will ask Sen. Abdirahman to second.

The Temporary Speaker (Sen. Ongoro): Before you second, I just want to confirm that it has been brought to me and it was already approved. So, it is in order.

Proceed.

Sen. Abdirahman: Madam Temporary Speaker, I stand to second this very important amendment.

Devolution is an essential pillar in our Constitution. Two years after its inception, we are still having serious challenges. These challenges are being experienced because the Senate is not able to function as expected, in line with the proposal that has already been put forward. Two weeks ago, there was the so-called World Bank report that was merely a collection of figures from the Controller of Budget. A number of counties, including Wajir County Government, said that they were very happy with that performance. I, for one, was not happy with it, because you may spend 60 per cent of what you are allocated but what impact have these projects made? What changes are we experiencing in terms of livelihood? You can implement a project, but probably funds were embezzled. Was there accountability of these funds?

Madam Temporary Speaker, the proposals presented by the King of Meru, Sen. Kiraitu, with regard to capacity building in the counties, monitoring and evaluation of projects that are funded and entrenching devolution will be very important, hence the need to allocate funds to perform this. Many a time, governors and a few other people in certain quarters have complained of duplication of functions. Particularly, when the Senate speaks about a little allocation of funding, they think that we are coming out to actually implement projects. We are not making any proposal - let this be very clear - with regard to implementation of physical projects. We are saying that we require little funds allocated with a view to capacity building, creating community empowerment and ensuring that these projects or funds that have been planned for use, particularly for development, do not go to waste.

Madam Temporary Speaker, there is evidence in many counties of knowledge and skills gap. I am sure that if you look at the Transition Authority reports, there is evidence of lack of skills and knowledge in a number of counties, hence the need to build them. There is little connectivity between the various players at the county, just like what my colleague, Sen. Kiraitu, had talked about a one-day small meeting trying to talk about collation of information with regard to projects and calling it an integrated development plan. In the earlier days, there used to be the district development plans that were coherently planned from the grassroots to the national level. This does not take place in our counties today. This will give an opportunity to create linkages between the various actors in devolution; the Governors, Senators, ward representatives, communities and other interested stakeholders. Finally, participation is key to achieving development. What is now labeled as participation by community groups is really not what should have been called participation. The elected representatives must get an opportunity to make an input.

I want to conclude by saying that this is very important. Allocating a small percentage to those three areas that I mentioned, to undertake particularly, monitoring and evaluation (ME), capacity building and entrenching devolution, will definitely make a difference. If we do that in the next three years and create some little change in this formula--- I do not think that we are deducting anything from the counties. This can be ring-fenced specifically for use to undertake this principal function of the Senate.

This is a God-sent amendment and we must give it all the support that it deserves. I hope that the Commission on Revenue Allocation (CRA) can pick this and support it without undue delay.

Thank you very much.

(Question of the amendment proposed)

The Senate Majority Leader (Sen. (Prof) Kindiki): Thank you, Madam Temporary Speaker. I support that amendment from the outset, but I have just had a discussion with the Chairman of the Committee on Finance, Commerce and Budget and we are convinced that perhaps the---

The Temporary Speaker (Sen. Ongoro): Just a moment. There is an intervention.

Please proceed Sen. Elachi.

Sen. Elachi: Madam Temporary Speaker, I think that what the Senate Majority Leader is about to say is the same thing that I wanted to point out. We should look at the amendment and ensure that we are within the Constitution.

The Temporary Speaker (Sen. Ongoro): Please, proceed, the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof) Kindiki): Madam Temporary Speaker, according to Article 219 of the Constitution, a county's share of revenue raised by the national Government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225. In that context, I think it would be prudent to reword that amendment, so that it provides that 1 percent of the revenue--- Alternatively, that amendment should be to the Division of Revenue Bill, so that it becomes a conditional grant of 1 percent and even more importantly, to remove the capacity building issues, because if we include all those broad issues, then that money will not meet its purpose. Just say that it is for monitoring and evaluation, in accordance with Article 96(3), so that it is specifically for the Senate to do its oversight function. If that is done, then we will be within the Constitution. Otherwise, if we proceed in the direction proposed currently, we will offend Article 219.

Madam Temporary Speaker, having said that, one other point is that I oppose this criteria. It reminds me of how a group of bright young men in the early 1960's met and came up with a paper called Sessional Paper No.10 of 1965. That was the late Tom Mboya, Mwai Kibaki and a few other people. That Paper is responsible for the destruction and the economic marginalization that we have seen in this country. They simply said: "Concentrate on the so-called high potential areas". The product of that Paper has excluded three quarters of the country from accessing development. That is the tragedy of this county and what devolution came to correct.

Madam Temporary Speaker, I have no problem with the population, and I know there are counties which have a lot of people and they need to be funded. But you also have counties which are sparsely populated, but they are of huge economic potential.

(Applause)

Three quarters of my county, Tharaka-Nithi, is sparsely populated, but one of the richest deposits of iron ore are found there. Tharaka-Nithi County is sparsely populated, but it has iron ore deposits which, if exploited, can save this country Kshs70 billion annually which this country spends on importing steel and other products in that industry.

So, Madam Temporary Speaker, I would urge us to increase the amount of money that is shared equally to 50 per cent. The reason why the Constituencies Development Fund (CDF) has worked fairly well; the reason why the differences between the constituency that is getting the highest amount and the one that is getting the lowest is not so big is because the percentage that is shared equally is very high. That is the reason. But if we sit here and say “let Nairobi get Kshs11 billion while Lamu gets Kshs2 billion, then what is the purpose of devolution?”

