

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Wednesday, 4th May, 2016**

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

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

PRAYERS**COMMUNICATION FROM THE CHAIR****INVITATION TO THE ANNUAL NATIONAL
PRAYER BREAKFAST**

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make.

The Kenya Parliamentary Prayer Fellowship Group (KPPFG) shall host the Annual National Prayer Breakfast on Thursday, 26th May, 2016, at the Safari Park Hotel in Nairobi. It is expected that over 2,000 guests will be in attendance.

This prayer breakfast is an interdenominational prayer meeting sponsored by MPs, both Senators and Members of the National Assembly. Senators are requested to confirm attendance by 15th May, 2016 in order to facilitate sitting arrangements. You are also requested to make contributions towards this noble course. The contribution form is available at the Serjeant-at-arms desk, at the entrance of the Chamber.

Invitation cards to all MPs will be distributed in due course. Sen. Beatrice Elachi is coordinating on behalf of the Senate and you may contact her for further clarification. You may also wish to get in touch with the Chairman of the Kenya National Prayer Breakfast group, the Hon. (Capt.) Clement Wambugu.

MESSAGE FROM THE NATIONAL ASSEMBLY**APPROVAL OF THE POLITICAL PARTIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 2 OF 2016)**

The Speaker (Hon. Ethuro): Hon. Members, I also have a Message from the National Assembly on the approval of The Political Parties (Amendment) Bill (National Assembly Bill No. 2 of 2016).

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I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Political Parties (Amendment) Bill (National Assembly Bill No. 2 of 2016):-

“Pursuant to the provisions of Standing Order No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

That the Political Parties (Amendment) Bill (National Assembly Bill No. 2 of 2016) was published vide the Kenya Gazette Supplement No.10 of 5th February, 2016 to provide an elaborate manner for managing political parties, including obligating political parties seeking registration to meet the constitutional threshold of two-thirds gender principle and requiring political parties to promote the values of inclusiveness, democracy and participation of the people.

Whereas the National Assembly considered and passed the same Bill on Thursday, 21st April, 2016 with amendments in the form attached hereto;

Now, therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby forward the same Bill to the Senate for consideration.

Hon. Senators, pursuant to Standing Order No. 148 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129, I now direct that the Bill be listed for the First Reading in the Order Paper of tomorrow, Thursday, 5th May, 2016.

I thank you.

COMMUNICATION FROM THE CHAIR

THE DEMISE OF HER EXCELLENCY, MRS. LUCY KIBAKI,
FORMER FIRST LADY OF THE REPUBLIC OF KENYA

Hon. Members, I have another communication from the Chair on the demise of her Excellency, Lucy Kibaki, the former First Lady of the Republic of Kenya.

As you are aware, on the morning of Tuesday, 26th April, 2016, the former First Lady, Her Excellency, Mrs. Lucy Kibaki, passed away while undergoing treatment at Bupa Cromwell Hospital in London. The late former First Lady was born in 1940 and died at the age of 76 years.

She was a teacher by profession and left teaching in 1962 to support and take care of her family.

Her Excellency will be fondly remembered for her commitment to family values, her devotion to helping the less fortunate in the society, particularly those affected by HIV/Aids and for her immense contribution to the development of this country through the various initiatives which she was passionate about.

Hon. Senators, a requiem mass for the departed former First Lady was held this morning at the Consolata Shrine in Westlands and her burial is planned for Saturday 7th May, 2016, in Othaya, Nyeri County.

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On behalf of all Senators and on my behalf, I wish to take this opportunity to once again condole with the family of His Excellency Mwai Kibaki for this great loss. As a Senate, we assure the family of our support during this period of great sorrow.

Hon. Senators, a visit has been organized for all Members of Parliament to condole with the family of the former President. The visit will take place on Friday, 6th May, 2016, at 10.00 a.m. at the former President's residence in Muthaiga, Nairobi. Travel arrangements to and from the venue are being coordinated through the offices of the respective Clerks of Parliament. May the soul of Her Excellency, Mrs. Lucy Kibaki, rest in eternal peace. I thank you.

Next Order!

STATEMENTS

STATUS OF KTDA MONEY PLACED IN FIXED DEPOSIT ACCOUNTS IN COMMERCIAL BANKS

Sen. Obure: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45 (2) (b) to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding money belonging to small scale tea farmers placed by the Kenya Tea Development Agency limited (KTDA) in fixed deposit accounts in troubled commercial banks.

In the statement, the Chairperson should:-

- (i) state how much money is held in fixed deposit accounts in Chase Bank limited and Imperial Bank limited and on what terms;
- (ii) explain whether KTDA has taken any steps to prevent possible loss of tea farmers' money held in various commercial banks especially following the closure and placement of the two banks under receivership; and,
- (iii) explain the impact of the deposits held on the ability of KTDA to pay bonuses to tea farmers this year and in future.

Sen. Ndiema: Mr. Speaker, Sir, I think we responded to the issue of Imperial Bank but I will check and ensure that we give a response in two weeks.

The Speaker (Hon. Ethuro): Vice Chair, Imperial Bank is not equated to commercial banks. It is just one of them.

Sen. Ndiema: Mr. Speaker, Sir, the way I understood, the question is referring to Imperial Bank and Chase Bank. We had responded on the same question in respect to Imperial Bank.

Sen. Obure: Mr. Speaker, Sir, in fact, you have clarified the statement I am seeking. It relates to commercial banks although I have specifically mentioned those two. This is a totally new question and I do not agree with the Vice Chair that they have responded to this. They have not responded because it has just been raised in this House.

The Speaker (Hon. Ethuro): The Vice Chair is asking whether you had a similar matter related to Imperial Bank.

Sen. Obure: Yes, that is correct Mr. Speaker, Sir. We did raise the question with respect to Imperial Bank, but this is now a general one referring to the experience of Imperial Bank and relating it to the rest of the commercial banks where KTDA has fixed deposits.

The Speaker (Hon. Ethuro): It is so ordered. The response will be in two weeks time. We now go to responses. We will start with Statement (a). Is Sen. Karaba here? Let us move to the next Statement (b). Where is the Vice Chairperson? Any Member? What is happening to your Committee?

SIGN LANGUAGE INTERPRETATION DURING RELEASE
OF NATIONAL EXAMINATION RESULTS

Sen. Mohamud: Mr. Speaker, Sir, my Chairman is not around but on behalf of the Committee, I undertake that we will report progress tomorrow.

The Speaker (Hon. Ethuro): Sen. Mohamud, this Statement was also on the Order Paper from yesterday. So, we will come back to it towards the end. Look for your Chairman.

Let us go to Statement (c). Sen. Ndiema.

AGRO-PROCESSING INDUSTRIES IN ASALS

Sen. Ndiema: Mr. Speaker, Sir, I have discussed this matter with Sen. (Prof.) Lonyangapuo and we shall respond in a week's time.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, can you confirm or deny?

Sen. (Prof.) Lonyangapuo: I want to deny, Mr. Speaker, Sir. I thought we agreed that he brings it tomorrow. So, I am surprised that he is rescheduling it to a week later. He approached me in good faith this morning to say that he is going to get the answer tomorrow.

Sen. Ndiema: Mr. Speaker, Sir, there seems to be a misunderstanding here. I had indicated to him that I will bring the answer in a week's time because there has been a bit of delay---

The Speaker (Hon. Ethuro): And he heard tomorrow?

Sen. Ndiema: Yes, but I now ask for his indulgence for one week.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, I think that is a genuine request made in good faith.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, it is a genuine request made in good faith; I agree. However, you need to tell these chairpersons that when a deadline has been reached, as you have always ruled, they need to walk to the relevant Ministry and get the statements the way you sent Sen. Karaba who is absent and he may be in the Ministry looking for the answers.

The Speaker (Hon. Ethuro): I am sure the Vice Chair has heard you and I have nothing more useful to add but to agree.

Let us now move to Statement (d), Chairperson for the Committee on National Security and Foreign Relations; Sen. Adan.

PRESENCE OF KDF IN SOMALIA SERVING UNDER AMISOM

Sen. Adan: Mr. Speaker, Sir, I am sorry I have just come in and I do not have the Statement with me. So, I would request Sen. (Dr.) Khalwale to give us until tomorrow to respond.

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Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have no problem about tomorrow because this question has been waiting for over four months.

The Speaker (Hon. Ethuro): Sen. Dullo, did you say that the Statement will be ready tomorrow?

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

The Speaker (Hon. Ethuro): It is so ordered. However, even if you have just come in now, you should have picked up an Order Paper from somewhere as you enter the House.

Sen. Adan: Mr. Speaker, Sir, I am sorry. I thought that the Chairman of the Committee was in. Sometimes, it is given to me or him. I am sorry about that, but I will follow it up.

The Speaker (Hon. Ethuro): Let us go back to Statement (a) to be issued by the Chairperson of the Committee on Education.

DISBURSEMENT OF FREE PRIMARY AND SECONDARY
EDUCATION FUNDS TO LEARNERS WITH DISABILITIES

Sen. Karaba: Mr. Speaker, Sir, thank you for giving me the chance. I came late because I was literally following the Statements. They are ready but the signature is yet to be appended. I will have to camp there again and make sure that I have the two Statements with me by tomorrow afternoon. I am sorry on behalf of the Cabinet Secretary.

The Speaker (Hon. Ethuro): Order, Sen. Karaba. You should have started by apologizing.

Sen. Karaba: Mr. Speaker, Sir, I apologize for coming late.

The Speaker (Hon. Ethuro): Since Sen. Omondi is not here, I order that the Statement be issued tomorrow.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. I was following on behalf of Sen. Omondi. These Statements have been pending for long---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. That argument was here since yesterday. I do not think repeating it 24 hours later will make any difference.

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

The Speaker (Hon. Ethuro): You are out of order, Sen. Njoroge. I am commending on what Sen. (Prof.) Lonyangapuo said and have a feeling that you want to contribute in the same manner as he did. It is to your advantage to listen to me. Repeating the same things 24 hours later will not help; hold your horses until tomorrow.

The Chairman has given an undertaking and an assurance that he has been camping at the office of the Cabinet Secretary. I am sure that after the end of this Sitting, he will continue to camp there. Since he seems to have been promised, let us give him the benefit of the doubt. Sen. Njoroge, I am sure that I have allayed your concerns.

What is it, Sen. Njoroge?

Sen. Njoroge: Mr. Speaker, Sir, I was not far from that. When Sen. Omondi is not in, I always represent her in this House. This is because we are responsible for matters of disability. I am okay with the response from the Chairman of the Committee on Education.

The Speaker (Hon. Ethuro): Sen. Njoroge, first and foremost, you are a Senator in the Senate. As far as I am concerned, you can prosecute any matter. I also appreciate that you may

be a person of interest on this particular matter, but that does not guarantee permission from Sen. Omondi.

It cannot be automatic; there must be an indication from Sen. Omondi that you will step in while she is away. Again, once a Statement is on the Order Paper, it is the property of the House. You could be satisfied, but another Senator may demand for a response. We do a favour because we suspect that whoever sought the Statement has more interest than the rest, but their absence will not stop us from prosecuting the business. Even if you are satisfied, your neighbour, Sen. Cheruiyot, may not be.

We should be moving to Order No. 8, but we are checking whether we have the requisite numbers. If we do not have the requisite number, we will have to skip Order Nos. 8 and 9. Order No.10 is to be handled by the Chairperson of the Standing Committee on Legal Affairs and Human Rights, but I notice that he is not in the House.

Is there any indication whether the Vice Chairperson or any Member of the Committee has been briefed? The same applies to Order No.11.

Sen. Dullo, are you ready to proceed with Order No.12?

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

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators. We are in the Committee of the Whole to consider the County Governments Disaster Management Bill (Senate Bill No.40 of 2014.)

Clauses 2, 4, 5 and 6

(Question that Clauses 2, 4, 5 and 6 be part of the Bill, proposed)

Clause 7

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

THAT Clause 7 be amended in sub clause 2 by securing the following new Paragraph immediately after Paragraph (h);

(ha) set up an emergency command centre within the county.

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This takes care of the emergencies within the county.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I will put the question but Division will be at the end.

Clauses 8 - 45

(Question, that Clauses 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 be part of the Bill, proposed)

Division will be at the end.

(The Schedule proposed)

(Clause 2 proposed)

(Title and Clause 1 proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): For all the above, Division will be at the end. I now call upon the Mover, Sen. Adan.

Sen. Adan: Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report progress on its consideration of the County Governments Disaster Management Bill (Senate Bill No. 40 of 2014) and seek leave to sit again tomorrow.

Sen. Karaba seconded

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

The Temporary Speaker (Sen. Ongoro): Chairperson!

Sen. (Dr.) Machage: Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered the County Governments Disaster Management Bill (Senate Bill No. 40 of 2014) and seeks leave to sit again tomorrow.

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Sen. Adan: Madam Temporary Speaker, I beg to move that the House do agree with the committee in the said report.

Sen. Karaba seconded.

(Question proposed)

(Question put and agreed to)

MOTION

APPOINTMENT OF SENATORS TO THE SELECT COMMITTEE TO SPEARHEAD THE PROCESSING OF THE GENERAL SUGGESTION FOR THE DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2015

The Temporary Speaker (Sen. Ongoro): The Senate Majority Leader has delegated this to Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I beg to move the following Motion:-

AWARE that pursuant to Article 124(1) of the Constitution and the Standing Orders of the Senate, at a Special Sitting of the Senate held on Monday, 15th June, 2015, the Senate resolved, to establish a Select Committee on Constitutional and Legal Review to inquire into legal issues arising following the re-allocation by the National Assembly of monies intended for key constitutional organs and institutions, including, the Judiciary, the Salaries and Remuneration Commission and the Senate.

FURTHER AWARE that on 23rd June, 2015, the Senate approved the names of Senators to serve in the said Select Committee whose terms of reference were as follows-

(a) inquire into the design of the Legislature and in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;

(b) inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in-

(i) the budget making process and revenue allocation;

(ii) the legislative process;

(iii) oversight over the National Government; and

(iv) oversight over the County Governments;

(c) examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;

(d) examine and make recommendations on the appropriate inter linkage and interplay between-

(i) the Senate and the National Government;

(ii) the Senate and the National Assembly;

(iii) the Senate and the County Governments; and

(iv) the Senate and other constitutional offices and Commissions.

(e) recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved government

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in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and

(f) examine and make recommendations on any other matter connected with or incidental to the foregoing.

COGNIZANT OF THE FACT that the Committee tabled its report on 23rd September, 2015 which report was adopted by the Senate on 21st October, 2015;

NOTING that one of the recommendations in the report was that-
The Senate approves the appointment of a Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution.

NOW THEREFORE, pursuant to the resolution of the Senate during the Sitting held on 21st October, 2015, the Senate approves the appointment of the following Senators to the Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution-

1. Sen. Murkomen Kipchumba
2. Sen. (Prof.) Lonyangapuo John
3. Sen. Chiaba Abu Mohamed
4. Sen. Wangari Martha
5. Sen. Kiraitu Murungi
6. Sen. James Orengo
7. Sen. (Dr.) Boni Khalwale
8. Sen. Hassan Omar
9. Sen. Halima Abdille

And that the committee reports back to the Senate within six months.

Madam Temporary Speaker, this Motion has been here with us and for the first time the Senate has realized that we have to take a very bold step; bold step in looking into and auditing the Constitution of Kenya 2010 and assess how far we have come in the implementation of the same. We should audit how the devolved government system is working.

There are challenges that we have already encountered in this House since we came in 2013. Kenyans had a lot of hope in the Senate as the custodian and the security of devolution. Anybody who has been aggrieved, any county Government which is not working or anybody who has done acts that are not driving the country forward would run to the Senate. That is why we get many petitions. When things are not moving, members of the public petition the Senate. They have hope and high regard that when the Senate steps in, things normalize.

As Senators, we came with all the intentions of safeguarding devolution. We wanted to enjoy the fruits of the new devolved governments system where we would see money going directly to our county governments which was very difficult earlier because we had a centralized system. One can attest that some activities are taking place in some counties. People who have seen the fruits of devolution are already enjoying them.

There was no Senate prior to the year 2010. The previous Parliament converted itself to work as a Senate. They would sit for a day and look at Article 96 and assign the Senate and the

National Assembly their duties. We all know what the Senate has gone through and what Kenyans are experiencing today.

Madam Temporary Speaker, we need to tackle the issue of amending the Constitution head on. The Senate proposes to adopt the suggestions that came from the previous committee on the Draft Constitution of Kenya (Amendment) Bill, 2015 to be done through popular initiative.

I am aware that there has been frustration when things do not move. The CORD Coalition has come up with their initiative which they called *Okoa* Kenya Initiative. I also heard that there is also another Bill in the National Assembly. All in all, this Motion proposes to give the nine Senators the hard task of collecting views and compiling them according to Article 257 of the Constitution so as to ensure that we anchor and strengthen devolution.

Those of us who sit in the County Public Accounts and Investments Committee (CPAIC) witness shocking incidences of how money has been spent in the counties. There are no stringent regulations on how Members of the County Assemblies (MCAs) and county governments spend money. For instance, we had an incident where a county assembly approved money to pay for their car loans and mortgages. They purported to have had 32 sittings on that matter in a month yet that is a function of the County Assembly Service Board.

Each MCA ended up getting Kshs256,000 per month in pretence to acquire money to clear their loans and mortgages. There are also other incidences that would shock us if they were revealed.

Madam Temporary Speaker, the Senate has witnessed the misuse of public funds and powers by some speakers of county assemblies. Today we even witnessed a Speaker who went to demolish the perimeter wall around the county assembly because he is not in agreement with the county assembly.

The Speaker even had the audacity to say that there are some Kenyans who are above the law, like him. If a county assembly Speaker can refer to himself as being above the law and the governor is senior to him, what then happens to the Constitution that Kenyans fought for many years leading to the promulgation of the Constitution on 27th August, 2010 at exactly 10.27a.m? When the former President lifted up the new Constitution, we all jubilated on that day. Little did we know that we were jumping from the frying pan to the fire. We must fight and ensure that the fire does not burn the nation. We need to strengthen the Constitution.

It is common knowledge that an MCA represents a ward, a Member of the National Assembly represents a constituency and constituencies make counties. In all the counties, some of these Senators championed the interests of the citizens before the 2013 General Elections and everybody knew that after those elections, the Senators would champion the interests of the counties. However, we have realized that there are some hidden powers in the current Constitution that we need to remove from the “Lower House” if we have to safeguard devolution.

Madam Temporary Speaker, that is why we proposed to allocate money for oversight. The money that has been passed by this House to benefit the counties amounts to about Kshs1 trillion. Nobody including the President can tell us how they have spent that money.

It must be known that the Constitution has assigned us the duty of overseeing county governments. The money that we proposed to oversight county governments was not pocket money or entertainment allowance for the Senators. I was shocked when our colleagues in the

“Lower House” and some governors said that the Senators would use that money to harass people in the counties.

The Senate came up with rules and regulations on how that money would be spent in the counties. People who would serve in the oversight team would be carefully chosen. We had suggested having engineers, economists, lawyers, doctors and many other professionals as part of the oversight team. We also suggested to have quantity surveyors and electrical engineers as part of the oversight team because there is a lot of construction going on at the counties. That way, we would be able to properly perform the duty of oversight. In case a county has a project that requires particular expertise, the officers in the oversight team will assist in ensuring that there is value for money. Senators are trained in different fields and may not be able to properly assess projects out of their professional fields.

Personally, I am a trained mathematician. I do not know much about medicine, infrastructure or water. However, if I had a committee like the one we had suggested to have, I would be able to oversight.

Madam Temporary Speaker, this House as well as Kenyans were mesmerized when the National Assembly said that they will deny the Senate that money. They further said that they would not allocate money to their “enemies”; the Judiciary and the Salaries and Remuneration Commission (SRC). They said that the Judiciary is a bother to them.

If there are excess powers in any arm of the Legislature; the National Assembly, the Senate or the county assemblies, it needs to be reassigned so that no House becomes dominant and messes everything up because the Senate is the custodian of devolution. Therefore, if we cannot account for the money that we pass as a House, it defeats all logic why we fought so hard for this Constitution.

The work of the proposed committee is cut out. It is stated in the Motion that:-

“(a) inquire into the design of the Legislature and, in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution”.

If the governors oversee the running of the counties, it is surprising that they can rent an office in Nairobi, the capital City of Kenya.

They have offices in Nairobi yet the Constitution clearly states that Senators represent counties. Therefore, if there is anything that governors may require in Nairobi, for instance, a place to sit, a chair or drinking water, their first stop-over would be the office of their Senator who is their representative. However, that is not the case. There is a building called Delta House where all governors have offices.

Similarly, the other day we looked at the list which shows county contributions to the Council of Governors’ Fund and I discovered that my county has donated Kshs19 million for entertainment so far. Turkana County which has many problems and everybody is praying for has donated Kshs85 million. They are my neighbours. We have peculiar problems. Vihiga County has contributed over Kshs40 million. This is surprising. Similarly, Kakamega County has contributed Kshs46 million. We must address this. We must put it in black and white. It does not matter whether or not you come back as a Senator next year. We must anchor this in law so that the people of Kenya can enjoy the fruits of devolution.

As reported in the newspapers today, we have millionaires in the counties. I am not sure whether it is in Vihiga or Kakamega County. It was reported that a County Executive Committee Member (CEC) said that he did not disappear with Kshs2 billion alone. This money could not be accounted for last year. He is being investigated. Kshs2 million is not the same as Kshs2 billion. We are no longer talking about millionaires but billionaires in the village.

An hon Senator: Shame!

Sen. (Prof.) Lonyangapuo: It is a shame! Some of them did not own a bicycle or a motorbike before. However, today they have moved quickly from zero to hero. They are driving some of the top of the range vehicles. You may wonder about this since there are no roads there. So, things have been done upside down.

We have to thoroughly audit and know which law we need to amend and improve on. We should inquire into the role of the Senate as set out in the Constitution and make recommendations on the appropriate role to be played by the Senate. I asked a number of governors whom I interacted with in the CPAIC whether they know that the Constitution states that Senators serve to protect the interest of counties. Therefore, when a Senator raises concern over buildings and other infrastructural projects, he or she is doing so on behalf of the community as their representative.

Members of the public need to be consulted before some projects are initiated. The law states that Senators serve to protect the interest of the counties. However, some governors are ignorant. This means that they stopped reading the Constitution once they were elected.

Madam Temporary Speaker, we should interrogate the role of the Senate in the budget making process. Why would the National Assembly be the alpha and the omega in all matters that have financial implications yet we also protect counties whose matters have financial implications? Senators should also participate in this process.

We also need to oversee the national Government. What is the role of the Senate in the same? How should the Senate relate with the national Government? We need a law to enhance the role of the Senate pertaining to this. We must highlight our oversight role over the county government in bold and in red. It has to be clear so that anybody can take note. We should put it in all languages; Kiswahili, English, mother tongue and Braille so that everybody can understand the role of the Senate with regard to county governments.

In addition, we need to examine and make recommendations on the appropriate interlinkages between all these arms. For instance, what is the linkage between the Senate and the national Government? What is the linkage between the Senate and the National Assembly? What is the linkage between the Senate and the county government? How do we link them? We call it commutative. How do they interact with the Senate and other constitutional offices?

Madam Temporary Speaker, as indicated here, we need to make the role of the Senate clear when it comes to appointment of Cabinet Secretaries and officers of independent commissions. The Senate being the custodian of the peoples' welfare through the counties, this is vital.