Nairobi has the best hospitals in the country and in East Africa; it has the best roads, the best universities; they are collecting Kshs18 billion every month in cess. So, if you punish Lamu, Isiolo, Samburu and Tharaka-Nithi, what is the purpose of devolution? Devolution came to make sure that Marsabit County can access levels of development that can attract investments and economic utilization of the resources in that county so that you can equalize it with the rest of Kenya.

Madam Temporary Speaker, I strongly oppose this criteria; I will oppose it now and I will oppose it even outside this House; this is a deadly criteria. If we proceed this way, we are balkanizing Kenya more; we are saying “let the rich counties continue getting richer while the poorer counties like Siaya, Tharaka-Nithi and Isiolo will continue getting nothing.” This is actually unconstitutional because the spirit of devolution is the spirit of equalization.

Madam Temporary Speaker, I beg to oppose.

The Temporary Speaker (Sen. Ongoro): Before I give a chance to the next speaker, from your contributions, it will be in order maybe if you brought further amendments to the amendment.

Proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Thank you, Madam Temporary Speaker---

The Temporary Speaker (Sen. Ongoro): What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: On a point of order, Madam Temporary Speaker. In the contribution by Sen. Murungi, he talked about the provisions of Article 216(2). But in the amendment that he has made, which he has proposed to be part of this Report, he did not include the things that the Commission on Revenue Allocation (CRA) did not do in Article 216(2), where we are talking about financing and management of resources by counties.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): His request was already signed; so, anybody else can bring a further amendment to his proposed amendment.

Proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I want to thank you for the opportunity. From the outset, I support this proposed sharing for now because, as you can remember, we went through it in detail in Naivasha and so many trials were subjected, including the 50 per cent which people are talking about here. Some counties were found to be on the extremes; for example, Lamu, which we are talking about, will

suddenly be finding herself with more money than the other counties; and counties like Nairobi will be affected. So, with those two extremes, we saw it fit for this second formula that has been proposed. It is actually the formula for Senate and it should be carried forward for now. We agreed, as Senators, that we should look at the functions and cost them, like what is taking place in some countries. We were even given comparisons of Ethiopia, South Africa and some other countries.

(Loud consultations)

Madam Temporary Speaker, protect me from some noise here. There are some Senators here who are making a lot of noise and Sen. (Dr.) Khalwale is in the wrong place.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Order Senators!

Sen. Orengo: On a point of order, Madam Temporary Speaker. A Senator does not make noise; there may be some disorder, but they cannot make noise.

(Applause)

The Temporary Speaker (Sen. Ongoro): Senator, you have the Floor.

Sen. (Prof.) Lonyangapuo: Thank you, Madam Temporary Speaker. When you have a Professor standing here and you hear what I am hearing, that is actually called noise, although you are now telling me that it is consultation.

(Laughter)

As I was saying, in the forthcoming formula for the next three years, we should look at it critically because as at now, we are saying that we are looking at population and people are proposing that population should have 50 per cent. We are going to set this country in a very bad mood where smaller counties and smaller communities are going to give birth at a rate worse than that of rats because they will want to have as many people as possible so that their population can go up.

Madam Temporary Speaker, I would propose that we think about it. We should look at the counties and the services we want to deliver to the people. What are the key services that are found here in Nairobi? We have tarmacked roads. When we talk about roads, look at the road network in every county and cost it, whether it is there or not, cost it. Even if it is going to take many years, we know that the road network in Tharaka-Nithi or West Pokot is supposed to be like this. So, the money that is going to come, assign every year, we will now achieve that goal.

The other issue is the provision of water for everybody. Nairobi and some counties surrounding Nairobi have water pipes to the extent that the pipes are now rusty; which means that they have now enjoyed the provision of water from 1963 or 1965, when this Sessional Paper that Sen.(Prof.) Kindiki quoted, was introduced which delivered the

water to them. We want to calculate the same; deliver water from the pure source to where the people are, even if it is in *manyattas*, then cost it. The same thing is true for electricity, provision of health services, and so forth. It will not matter whether you are found in the little Lamu County or in the biggest county called Isiolo. It is going to assist this country whereby it will allow the people, who are crowded in the bigger cities and counties to go to the counties that are now opened up, services are there. You can go and invest your money there.

Madam Temporary Speaker, it is true that we are now going into some counties where, previously, nothing good was coming out of. We are beginning to see some huge economic benefits that are going to come to this country. We have just heard of the oil boom in Turkana County and the neighboring counties. If we need to go into those sectors, we need to look into this critically and see how the formula is done.

Madam Temporary Speaker, if we go with the population as well; we need to look into some counties that have interesting data based on the 2009 Census. We have some counties that have got issues with how the population is. But in the meantime, they want to be given services, so we need to look at it.

The poverty index that has just been mentioned here, other than looking at the index itself as was proposed, we need to look at the poverty gap. The poverty gap that every household has, what do they eat daily? For instance, here in Nairobi, we have extremely poor people and extremely rich people. So, the formula should address the plight of those people who are unable to meet their basic needs.

Madam Temporary Speaker, the formula of sharing of these funds now is meant for ---

The Temporary Speaker (Sen. Ongoro): Order Senator! Sen. (Prof.) Lonyangapuo, you will have ten minutes when we resume tomorrow.

I have considered the proposed amendment and it affects counties. Therefore, we must take a vote on it, which we shall do tomorrow after concluding debate.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now 6.30p.m. and the Senate stands adjourned until tomorrow, 18th February, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.