Therefore, our colleagues from both sides of the House have been nominated to spearhead this. I have no doubt that they are capable and will move The General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 forward. We will ask our colleagues in the *Okoa Kenya Initiative* to bring their draft so that we can look at what we can take onboard as a Committee.

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We will also ask hon. Members in the “Lower House” to submit theirs too. I saw some of them competing. They came up with proposals which did not come to fruition. If anybody has a proposal we can look at it. There was an attempt in this House to consider it too. This can also be looked at. We need to push it forward in the life of this Parliament.

Madam Temporary Speaker, Sir, since we have six months to do so, we should be through by the end of this year. As we go for elections, we should be having a document that we will vote for possibly during the elections. We can also do it earlier. These issues will come up as we debate taking into account the recommendations of the Committee. It is essential that this is done.

Last week, the Senate fulfilled all the necessary regulations and rules required in order to access the oversight fund that was rejected last year. We need this funding so that we can regulate how money for development is spent in the counties. However, we saw it live; our colleagues shot down the Bill last week. It was rejected. They said that money is not required. For this reason, we ask our colleagues to stand firm on this so that the oversight fund can be reconsidered in the next financial year.

We are not doing it for ourselves. It is not our money. If oversight funds cannot be obtained through the Parliamentary Service Commission (PSC) as we have been, there is no harm at looking at the way we share funds for the counties. Normally, we even have money for conditional grants. There is a formula for this.

There is also the Constituencies Development Fund (CDF) which I discovered that it has a new name. Our colleagues in the National Assembly have quickly covered it using a strange name; National Government Fund (CDF) so that they can circumvent the Constitution. It is now a national fund. They do not want it to be called CDF because that was overtaken by new laws. It is supposed to become county funds so that Members of the National Assembly and Senators could play the oversight role. They would have also been given oversight funds to oversight work in their constituency. They rejected this and attached themselves to the National Fund.

We can also create a fund in the way we normally allocate revenue to the counties. For instance, we have parameters such as land size and population. We can introduce another parameter called oversight which will be a percentage. The CDF is normally 2.5 or 5 per cent of revenue. We can tailor this one in the same fashion, for instance, 0.5 or 1 per cent of the money going to the counties for development expenditure not for recurrent expenditure. We can provide for it to avoid competition and misunderstanding that our colleagues perpetually entertain in their House.

I beg to move the Motion and request Sen. (Dr.) Khalwale to Second.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, may I start by acknowledging that I was privileged to have sat in the team that worked on the draft Bill for the *Okoa* Kenya referendum. It is equally a privilege that once again, I am sitting on this Committee. Therefore, I thank the leadership of the House for allowing us to be in the Committee.

When the Committee finally reports to the House, it is expected that it is going to make recommendations on such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved governments in the Constitution. These include the measures necessary to ensure effective discharge by the Senate of its legislative and oversight role under the Constitution.

Madam Temporary Speaker, the Members who campaigned during the 2010 referendum that gave way to the current Constitution agreed that there was 20 per cent which we thought could be made better. We agreed to start from some point and in the fullness of time, the 20 per cent would be corrected. When we envisaged the *Okoa Kenya* initiative, we thought that what we were doing was resonating well with the members of the public. By reaffirming that the public was in support of the review of our Constitution, various initiatives came up.

The House will remember the initiative by the governors called *Pesa Mashinani* and the initiative by this House that gave birth to this Committee, hence, this Motion. There was also an attempt in the National Assembly where similar attempts were being made to have the country re-look at the Constitution.

A member of the public watching this debate might wonder why we are agitating for this. There are many reasons but the loudest amongst them is that, if we are not careful, we will not only lose on the gains that we had made under the new Constitution, but also, we run the risk of being taken back to the old Constitution.

Madam Temporary Speaker, Kenyans have been seeing the return to the old Constitution by His Excellency President Uhuru. He is today balkanizing and profiling the country in terms of tribal communities. It is only the other week he hosted a delegation of people purportedly from the Kamba community. Since when did development have the face of a tribe? Before then, he had hosted, through his Deputy President, a delegation of Gusiis in the Turbo home of the Deputy President. He had also hosted a delegation of the Luhya Community in the home of the Deputy President. It is a complete 180 degrees return to the old Constitution.

We used to see retired President Moi doing similar things. We hope that we shall fight hard enough through this Motion and other initiatives to make sure that the President and his Deputy do not return us to the bad old days. They are doing it so effectively that if we are not going to be emphatic, the corruption that used to be perpetuated through *harambees* has now gone full throttle. Every weekend, the Deputy President donates millions of shillings for himself and for the President.

Madam Temporary Speaker, we watch with dismay as he dishes out money to MCAs and MPs who follow him so that they are seen to be generous.

(Sen. Wamatangi stood in his place)

Sen. (Dr.) Khalwale: Madam Temporary Speaker, Sen. Wamatangi will get an opportunity to give his views.

The Temporary Speaker (Sen. Ongoro): What is it Sen. Wamatangi?

Sen. Wamatangi: Madam Temporary Speaker, on a point of order. Is the Senator for Kakamega County in order to mislead this country by implying that either when a delegation from any community seeks to have audience with the presidency or the occupants of the office of the President, it is tantamount to balkanizing this country along tribal lines? We know it is the same tribal communities that form our nation. Our Constitution is clear because short of it, we shall be discriminating.

The Temporary Speaker (Sen. Ongoro): You are now debating. Kindly make your point.

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Sen. Wamatangi: Madam Temporary Speaker, my point is that it is not envisaged anywhere in the Constitution that any community can seek audience with the presidency and be denied because it is from a particular place. The presidency has a right to meet anyone from this country.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, can you make that clarification so that Sen. Wamatangi gets it right.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, if Sen. Wamatangi is feeling uncomfortable with my contribution, he will have the opportunity to counter it. When it comes to the issue of tribalism and corruption, if you are uncomfortable, I will make you more uncomfortable.

(Laughter)

Madam Temporary Speaker, in 1963, the challenge to this country was poverty, ignorance and illiteracy. However, thanks to the orphans of Moi---

(Laughter)

Madam Temporary Speaker, we have moved from that noble course of fighting those enemies, but they have now brought two other enemies called the need to fight tribalism perpetuated by them and to fight corruption which was not there at the time of Independence.

Sen. (Prof.) Lonyangapuo: On a point of order, Madam Temporary Speaker. Is Sen. (Dr.) Khalwale who begun his contribution to introduce the names of senior citizens who did their work well? He is referring to Sen. Wamatangi as an orphan. What does he mean?

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, we do not have orphans in this House but Senators. You are out of order to mention adversely the former Head of State.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I love retired President Moi. In his first 10 years, he is the one who revolutionised education in this country. When I talked about orphans - I am sorry if I was misunderstood - what I was referring to were his political and ideological orphans. When he will die, then Sen. Moi will become his orphan but for now, there are ideological and spiritual orphans.

(Laughter)

Madam Temporary Speaker, I urge Members that if we tighten the Constitution a little bit, we might get the magic silver bullet to fight corruption.

The Mover of the Motion has correctly said that almost a trillion Kenya Shillings has since been pumped into our counties. Where are the flagship projects? Because of the architecture of our Constitution, the money we have given to the governor---

(The timer lights were switched on by the Clerks-at-the-Table)

Madam Temporary Speaker, I thought that I was seconding as the Senate Deputy Leader of Minority. Why is the light coming on?

The Temporary Speaker (Sen. Ongoro): You still have time to finalize.

Sen. (Dr.) Khalwale: No, Madam Temporary Speaker. The Senate Majority Leader is seconded by the Senate Minority Leader of Minority. You can clarify, so that I re-arrange my points. Please, hold my time.

*[The Temporary Speaker (Sen. Ongoro)
consulted with the Clerk-at-the-Table]*

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, when you started your contribution, you did not take time to clarify that you were representing the Senate Minority Leader. However, if you make that clarification now, of course, you will still have a lot of time.

Sen. (Dr.) Khalwale: I am sorry, Madam Temporary Speaker. When the Senate Majority Leader delegated to Sen. (Prof.) Lonyangapuo, Professor remembered to say that he was doing it on behalf of the Senate Majority Leader. In the same vein, Sen. Wetangula had asked me that he is rushing to attend---

The Temporary Speaker (Sen. Ongoro): You only needed to notify the House, which you have now duly done that.

Proceed!

Sen. Hassan: On a point of order, Madam Temporary Speaker. For the purposes of the HANSARD, he has said that Sen. Wetangula harassed him. He needs to withdraw that.

The Temporary Speaker (Sen. Ongoro): No! He said that Sen. Wetangula had asked him; that is what I heard.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I am sorry if I was misquoted. If we fine-tune this Constitution, we might get the silver bullet to address the issue of corruption. Where are the flagship projects for the approximately Kshs1 trillion that has gone into the devolved Governments? Are they in Kiambu, Mombasa, Nakuru or Kakamega? We do not see them. Instead, Sen. Musila – the governor-in-waiting – was forced to be teargassed for him to send a point that a road in Kitui is not motorable.

I beg the Members from both sides of this House that this is an opportunity for us to factor in a strategy of fighting corruption. The billions that we have given governors cannot even be audited. We, at the County Public Accounts Committee, get audit reports and wonder why we sit in the Committee. They present two pages showing Kshs30 million of unrecovered imprest.

Madam Temporary Speaker, they also give you an annexure of hundreds of people who received that imprest, yet they do not speak about the abuse of money meant to do projects worth Kshs200 million or Kshs300 million. This is because the auditors are now being ‘pocketed’ by the governors whom they are supposed to audit. Why do we not improve the Constitution, so that we can catch these governors?

In Kakamega, Governor Oparanya, upon being summoned to come before the Senate so as to answer how he spends public funds meant to develop Kakamega, ran to the High Court. In the High Court, they give such excuses as constitutional reference and adjournment of mention and hearing dates. This is the fourth year and the people of Kakamega have no idea how the

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Kshs25.3 billion that has gone to that county from the national kitty has been spent. We need to make up our minds. This is not just limited to Kakamega, but across the country.

Today, I have been looking at the accounts of Kiambu County with my fellow Committee Members. There is no mention of purchase of motor vehicles for ward administrators. In that audit query of Kiambu, they do not mention how those vehicles were procured, how the decision was made or whether there was a county tender committee. Instead, they are telling us that daily balancing of cash books or monthly reconciliations were not done. These are petty things that I do not want to listen to when I am pursuing the monster called corruption.

This Constitution which we want to perfect reduced the powers of the President to commissions. Every day, President Uhuru is busy, through the National Assembly, attempting to recapture the powers of commissions to an extent that he literally controls those commissions. Take the office of the Independent Electoral and Boundaries Commission (IEBC), for example. Shame on them!

They were told by the Jubilee Coalition to announce in advance that the people who signed the *Okoa Kenya* signatures did have authentic signatures. So, they threw away our initiative. Unless you have not gone to school, you know very well that the only institution in this country that has a repository of Kenyans' signatures are banks. Banks do not care about the kind of signatures people give, but they insist on an authentic signature. How could IEBC commissioners pretend that under this Constitution they are supposed to verify the authenticity of a petitioner's signature? They do not have that mandate under the Constitution. What is worse, the IEBC does not have a depository of our signatures.

Sen. Wamatangi, you have been a voter for many years. You are now a Senator who controls policy, but I can assure you that your signature is not in the depository of the IEBC. The IEBC was just supposed to say: "Okay, the people who had signed the petition are registered voters and have identity card numbers against their names. We see an acknowledgement that they submitted a signature;" whether that signature was a perfect signature, written like somebody who went to Harvard University or University of Nairobi, like me, or somebody who did not go to school, like the sugarcane cutter in Kakamega, who chose to sign with a picture of a cow, that is a valid signature. A picture of a rat is also a signature. However, because they had to look for an excuse to please President Uhuru, they said there was an anomaly.

After KANU had defeated the Jubilee Coalition in the Kericho by-election, they settled in some highrise building in Nairobi and started releasing some fake results purported to have come from Kericho, leading to the defeat of the KANU candidate. I have a lot of respect for Sen. Cheruiyot and I am not casting any aspersions against him, but Kenyans cannot sit back and fail to remove this Commission. If we fail, we will leave the fate of our children whom we love so much in the hands of gangsters. I have very beautiful daughters and I feel so nice when they come from school. These gangsters fish for excuses not to make a constitutional decision.

I, therefore, insist that we must recall the thinking of the President, through the Constitution, so that from now hence forth – forever - current and future presidents will respect commissions. For example, under the Constitution, the Office of the Inspector General (IG) is supposed to be completely independent for manipulation. Unless the Cabinet Secretary is directing the IG on issues of policy, the IG is not supposed to be directed on all operational issues. Instead, what happens? When we went for a peaceful demonstration at the Anniversary Towers, the IG teargassed us.

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An. hon. Senator: Shame! Shame!

As if that is not enough, as late as yesterday, when the CORD principals – the depository of the future and hope of this country – went to condole with families in Huruma, the Inspector General (IG) teargassed them.

Sen. Wamatangi: On a point of order, Madam Temporary Speaker.

Sen. (Dr.) Khalwale: I am going to make you very uncomfortable.

Sen. Wamatangi: Madam Temporary Speaker, is the Senator for Kakamega in order to mislead this country once more, first, by referring to individuals as orphans of politics or ideology? Even more substantive, is he in order to mislead the country that the CORD Coalition led a peaceful demonstration, while it is actually on record, including photographs and video coverage, of members of the CORD Coalition trying to break doors and entrances of public buildings, where public money has been invested, against even the ‘lowest’ law of misdemeanor?

Is he in order to mislead this nation that it is allowed under the Constitution to go around the City Centre throwing stones, especially near the Kenya Methodist University (KMU), where young boys and girls go to school every day? Is it in order for the Senator to mislead this country that other Kenyans do not have equal rights as the CORD people, to enjoy their peace and do their business?

Sen. Hassan: On a point of order, Madam Temporary Speaker. Is Sen. Wamatangi in order to bring innuendos and proposals that led to excessive action by the police, by making allegations that there was somebody trying to break doors and gates or throw stones? If he cannot substantiate those claims validly, we cannot hold them on the record of this Senate. We take that as an insult, because there are ways in which those matters can be pursued by law, rather than allegations that are unsubstantiated in this Senate.

Sen. Sang: On a point of order, Madam Temporary Speaker. Is Sen. (Dr.) Khalwale in order to mislead this House that they were on a peaceful demonstration at the Independent Electoral and Boundaries Commission (IEBC) offices, when the leadership of CORD and himself are on record stating clearly that their intentions of visiting the IEBC offices was to eject---

An. hon. Senator: Peacefully eject!

The Temporary Speaker (Sen. Ongoro): Order, Senators. Allow Sen. Sang to raise his point of order.

Sen. Sang: Their intention was to eject state officers, who are constitutionally in office and whose exit from that office is provided for by the Constitution. They were not in pursuit of the constitutional processes of ejecting them out of office.

Sen. Musila: On a point of order, Madam Temporary Speaker. Is Sen. Wamatangi aware that on 21st March, I was teargassed along with other Members of Parliament while walking peacefully along a deserted road? Is he not aware that the military is being introduced into civil government by none other than Maj-Gen (Rtd.) Nkaisserry, who is a former military man? Yesterday, innocent people were also teargassed in Huruma. Is this the direction the Government is moving? Is this a military or civilian Government?

Sen. M. Kajwang: On a point of order, Madam Temporary Speaker. Previously in this Senate, we have rejected reports from the media – newspapers and television – as a basis of any solid evidence.

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Is it, therefore, in order for my friend, Sen. Wamatangi, to dream in this House when the entire nation is watching? He could have just asked me what transpired on that day because I was part of a peaceful demonstration and protest. We went and sat on the tarmac, when it was raining so that we could put pressure on the IEBC.

Is he in order to accuse the CORD Coalition and majority of Kenyans of being hooligans and thugs, yet we know that on that material day it is the police who had occupied the IEBC offices? The opposition was just asking them to get out so that Kenyans could access a publicly funded institution. He needs to substantiate or withdraw.

The Temporary Speaker (Sen. Ongoro): As we proceed, any newspaper reports will not form part of what will be used in the Senate. Any allegations which shall not be supported by papers laid on the Table are, therefore, invalid.

I will allow one last intervention by Sen. Leshore.

Sen. Leshore: On a point of order, Madam Temporary Speaker. Is hon. Moses Kajwang in order to mislead this House by saying that he was at the forefront of the demonstration, yet from the live pictures that we saw, he ducked when they were teargassed?

(Laughter)

The Temporary Speaker (Sen. Ongoro): Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: In a debate like this, when one remembers the great debates of the late hon. Martin Shikuku, George Anyona, Josiah Mwangi Kariuki and others, one is tempted to think that all those points of order, apart from the ones ably raised by Sen. Musila, Sen. Hassan and Sen. Moses Kajwang, are nothing but just comic relief.

On the issue of stone-throwing and breaking a gate, I wish we respected other dialects and tribes. What you were hearing as noise were three tribes speaking very loudly, and allow me to quote a Swahili saying: “*Haki yetu; tunataka kuingia.*” They then banged and slapped the gates. The Luos were saying: “*Waduario donjo, waduario donjo.*” The Luhyas were saying: “*Ikuli khwenya khwinjira, ikuli khwenya khwinjira.*”

(Laughter)

How does that amount to violence; those are peaceful people. Is there a violent voice?

The Temporary Speaker (Sen. Ongoro): Order, Sen. (Dr.) Khalwale. You are now out of order by introducing other languages that you had not sought to use in the first place. Could you proceed and stick to the point of seconding this Motion?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, since they do not understand those voices, they might have thought that they were war songs. They were just pleading to be granted their right. They were just saying: “Open, we want to come in.”

On the point of order raised by Sen. Sang, I want to advise him that he must find time to read the history of this nation. In 1991 when former President Moi refused to give a registration certificate to FORD-Kenya and chose to give one to FORD-Asili, the late Jaramogi Oginga Odinga, Prof. Anyang’-Nyong’o, Michael Kijana Wamalwa, Raila Odinga, Paul Muite, Gitobu Imanyara, Chibule wa Tsuma and many others went to the Office of the Registrar. Jaramogi

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Oginga Odinga sat next to an old typewriter and started hitting the keys. Some of us had just left university and were dancing on the streets of Nairobi. It has been a big fight. When they did that, it prompted the Commissioners to come out and say: “You people, here is the certificate; leave this office.”

If you had allowed us to go into the IEBC offices at the Anniversary Towers, there would just be a few gymnastics and antics. We would just do press-ups and those people would have resigned on the spot. We were not going to destroy any property. I hear that some misguided five people from the former Central Province have gone to court. Whatever the decision of the court, on behalf of the “weak” – *wanyonge* - of this country, I shall report every Monday at the Anniversary Towers, to demand that the Commissioners must go home for the sake of your daughter.

I am so energized because when I went home from the Anniversary Towers my boy, who is in Class Seven, came running and asked me---

Sen. Wamatangi: On a point of order, Madam Temporary Speaker. The Senator for Kakamega has persisted on following the same line of misleading this nation.

The Temporary Speaker (Sen. Ongoro): I want you to point out what is misleading.

Sen. Wamatangi: Madam Temporary Speaker, he made a clear presentation that they were carrying out a peaceful demonstration and now he says that they were going to the IEBC offices to do gymnastics and press-ups. What kind of gymnastics did they envisage to do inside the offices of a constitutional body that conducts elections and not gymnastics? He should have gone to the gym.

Secondly, he has used many languages that are not understood by everyone.

The Temporary Speaker (Sen. Ongoro): I have already ruled on that.

Sen. Wamatangi: Madam Temporary Speaker, in all fairness, he is out of order, because this House has got its rules. You use one language that can be understood by all and sundry.

The Temporary Speaker (Sen. Ongoro): I have already ruled on that; maybe you were not paying attention. I pointed out to the Senator that he was out of order by using other languages.

Your question is valid but my own understanding is that Sen. (Dr.) Khalwale said: “Had they gone to the offices.” My understanding is that if they went in and did gymnastics they would be probably judged otherwise, but they never accessed the offices. He is just saying what could have happened, had they gone to those offices. To my knowledge, they never went past the gates.

Sen. Hassan.

Sen. Hassan: Madam Temporary Speaker, is the Senator for Kiambu aware of Article 24 (5) (c) of the Constitution that allows every Kenyan the right to assembly, demonstration, picketing and petition? The manner and nature in which that right is exercised is the discretion of those exercising that right.

Whether you decide to demonstrate by sitting on the road or picket inside the offices of the IEBC it does not disclose where you can do so. You can decide to go and picket in the very offices of the IEBC, because this Constitution has not set limits on the manner and nature of the picketing or demonstration. Therefore, this Constitution will be an extremely difficult document for some of those who do not believe in a democratic and constitutional Government that respects the right to picket. There is an increasing chorus nowadays where it is perceived to be

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‘un-Kenyan’ or a preserve of a few to picket or demonstrate. For as long as it is a right provided for in the Constitution, it shall be exercised now, tomorrow, into eternity.

Sen. Sang: On a point of order, Madam Temporary Speaker. Are Sen. Hassan and Sen. (Dr.) Khalwale in order to mislead this country that the exercise of the fundamental freedom to picket is part of the various rights and fundamental freedoms that are not subject to limitation while Article 25 of the Constitution clearly indicates those particular freedoms that cannot be limited and picketing is not one of them? That means you must picket in a manner provided for under the Constitution.

If you want to inject pressure to eject members of constitutional offices, the same Constitution has provided avenues for that. Picketing is not one of those fundamental freedoms under Article 25 of the Constitution.

Sen. Bule: On a point of order, Madam Temporary Speaker.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, allow them to debate their own---

The Temporary Speaker (Sen. Ongoro): Senator, take your seat. Let us hear from Sen. Bule.

Sen. Bule: Madam Temporary Speaker, is it in order for the learned Sen. (Dr.) Khalwale to declare that he will apply all gymnastic means---. He said that he will remove commissioners of the Independent Electoral and Boundaries Commission (IEBC) from office by Monday by hook or by crook. That is a very serious issue because there are very many ways of killing a rat. You can go to court---

The Temporary Speaker (Sen. Ongoro): Order, Senator. You are now debating but you were on a point of order. Could you point out what is out of order?

Sen. Bule: Mr. Temporary Speaker, Sir, what is out of order is that the Senator has declared war by saying that he will remove commissioners of the IEBC from office by Monday. That is a very serious offence!

The Temporary Speaker (Sen. Ongoro): Senator, please take your seat because you have already made your point.

(Sen. Bule took his seat)

Senator, proceed and answer those interventions.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, my distinguished son, Sen. Sang from Nandi, is a lawyer. He should not attempt to read Article 25 in isolation. He should read it with the balance of the Constitution including Article 37 and see what it says.

When I listened to Sen. Wamatangi’s point of order, I was tempted to remember the history of this country. He seems to confirm – now that we are fighting for liberation of this country – rumours that even in the first liberation, people from his part of the world never participated in the fight but they were home guards instead.

(Laughter)

Madam Temporary Speaker, I was speaking on the very important issue of teargassing.

Sen. Wamatangi: On a point of order, Madam Temporary Speaker.

(Sen. Wamatangi stood in his place)

The Temporary Speaker (Sen. Ongoro): Sen. Wamatangi, next time, you should not stand up before you are given the Floor. Every time you have asked for the Floor, I have been very kind to grant you permission.

Proceed, Senator.

Sen. Wamatangi: Madam Temporary Speaker, I apologise for that. It is only that the Senator for Kakamega has made a very serious and wild allegation. He attempted to tell Sen. Sang to read the history of this country. He himself is the worst student of that history. He has no clue what the history of this country is like for him to make that allegation. The history of this country is clear about how the freedom of this country was fought for by many tribes including my community which had the biggest battalion of fighters in the forest during the Mau Mau Movement.

He needs to apologise not only to the country but also to my community for making such an allegation when we know that the statue of Dedan Kimathi is here in the city. Dedan Kimathi is a man who sacrificed his life on behalf of the freedoms that Sen. (Dr.) Khalwale and his children enjoy today. It is a wild allegation and he needs to apologise.

(Sen. (Dr.) Khalwale stood in his place)

The Temporary Speaker (Sen. Ongoro): Take your seat, Senator.

(Sen. (Dr.) Khalwale took his seat)

Hon. Senators, this is an honourable House. I am in agreement with the point that the Senator for Kiambu has raised. If my memory serves me right, during the fight for freedom and liberation in this country, people from Kiambu County played a critical role. Not only were they homeguards but a critical number of them were also in the *Mau Mau* Movement. Therefore, on that particular note, you are out of order.

I will give only one intervention to Sen. Hassan and then allow Sen. (Dr.) Khalwale to conclude his contribution.

Sen. Hassan: Madam Temporary Speaker, thank you for your clarification. There are those of the *Mau Mau* type and the Dedan Kimathi type who chose to die on their feet rather than live on their knees. However, we also know that there was a substantial number of people who collaborated. Unfortunately, the collaborators founded this nation. That is why we mortgage the spirit of freedom in this country. That is why this country is not only free from some of the subjugations we had. I guess that is the point Sen. (Dr.) Khalwale wanted to make.

The Temporary Speaker (Sen. Ongoro): Thank you for that clarification. Sen. (Dr.) Khalwale, you may now proceed without interruption because we need to bring this to a closure.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I must make it clear to my brother and distinguished Senator for Kiambu that he misread me. I never said members of a certain community but sections of Kenyans from certain corners are said to have been collaborators. I know the history of Dedan Kimathi and others.

With all due respect, some of us are here because we live the spirit of heroes in this country who came from his community.

The Temporary Speaker (Sen. Ongoro): Senator, you are now beginning to deviate from the Motion. I want you not to digress any further and go back to seconding this Motion so that we bring it to a closure.

Sen. (Dr.) Khalwale: Thank you. We hope that in the new look Constitution after our work is done, commissions will be stronger and they will not be threatened by the presidency. We also hope that the independent office holders will not be threatened by the presidency.

Madam Temporary Speaker, I was speaking on the issue of the Inspector-General of police. Does it not concern members of the public and especially we, leaders, that the Inspector General – not directly but through his agents – managed to give security equipment like teargas to members of Kakamega county government to the extent that they teargassed us? These are the things that we must interrogate.

This week, there has been a big debate which started last week about the need for the National Assembly to vote wisely so as to enhance the possibility of us achieving the two-thirds gender rule. There is no greater opportunity of achieving this than to rethink the structure of the Constitution through this amendment, so that we capture once and for all, the need for us to allow our women to participate fully in governance.

The few who are apprehensive about giving a plunge on the number of people that can be nominated are saying the structure of running Government is too big, expensive and wasteful. So, we have an opportunity to reduce the number of MCAs by way of reducing the number of wards. We can reduce the number of Members of Parliament (MPs) by reducing the number of constituencies. Why not?

Madam Temporary Speaker, we lost Seth Lugonzo whom we shall bury on Saturday. For that reason, I will not be able to attend the burial of Her Excellency Mama Lucy Kibaki because I will attend the burial of Seth Lugonzo, a former Assistant Minister who was an age mate and colleague of hon. Kibaki. He was able to effectively serve Shinyalu and Ikolomani constituencies combined as the original Ikolomani. We can merge some of the constituencies to reduce the number of MPs.

Sen. Wamatangi: Point of information, Madam Temporary Speaker.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I accept to be informed by the Senator for Kiambu.

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

Sen. Wamatangi: Madam Temporary Speaker, my point of information to the Senator for Kakamega is that, for the constituencies to be divided into what they are today, a lot of painstaking work was done. This was to ensure that there is adequate representation of people, no matter how small the regions they were living in.

I would want to inform my distinguished colleague that in some areas like my own county of Kiambu, it was even hard to achieve the 250,000 heads within a constituency. Some of our constituencies have more than 400,000 people, making it practically impossible to have adequate representation by one person. That is the basis on which most of the constituencies today found their existence.

I was just informing him to realise that there are huge implications. The blanket assumption that we can break those boundaries and go back to constituencies with more than 500,000 people being represented by one MP has a huge implication.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I thank the Member for that information. Equally, Sen. Wamatangi, what you are saying is true. You merely heard about it but we are the ones who did it. We learnt from the late Michael Kijana Wamalwa who taught us that what we did – which is what you are defining now – and which informed us to give you the current constituencies, was a good idea.

However, the late Wamalwa said that a good idea can always yield ground to a better idea. So, maybe under this initiative, we will get a better idea. For your information, Sen. Wamatangi, in India, MPs represent millions of people in one constituency. Yet, India today is, in fact, the world's largest and most successful democracy. Open up the horizons, you never know, we can perform better.

Madam Temporary Speaker, when you look at the expected outcome in this initiative, the Motion expects that the Committee will inquire into the role of the Senate and set a clear structure of oversight over the national Government. If we do not do this, currently, the Senate as constituted, our claim that we represent counties and oversight over counties is only in our minds but on paper, we are toothless.

We need to give the Senate real teeth so that the oversight that we are talking about is not reduced to some petty thing called oversight fund. No! You need to empower the Senate so that in the definition of a bicameral Parliament, this Senate is clearly an Upper House. Until you make this Senate a clear Upper House, the balance of the issues is just wishful thinking.

If we become a proper Upper House, we will then do what I found in Poland when I visited the country. They have a proper bicameral system of Parliament where the Upper Chamber is a Chamber of reflection. After the Lower House has made legislation, the Upper House then reflects on it. With due respect to the younger Members of this House, I am not casting any aspersions against you. I am just saying what I see in the USA and Poland; a Senator cannot qualify for nomination to run for office unless they are 35 years and above. You are supposed to be in the age where you can reflect on issues.

This is where we want to drive our country to the extent that I would see the future Senate to be one whereby people who have served as governors and they do not think they want to exit public life, when they quit office as governors for whatever reasons, they could then run as Senators. They will reflect on the experiences that they had when they were serving as governors to enrich the process.

Madam Temporary Speaker, this Committee is expected to recommend to the Senate such other constitutional and legislative interventions that may be necessary to secure and safeguard the system of devolved government in the Constitution. The current situation where an MP from Kakamega County representing – for argument's sake – Khwisero Constituency, with a population of 105,000, people thinks that he is at par with the Senator who represents that county with a population of two million people, is defective. Unless corrected, people might run the risk of being discouraged from spending hundreds of millions to win a senatorial seat and then end up being belittled by somebody who you literally campaigned for to become an MP.

I, therefore, believe that this is an opportune moment. Let me conclude with one precaution; I am very worried about the support from the Jubilee side of this Committee. I am, in

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fact, very suspicious. When I see Sen. Wamatangi sitting here – not that he does not normally sit here – religiously this afternoon supporting this Bill and even informing me positively; when I see Sen. Lesuuda religiously seated supporting me, I am very suspicious. It is because when a similar initiative was stated by *Okoa Kenya*, they opposed, shouting themselves almost to the extent of becoming hoarse.

When a similar initiative was suggested by the Council of Governors (CoG), Sen. (Prof.) Kindiki almost went wild. That, why are these people ever imagining the issue of --- Yes, Sen. (Prof.) Kindiki could not hear. Today, he is seated religiously ---

(Sen. (Prof.) Kindiki glanced at Sen. (Dr.) Khalwale)

Madam Temporary speaker, protect me from the good professor. He is my leader and now he is threatening me.

(Laughter)

We are very suspicious. In some other informal conversations with some of them, one of them – the one who told me is here in this House today, listening to me –told me that they are merely going through this so that they can drag the possibility of reviewing the Constitution, so that the question of whether we should amend articles of this Constitution or not should be put to the public on the day of the general elections on 8th August, 2017.

Members of the public, be aware. If you risk that – those of us who love this Senate – Jubilee has the capacity ---

Sen. Lesuuda: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, give Sen. Lesuuda time to give her intervention.

Sen. Lesuuda: On a point of order, Madam Temporary Speaker. Is the honourable, Sen. (Dr.) Khalwale, who has eloquently executed this Motion in order to mislead the public and this House that some of the conversation that he has had informally should be generalized to mean Jubilee in totality. Those may be conversations that they could just have had while having tea. Should they be taken to be the truth and the stand of Jubilee Senators?

The Temporary Speaker (Sen. Ongoro): Senator, elaborate what exactly you meant.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I urge young politicians to read the history of the politics of the world. Senator, if you bothered to read the history of the world, you would know that those informal conversations are the ones which eventually become formal, to the extent that when the United States of America (USA) joined the World War, the decision to do so was taken on the stairs in the White House. It was not taken in the Congress.

I, therefore, caution members of the public that there is a mischievous attempt to bring this question the same time that members of the public are voting. If you bring it at a time when the public will have been given enough negative propaganda that the Senate is toothless and does not add value, they can very easily vote “No” for us having a Senate in this country.

With those many remarks, I support.

(Question proposed)

Sen. (Dr.) Zani: Madam Temporary Speaker, I will be very brief because we want to go to the debate for the County Allocation of Revenue Bill (Senate Bill No. 3 of 2016).

If there is a time we needed to stamp our authority as a Senate, this is the time especially being the second Senate. We need to have clarified roles and to have the bravery that goes with it. If you look at all the other institutions, including the Council of Governors (CoG) and the National Assembly, they have been able to remain united, push for their agenda and suppress us in everything that we try to do. We have been asking for oversight money which they know is important but they have not given it to us.

Madam Temporary Speaker, this is the first time the Constitution is being implemented and there is going to be an issue about interpretation and translating it into action. That is understandable. The level of disarray that has been in operation across the various institutions has been disappointing. That is going to have an impact on devolution. Many people are now looking at the various roles. We are looking specifically at the Senate and they think we are the guardian angels of devolution, we should have protected devolution, we should continue to protect devolution and address all the issues.

I know from the Senate perspective that we have done quite a lot in terms of our work in the committees, engaging with various stakeholders but we have had serious limitations. We need to find ways and means of addressing these limitations as a united Senate. We need to put our partisan interests aside, join together and begin to address our mandates and what we are meant to do in order to protect the counties.

Madam Temporary Speaker, I support this Motion and say that what has been outlined in this Motion is critical; budget making processes, revenue allocation and legislative process especially the interference from the Judiciary. I know from the CoG perspective, that they may praise it and say even the Judiciary has helped to entrench devolution. However, I know from the Senate perspective that many of the problems that we have had are as a result of the decisions of the Judiciary on issues brought by the CoG.

For example, we know we have impeached governors. That was going to be one of the truths that was going to strengthen Senate but it has not worked. There is the issue of oversight over the national Government and some bodies within national Government at the county level; some devolved functions whose devolution has not been followed by the money that is needed for their functionality.

Madam Temporary Speaker, unless all these players come together and find a way of saving devolution and re-focus on what devolution was all about, then we are going to get it wrong. We stand at a pinnacle and a point in history where we must make a difference and be counted. The moment is now. If it is not now, then it is right now.

We need to look at the various issues like slow disbursements of money into the counties, transparency in allocation of money and accountability. We cannot say that the Integrated Financial Management Information System (IFMIS) cannot be used to address issues of money that is lost within counties and spent on buying wheelbarrows at huge costs. It is disappointing that we have not been able to get to the bottom of the various issues affecting devolution. I think this committee is up to the task and they will get there.

I support and I wish this Committee well. It is an important Committee. Let it catapult the Senate to the position that it was intended to be.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, Sir, I will also be very brief because we want to move to the next item. I have two things; first, the architecture of the Constitution is very clear. It is the Constitution that envisages the sovereignty of the people, the rule of law, good governance, accountability and transparency in Government.

In that regard, two important institutions were established in terms of accountability, transparency, the rule of law, the Legislature and the Judiciary. In between them are constitutional commissions. I would have expected the Commission for the Implementation of the Constitution (CIC) before it went out of office to have come out with a position paper guiding the nation as to where amendments were needed in this Constitution to improve its architecture.

As you can see, the discordance between the Senate and the National Assembly is as a result of some poor architecture in the Constitution. Further, the ineffectiveness of the constitutional commissions is due to poor architecture between the powers of the Executive and the independence of these commissions.

Therefore, in the history of constitution making, we know, for example, the United States of America's (USA) Constitution was amended extensively within the first five years of its existence including introducing a Bill of Rights in that Constitution.

Madam Temporary Speaker, it is unfortunate that five years are ending before we make substantial improvements in the architecture of our Constitution, to make it meet the principles that I have stated, which it was meant to meet. Therefore, the establishment of this particular Committee is not only overdue, but urgent. It is not being established simply just to help this House, but to help in improving the architecture of our Constitution, which is wanting and should be undertaken by carefully thought out amendments.

Therefore, in the debates that have gone on this afternoon, mention has been made of the need to reform the Independent Electoral and Boundaries Commission (IEBC), which as it exists today, is neither legal nor competent. Therefore, any action taken to remove it by the people is, indeed, welcome. After failing to perform its duties, it cannot be defended in law because it is those laws that it has abrogated.

I, therefore, wish to support this Motion. I am looking forward to the Committee being set up by the Senate to deliver its responsibility expeditiously.

Sen. Murkomen: Madam Temporary Speaker, I rise to support this Motion. I had the privilege and honour to chair the Committee that was constituted before to discuss the areas of amendments and it did a good job. It was composed of most of the current Members who are still in this Committee. Most of us in this House agree that there are issues that need to be amended in the Constitution.

Most of us in the country - not just in this House - believe that there are certain things that need to be amended in the Constitution. That is the general agreement across the political divide. Nowhere have we said that the Constitution should not be amended. Even as we agreed on the time, this Committee will play a critical role in terms of providing the roadmap of achieving that which is agreed upon by Members across the board.

Madam Temporary Speaker, what is critical for us in this House is the role of Parliament in ensuring that there is equity, quality of legislation and prudent and proper use of national and county resources for the country. That is why the next Senate must match the expectations of the people of Kenya in oversighting and protecting counties from external attacks in the budgeting process or the role of other levels of Government like Parliament and the national Executive. To achieve that, we will need to amend this Constitution.

I am sure that Sen. (Prof.) Anyang'-Nyong'o will agree with me that one of the most successful regimes in uniting the country was the past coalition Government. It provided institutions of governance - although they were temporary and short-term – that made everybody feel that they were part and parcel of the governance of the country.

The position of the President, Vice President, Prime Minister and the Deputy Prime Minister, politically speaking, provided a safeguard; that every community was part and parcel of the Government. Now, we have a Constitution that provides critical institutions like the Senate. In the political negotiations, the Speaker of the Senate provides part of the balancing act of political representation and unification of the country, yet we want to weaken it to the extent that the Speaker of the “Upper House” is trampled upon by other institutions and looked down upon by the National Assembly.

He is not part and parcel of the discussions of the running of the State. It is not one of the institutions that engage in negotiations of certain issues of oversight, representation and sharing of national and county resources. The strength of this House is necessary for unifying the country, protecting the counties and the people against attack by internal forces within the counties on issues of resources. When the Senate asks to be allocated resources for oversight, it appears like it is begging another level of Government.

We want to ensure that there are sufficient checks that can be achieved; to check the other House and other institutions and make sure that this House can operate. As Senators, this is a great opportunity and as a Member of this Committee, I will put my every effort forward. I hope that when we go to collect signatures - if we have to go for popular initiative - we will also pass through a process of integrity that ensures that the names and signatures that we bring will be those that the people of Kenya have consented to.

Madam Temporary Speaker, once we have agreed that we want one million signatures, each of the 47 Senators needs to come up with about 25,000 signatures. It is possible with commitment. We should bring credible signatures, without duplication, drawings and other kinds of things that we have witnessed with other signatures.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Madam Temporary Speaker. I did not want to interrupt my friend, Sen. Murkomen, but is he in order to aver that there are signatures that are not valid, without at the same time explaining to this House, in an authoritative manner, what a signature is? Is the Senator in a position to distinguish between a valid signature written in Amharic, hieroglyphics and Gujarati?

Sen. Murkomen: Madam Temporary Speaker, I do not understand which signatures and language Sen. (Prof.) Anyang'-Nyong'o has talked about. Of course, he is intimidating me with his professorial abilities and strengths. However, on a serious note, there has to be a legislation, going forward, as part of our recommendations, to give credibility and legislative framework that operationalizes the popular initiative and mechanism of amending the Constitution so that we

avoid a situation where ten people will be drawing a pig as their signatures, which creates a confusion as to whether the signatures are authentic.

There cannot be ten people who can imagine and draw a pig as their signatures. Granted, I concede. As Sen. (Prof.) Anyang'-Nyong'o says, I have no capacity to determine which signature is valid. But where the same signature is used by ten people - all of them drawing a pig in the same way and manner - it will raise questions of credibility.

I support.

Sen. Abdirahman: Madam Temporary Speaker, I do not want to be left behind in expressing support for this important Motion this evening. Indeed, this Committee will give the Senate an opportunity to look at the pitfalls that we have experienced as a result of our last constitutional review that put the Senate as an ineffective organ.

Although this is the fourth year, this will look like a mid-term review of what the challenges were with regard to devolution and how best the different institutions will have complemented each other. It will provide an opportunity to create synergy, so that we can see the successes of devolution.

Quite a number of times, we have had challenges in terms of making sure who plays what role in terms of oversight functions between the county assemblies and the Senate. This is something that is clear in our Constitutional framework. Through this Committee, we will look at how best we can create the different linkages of the different institutions.

I want to link my thought with that of Sen. Murkomen with regard to the failure of the National Assembly to give us our allocation that would help us to monitor and evaluate the various programmes that were undertaken in our various counties. I have come to the conclusion that it is the National Assembly that is rendering the Senate ineffective. This is the Eleventh Parliament. I am, therefore, surprised that there is no voice of reason in its membership. The Senate is a House that works in a bipartisan manner and looks at issues objectively as opposed to the rogue National Assembly. I am disheartened by the manner in which they have treated the Senate many at times.

I beg to support.

Sen. M. Kajwang: Madam Temporary Speaker, I wish to support this Motion. From the time I got to this House, I have wondered why we set up a Senate such as this one. It is even more curious that some of the drafters of this Constitution are eminent Members of this House.

When I look at the majority membership of this House, they are people who in one way or the other were involved in drafting the current Constitution. It is on that basis that the populace saw them as senior politicians befitting the honour of sitting in this House. Sometimes I wonder whether someone put something in their drink when they were making the final decision in Naivasha. I hear that it is in Naivasha that the decision to water down the powers of the Senate was arrived at.

In my view, we do not need the Senate as presently constituted and defined in the Constitution. We would rather scrap the Senate and forget about it. We would rather go to the counties, get the majority leaders from county assemblies to sit in one place in Nairobi and task them with the duty to protect and defend the interests of the counties.

There is no need for someone to campaign in an entire county, similar to what the governor is doing, then after that, they come to Nairobi and they are told that their job is to sit and do some very peripheral work. As presently constituted, we are better off scrapping the

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Senate and saving this country a lot of money. I know that students of History would say that such drums of war were beaten immediately after Independence and some people started talking about scrapping the Independence Senate. That led us to all sorts of problems. The powers, authority and privileges of the Senate sometimes lead me to believe that we do not warrant spending taxpayers' money.

Madam Temporary Speaker, if the Senate is to remain - which I believe is the consensus and view of many of us in this House that the Senate has got a place - we need to give it authority and teeth. The authority of this House is not just about the oversight fund. I would like to make it clear that as a Senator representing Homa Bay County, with or without an oversight fund, it does not stop me from doing my duties as spelt out in the Constitution. It only makes it harder for me to do it, but it does not stop me.

The feeling and impression that has been created in the minds of the public by the media and the National Assembly, that Senators will die if they do not get the oversight fund is wrong. The idea to come up with an oversight fund was more of an act of desperation. That fund is giving us a lot of problems. The Kshs332 million that we sought to take us to the end of the financial year is nothing compared to the Kshs400 million that Homa Bay County has set aside for the MCA in form of a ward development fund. We may leave Nairobi feeling that we got something but when we go to the counties, we will realize that we have absolutely nothing. That fund is not going to help us achieve even half of the objectives that we are set up for.

The authority of the Senate is not just about Sen. Sang's Bill. The Sang Bill was a piece of legislation which was well inspired and thought out but remember that the Bill only put us at the center of discussions relating to affairs of the county. It was just one small aspect. Giving authority to the Senate is not just about order of precedence. Some of us have nowadays given up. When we go for functions which have been organized by the county executive, we just take up whatever order of precedence that is assigned to us. You will find that even MCAs depending on their closeness to the governor would be given a higher order of precedence in public functions.

We said that what defines order of precedence in public functions is not whether you are given a higher chair or put on a red carpet. Therefore, let nobody think that when we talk about giving authority to the Senate, it is about fighting for space, who speaks last in a public meeting, fighting for who chairs what meeting, who is the secretary of what meeting or fighting for some small amount of money in the form of a Kshs1 billion oversight fund.

Madam Temporary Speaker, if we are to build the institution, first of all, we need to look at the Senate and Senators as an institution. We need to provide this House with the necessary resources sufficient to do our work. Many Senators are scattered in this City because the body that has been given the mandate to ensure that the Senate is treated as an institution decided to ask Senators to go and look for offices. Logistics, staff and resources must be provided for Senators to execute their functions. I hope and believe that the Senate will come up with very clear proposals.

Due to time constraints, I would like to talk about two important pieces of legislation one of which is coming up for discussion shortly. I would like to give an example of how insignificant our role is. The Division of Revenue Bill is a very important piece of legislation in this country that the Senate is expected to be part of. However, if you look at it carefully, you will realize that discussions start from the budget policy Statement which comes from the

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National Treasury and then there is another body called Inter Governmental Budget and Economic Committee (IBEC), which is chaired by the Deputy President.

Madam Temporary Speaker, once IBEC has come up with a position on some issues to do with the budget, even the Senate many a times finds itself incapable of changing it. We attempted to challenge the revenue growth parameter that the National Treasury had used but we were unable. An amendment was brought by Sen. (Dr.) Khalwale to the effect that we needed to apply a higher revenue growth parameter so that counties could get more money but we were told that those things had already been discussed in IBEC and had been captured by the budget policy statement. What then is the significant role of this House?

Madam Temporary Speaker, that then leads me to think that even when it comes to the Division of Revenue Bill, our role seems to be to rubber stamp what other bodies have come up with. Last year when we attempted to change the Division of Revenue Bill, we went into mediation and it turned out nasty and has put us in the situation that we are in now. The County Allocation of Revenue Bill which we want to rush to discuss at 5.00 p.m. on a Wednesday, one day before we go on recess will not be discussed properly. We are not doing justice to our role. The blame is on us as Senate.

We spend a lot of time discussing Statements and many other things and yet the County Allocation of Revenue Bill is one of the significant Bills that originate from this House before it goes to the National Assembly. However, you will realize that the Commission on Revenue Allocation (CRA) has got more powers on the Division of Revenue Bill than the Senate. The CRA is only supposed to recommend a formula for allocating revenue amongst the various counties. However, when the matter comes to us, we tend to find ourselves in a situation where it is a sealed matter.

Madam Temporary Speaker, even if we are going to discuss the County Allocation of Revenue Bill this afternoon, it will just be another rubber stamp venture. We will not spend as much time on it. That leads me to think that something needs to be done to give relevance to the Senate. Otherwise, we need to get rid of it. I do not support the Membership of the team that has been set up for one reason. It is top-heavy. It has got people who are already Chairpersons of several other Committees; people with significant responsibilities.

Madam Temporary Speaker, the team that we are setting up is going to suffer getting quorum or convening. I support the move to set up the team but I do not support the composition of that team. How I wish more Members could be here to scrutinize that team because it will not make us progress. They are people whose hearts mean well for this country but they are too busy running political parties and movements out there. This team will not progress. There are hon. Senators whose hearts are in the right place. They mean well for this country but they are too busy running political parties, movements and multiple committees in this House. I do not support this membership. We need people who have time, passion and not hoping to become governors.

This list is full of people who want to become governors. With all the imperial powers governors have, they want to become governors because they know there is a weak Senate that will not do anything about it. Do we expect someone who has powers to be a hyena to come up with proper regulations for sheep? I do not support this team even though I support the establishment of a team. I wish we could have had time for a robust debate on this matter rather

than rushing so that we can look at the County Allocation of Revenue Bill which we will not change because the Commission for Revenue Allocation (CRA) has already done its job.

Madam Temporary Speaker, I beg to support. I support the idea and not the membership. The membership is all wrong.

Sen. Lesuuda: Madam Temporary Speaker, I rise to support this Motion. It was a privilege for me to sit in the earlier Select Committee that looked at some of the constitutional and legislative interventions that this Committee will look at. It will determine how best to implement those recommendations either through popular initiative or come up with other recommendations.

It is evident that we need to look at how we can enhance our Constitution. If leaders, both in the National Assembly and the Senate had the good will, we would not have had to change our Constitution this early. We would have continued to implement it and pick lessons of what we can do. However, there has been no goodwill. It is my hope and desire that even after the recommendations are done and the popular initiative carried out, in future, leaders should learn and invest more on having the political goodwill for serving Kenyans.

We have always talked about the need to strengthen this House. Its role has to be strengthened. In the Constitution, its role is clear but because of lack of---

(Sen. Murkomen consulted loudly)

Madam Temporary Speaker, please protect me from the loud consultations that are going on here.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, consult in low tones so that Sen. Lesuuda can give her contribution.

Sen. Lesuuda: Madam Temporary Speaker, we have always said that the role of this House is very clear under Article 96 of the Constitution. However, the goodwill that I talked about has been lacking. That is why we have to categorically strengthen the role of the Senate.

It is important for Kenyans and all of us to know that many are the times that debate has been whether we really need this House or not. As Kenyans, we should all know that when we strengthen the Senate, we strengthen devolution and delivery of services to Kenyans. So, it is important for us to look at ways to do so. The oversight role of the Senate should be very clear for it to get resources to do oversight categorically. This will ensure that the public get the services that they desire.

I would like to add to what Sen. M. Kajwang said. It is as if he read my mind. Many of those who sit in this House who have had the experience and always contributed on issues to do with how we should strengthen this House were in one way or another involved in the Constitution making process of this country. I would like those who will sit in this Committee not to think that probably they will not sit in this House again. Many of them will be contesting for the position of governor and, so probably, would not need a strong Senate. We should make laws for posterity regardless of whether in the next election you will find yourself in this Senate or not.

Madam Temporary Speaker, having listened to the contributions of some of my colleagues, even when this Motion was seconded, there is already some suspicion on whether

both sides of the House will work in a manner that will definitely deliver for this House and the country.

I hope the Committee will work in a bipartisan manner and ensure that it delivers on the spirit of many of the Members in this House and Kenyans who are looking forward to ensuring that we have a strong institution; the Senate. It will also ensure that devolution is properly anchored in our Constitution.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to reply.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, I will proceed to put the question. I wish to remind the House that this Motion does not affect counties. The process of constituting this Committee to undertake this responsibility does not affect counties but when they give their report to the House, it will. So, we shall vote then. I will proceed to put the question as set out in the Order Paper.

(Question put and agreed to)

Next order!

BILL

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO. 3 OF 2016)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move that The County Allocation of Revenue Bill (Senate Bill No. 3 of 2016) be read a Second Time.

This is one of the most important Bills that we pass every year. It divides the revenue of the nation between the two levels of Government. The process that has led us to this Bill is protracted. Other than the longevity of the process, this Bill is a product of consensus building from as early as 15th February every year when the Cabinet Secretary for the National Treasury issues the Budget Policy Paper which is debated and passed by each of the two Houses of Parliament.

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

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

Therefore, this House has been involved from the onset by virtue of the Constitution and the Public Finance Management (PFM) Act of 2012. Notably, also the negotiations between the various agencies of state, including the National Executive, the Intergovernmental Budget and Economic Council (IBEC); the organ that deals with the budget and economic affairs, and all other agencies have in the last two months been involved in negotiations on this Bill and its contents.

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Mr. Temporary Speaker, Sir, I am also happy to note that this year, unlike the years gone by, the Senate has been involved at the informal negotiations. The Chair of the Committee on Finance, Commerce and Budget has been involved. In the past, the Senate was left out.

This Bill is a product of a lot of negotiations. The CRA, CoG and IBEC have made recommendations. The parliamentary committees and the national executive were all involved. Therefore, I do not expect a lot of debate save for a few things.

First, this year the counties are getting approximately Kshs302 billion as part of the sharable revenues from the national Government. That is the agreed amount. This Bill also proposes a number of conditional grants. Notable is the conditional grant of Kshs4.1 million to support free maternal health care.

Mr. Temporary Speaker, Sir, the Members are aware that the Jubilee Government on 9th April, 2013 announced the free maternity services in the entire country. Most of the facilities where maternity services are offered are facilities under the county governments. So, what the Government has done is to reimburse counties for the fees they would have charged mothers who are getting maternity services at the health centres, dispensaries and hospitals under county governments. Therefore, this grant of Kshs4 billion will offset that amount so that counties do not suffer pecuniary losses as a result of offering free maternity services.

Mr. Temporary Speaker, Sir, secondly, there is also a conditional grant to support the medical equipment leasing arrangement which is currently a subject of public debate. The national government is assisting to equip two hospitals per county which are jurisdictionally under the county governments. These are the Level 4 and 5 hospitals. They are equipped with MRI equipment, CT scans and dialysis equipment in order to shorten the distance that the public has to travel to get these services.

It is also aimed at reducing the expenses that many Kenyans go through to travel to Kenyatta National Hospital or Moi Teaching and Referral Hospital in Eldoret for treatment of serious ailments such as heart, cancer and kidney diseases. This conditional grant will make sure that more hospitals are equipped. Nearly 20 hospitals have been equipped and the rest are in the process of being equipped with medical equipment for specialised treatment.

Mr. Temporary Speaker, Sir, the other conditional grant is for the Level 5 hospitals which will get Kshs4 billion. We have 11 counties which have Level 5 hospitals which are serving Kenyans who are outside those counties. Therefore, it is proper to support them. The Kshs900 million is also provided as a sharable amount to offset the foregone user fees. The Jubilee Government on 9th April, 2013 announced the abolition of user fees in all health centres. The Kshs20 or 30 that patients used to pay in the dispensaries and health centres were abolished. The cost is now met by the national Government. Therefore, there is an additional conditional grant to reimburse the facilities for the foregone user fees.

There are few other conditional grants which are provided for in the schedule but time will not allow me to go on a case by case basis. However, I am happy that we have strengthened the negotiations between various agencies. This year we have had less acrimony. The budgetary processes are always acrimonious and divisive. However, because of the consultations and cooperation, there have been fewer differences.

Mr. Temporary Speaker, Sir, what this underscores is the need for cooperation and consultations as opposed to conflicts and confrontation. The earlier the institutions of this country and the people who serve in those institutions realise that the country and the

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Constitutional architecture is dependent on a culture of cooperation and consultation, the better. Article 6 (2) of the Constitution is not in vain. It demands consultations, cooperation and mutual respect between the two levels of government. This is what should be encouraged. We need to see less confrontation, competition and conflict.

Mr. Temporary Speaker, Sir, the money allocated to counties has been periodically increasing. The current amount is 30 per cent of the recent audited accounts of 2013/2014. However, we are behind schedule but whatever arithmetic used is still way beyond the minimum 15 per cent. This is what should be encouraged. As we think about possible constitutional review in the future, the one area we need to look into is whether we need to up the minimum allocation to counties from 15 per cent to another figure. We have had three financial areas of testing whether the monies given to counties are enough.

The county governments require more finances. The kind of functions that they are assigned require resources much more than we are giving them at the moment. It will be important in future to ensure that we do not leave the minimum allocations to the whims of the successive governments. There can be a government that honours that and another that may not honour or if it honours, they stick to it.

Mr. Temporary Speaker, Sir, we hope that through the review process, there will be consensus on how much a county government requires. Surprisingly, in older democracies like Australia, India and others, the issue of how much money is devolved is a controversial issue. So, we should not be surprised because ours is less than three years old.

Countries like Australia which have had devolved governments for 175 years still contest how much the regions should get from the centre. This debate will not go away even with the proposed constitutional amendments. Therefore, there is need for better communication between the agencies and the two levels of governments. This will ensure that the budget making process and the sharing of the resources is equitable and is done in a way that every part of the country is taken care of.

Mr. Temporary Speaker, Sir, devolution has changed our country for good. We are witnessing great things that are happening because of devolution. Where there was no access to health services in the rural areas there are health services. We are seeing tarmacked roads in parts of this country where there were none, never mind the kind of technology used. Some of them are appropriate technologies. We have heard about the pro-base technology and others, but it does not matter.

A road that may not last for more than 10 years is worth having than not having a road at all. We have seen tremendous improvement of the infrastructure. Rural economies are rising up again, after many years of neglect, because of devolution. Therefore, we must stand to defend the silver bullet that has helped us kill exclusion, division and marginalization. This is the game-changer and the card that Kenya is left with to make sure that every part of this country feels secure and attended to. For many years we have remained exclusive. We have made certain parts of our country feel ostracized from the society.

Mr. Temporary Speaker, Sir, one of the reasons our country continues to have tension, mistrust and disaffection is because of exclusion, especially in resource allocation. Before devolution, technocrats in Nairobi would sit and decide which districts would get which amount of money for water. We ended up having district “X,” which had a lot of water, getting more money for water than district “Y” which had serious water shortages.

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Therefore, devolution is a game changer and the card that has come to tell every part of Kenya that they are part of our country. Mandera, for instance, is getting Kshs9 billion consistently for five years. An allocation of nearly Kshs50 billion to that county means a lot. They had never seen tarmac for 50 years and now, they have seen it, courtesy of devolution.

Mr. Temporary Speaker, Sir, in this Schedule, Elgeyo-Marakwet County is getting Kshs3.5 billion. Just like Tharaka Nithi and Lamu, it is a relatively small county in size, compared to other counties in our country. These are small and marginalized counties historically. A total of Kshs3.5 billion in a financial year is a lot of money for Elgeyo-Marakwet. We are allocating Kshs3.4 billion this year to Tharaka-Nithi. Over the last three years we have allocated the county more than Kshs10 billion. This money can transform that county and we are happy with what is happening.

Lastly - this is the saddest part - notwithstanding the promise of devolution and the hope that devolution has rekindled in the citizens of this country, in terms of an equal society, we are witnessing a terrible accident taking place. The accident that is taking place in Kenya today through devolution is the accident that occurred in 1965. Sen. (Prof.) Anyang' Nyong'o, who is a scholar, is here and can challenge me, but my belief is that the majority of problems of post-independence Kenya are traceable to certain aspects of Sessional Paper No.10 of 1965, especially, the parts that brought out the policy of attending to and allocating resources to the so-called 'high-potential' areas, at the expense of the rest of the country.

The 'high-potential' areas were described as areas that receive adequate rainfall, grow cash crops and that kind of thing. As a result of pursuit of that flawed policy, more than two-thirds of this country has remained excluded and marginalized. The anger in this country is emanating from that part. Places like Isiolo, Tharaka-Nithi, Lamu, Tana River, Elgeyo-Marakwet fell outside the so-called 'high-potential' areas.

Therefore, nobody cared about infrastructure there. Some of these areas were regarded as waste lands. We do not have waste land in this country. In some developed countries; Australia and the US, there are highways and big corridors passing through deserts, because there is a connection between an area that may not have agricultural productivity, the overall economy and the future stability of that country.

For example, why is there a bit of tension in some of the areas where oil has been discovered in northern Kenya? Why is it that in places like Nigeria, where oil has been discovered, there is always tension and sometimes violence? If we neglect an area for five or six decades because there is no rainfall, roads, power, water and all of a sudden, because a resource has been found there, everybody troops there and starts showing national solidarity with that part of the country that we have neglected for 50 years, there will, definitely, be a reaction.

For 50 years, Turkana was regarded as waste land, but because oil has been found there, every Tom, Dick and Harry is running there. That is what devolution is trying to heal in this country. Anybody who is opposed to devolution must suffer the consequences that any traitor in a nation should suffer. This is the only thing that will save us from what we were staring at. Kenya was almost titling into anarchy because of skewed allocation of resources and marginalization. However, all of a sudden when gas is discovered in Marsabit and Isiolo, everybody goes there purporting to invest there.

Devolution has brought great hope and promise for our country and certain things that were unheard of for the last five decades. This, we must celebrate. There are a few county governments that have done well, but it is also true that there are serious threats to devolution. The biggest single threat is not the national Government. The way the Constitution is crafted, no authority can undermine county governments without breaching the Constitution significantly and attracting the consequences thereof. The biggest threat to devolution is internal. It is corruption, theft, wastage, and robbery of resources left, right and center. Even as I join the Senator for Kakamega - the self-declared anti-corruption czar - I also ask him to reconsider, alongside other colleagues, the mistake that Senators are about to make.

Dear colleagues, you do not mitigate for a weak Senate by running to become governors so that you can enjoy the trappings of power. You mitigate the effects of a weak Senate by pushing for the strengthening of this House and other institutions and remaining here to be a check and balance on the plunder, robbery and theft that is going on in our countryside.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. With the utmost respect, is the Senate Majority Leader in order to impute improper motive on colleagues who have indicated that they will fight corruption from within the ranks of the administration of county governments by suggesting that they are motivated by the trappings of power? Could he substantiate that, failure to which he should withdraw and apologise?

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I am not---

The Temporary Speaker (Sen. Sang): Order, Senator. That point of order is very valid. You need to respond to that particular point of order. Before you do that, Sen. Murkomen seems to have another point of order.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. I do not know how to handle this. You know, we cannot challenge the authority of the Chair. However, is it in order for me, being just a Member of the House, to refer to newspapers and social media reports that pointed out that the Chair might also be an interested party in this matter?

(Laughter)

The Temporary Speaker (Sen. Sang): Sen. Murkomen, you are completely out of order. What I did was precisely procedural. I just asked the Senate Majority Leader to respond to a valid point of order raised by Sen. (Dr.) Khalwale.

The Senate Majority Leader, could you respond to that point of order?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I will respond to that point of order as follows. Ordinarily, I do not exemplify my points using riddles. However, you will allow me to say that there is a riddle I heard from one of the people who are notorious of using riddles. It is about how a lion chased an antelope that disappeared somewhere in a rocky place. The lion found a hippopotamus grazing nearby that rock. He asked him whether he had seen the dik-dik but the hippopotamus did not talk. He asked the rock; Mr. Rock, have you seen the dik-dik? But the rock, of course, could not reply. He repeated the second and third time but the rock was silent. Then, he told the rock and the hippopotamus that you may not answer me but you have heard me.

Having said that, I withdraw any remarks that I may have made imputing improper motives on any Senator, including the Senator for Kakamega, who is a very good friend of mine and my senior in the school of life, but he has heard me.

Mr. Temporary Speaker, Sir, I want to end my remarks by saying that we must face corruption in our counties head-on. Those of us who believe we can save this country from the horrors and ravages of corruption must regroup. We must regroup and work hard to redeem our counties and chase out all the thieves that have converged to eat the carcass, which is the resources of the people of Kenya. We have “big” thieves in the counties occupying big offices but we also have “small” thieves because sometimes there has been a lot of attention on governors. We have some other little fellows in procurement who aid and abet the grand theft that we are seeing in counties. Time has come and it is now when we must say no and put our foot down.

I am happy that the County Public Accounts and Investments Committee (CPAIC) has started considering some of the reports and they will be discussed in this House. We request every Senator of goodwill to stand out and be counted at this hour when our country is looking for help on how to save our counties from the ravages of the demonic forces of corruption, theft and plunder.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to move. I request the Senator for Kisumu County, Sen. (Prof.) Anyang'-Nyong'o, former Minister of Health Services in the Republic of Kenya and my senior in academia for many years to second this Motion.

I thank you.

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Anyang'-Nyong'o is also a former Minister for Planning and also held many other dockets.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I beg to second the Motion. To begin with, I would like to draw the attention of the House to the Sixth Schedule of the Constitution of the Republic of Kenya which is about Transitional and Consequential Provisions. I will be particular on Provision 17 on Provincial Administration which states that:-

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

Mr. Temporary Speaker, Sir, if you go to the section that gives definitions to terms used in the Constitution, I am sure it will give you a definition of “the effective date.” The Mover of this Motion, who is the Senate Majority Leader in the House, is a lawyer. I am sure he has advised the Government when the effective date of the Constitution was. Indeed, we are way passed the effective date and there has been no indication, whatsoever, either in terms of sessional papers or Bills that state the steps that the Jubilee Government has taken to respect this provision in the Constitution.

Mr. Temporary Speaker, Sir, we have talked about it, the Mover has said quite rightly and it has been said in both the Committee on Finance, Commerce and Budget and the CPAIC of this House that one of the problems in the counties is wastage and pilferage. One of the problems in the national Government is also wastage and pilferage. The biggest problem of wastage is that we are running two systems of government; the national Government and devolved

governments. This is causing double expenditure of public revenues in running the two systems. That is a project too expensive for this nation to get itself involved in.

We have a budget of over Kshs3 trillion. If you interrogated that budget, you will find that quite a bit of it is being earned productively and used for either financing non-existing loans, loans out of investments whose costs have been highly exaggerated to satisfy kickbacks or financing Government institutions which do double work. Instead of one institution doing the work, you will find two institutions doing the same thing, particularly when you look at this particular provision in the Constitution on Transition and Consequential Provisions.

Therefore, I would like to propose the following. As we pass the County Allocation of Revenue Bill and the Division of Revenue Bill, 2016, and after we have passed the coming Budget, this House should hold a three-day conference or retreat to take stock of devolution, get a balance sheet of devolution and assess its future. As one of the ways of taking stock of devolution and having a balance sheet, this House should commission a study of the effect and impact of continuing with the Provincial Administration as received before the Constitution was passed and as it is, affecting devolution today.

This is because this particular provision was not put in the Constitution for amusement. It was put to ensure that now that we have two systems of Government, those structures of Government that existed before should not continue *ad infinitum* but should be terminated at a specific time in history which was defined as five years after the effective date of this Constitution coming into being.

We as a Senate responsible for devolution, we are letting down this nation by not compelling the Government to implement this provision in the transitional and consequential provisions. Therefore, in the retreat or conference that we are going to have after the budget is passed, this is one of the things that must be discussed. I propose that in line with the Motion that we just passed, one of the things that that Motion should consider is a provision to hold that conference, first, to discuss the proposals that will come out of the Select Committee that we have just established headed by Sen. Murkomen. I think that this provision has to do with the terms of reference of that Motion.

I hope that we shall take this very seriously. As I said in one of the debates on television, we, as Senators, should not continue dancing like angels on the top of a pin and thinking that by doing so, we shall have an impact on the history of this nation. That is very important. I am sure Sen. Wamatangi agrees with me on that.

Secondly, I noticed that we are passing a Bill called The County Allocation of Revenue Bill 2016. I suppose that we are all agreed in this Senate that allocation of revenue should be in line with functions; that revenue should not be allocated without consideration of the functions that the counties and the national Government are performing. If you look at the Fourth Schedule of the Constitution, it speaks of distribution of functions between the national and county governments. I have always wondered when we discuss this Division of Revenue Bill, whether we ever sit down to put the monies put here side by side with schedule four to find out exactly which functions have not been allocated revenue in this particular bill.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. Did you hear Sen. (Prof.) Anyang'-Nyong'o call this Bill Division of Revenue instead of the County Allocation of Revenue Bill?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I apologise because we deal with the division of revenue in the Committee on Finance, Commerce and Budget. This is the County Allocation Revenue Bill. It comes after the Division of Revenue Bill, I understand that. However, the point is still made. Whether it is the Division of Revenue Bill or the County Allocation of Revenue Bill, have we ever taken time? I know that as the Committee on Finance, Commerce and Budget, we try to do so but as the Senate, let alone the committees, now that the Bill is in front of us, can we for certain look at the Bill against the functions performed by devolved governments and satisfy ourselves that monies have been allocated to these functions?

I will just mention two things in the county Government. The county government is given the responsibility of looking after the environment which is an extremely important function. The environment is now more or less everything. If you look at function No.10 – implementation of specific national Government policies on natural resources and environmental conservation including soil and water conservation and forestry, I would bet you my bottom dollar that if you go through the 47 counties, very few of them allocate sufficient resources for environmental conservation.

Note that the national government in its policies, prescribes to the county governments how to use revenues for soil and water conservation and forestry. I am speaking with authority in this because when I was head of programmes at the African Academy of Sciences many years ago, we developed a project for the whole of Africa called soil and water management in Africa. It influenced many African Governments to connect the issue of soil and water management and afforestation.

In my own county; the county of Kisumu, only 1 per cent of the land surface is forested. This is a disaster in the making. If I go to my City of Kisumu County, the only section of the city which is partially forested is Milimani. The rest of the estates where people live; whether it is Nyalenda, Obunga or Manyatta, afforestation is wanting. You know that part of the problem with climate change is a destruction of the environment that has made haywire the climate of the world.

It is not by mistake that the framers of this Constitution gave this responsibility to counties because people live in counties. I would like us, when we retreat, after the budget, that we take time to look at the budgets that have been passed so far and functions of devolved governments and find out whether year in year out, we have not been doing good service to our counties.

The other thing that I want us to talk about is putting in place structures of devolution. Again, I would like to inform this House that if you examine all counties in Kenya today, none of them has put in place structures of devolution as enshrined in the Constitution and in the County Governments Act. I do not think there is any county today which has a village council. None! Yet, people in counties live in villages. If devolution is going to be a *mashinani* affair, it has to go down to the villages and it must be budgeted for because those village councils must function in line with the Constitution and the County Governments Act.

Sen. Murkomen: On a point of order Mr. Temporary Speaker, Sir. I did not wish to interrupt Sen. (Prof.) Anyang'-Nyong'o but it is a small procedural Motion because of---

The Temporary Speaker (Sen. Sang): Hold professor's time, please.

The Temporary Speaker (Sen. Sang): Professor, take your seat.

PROCEDURAL MOTION**EXTENSION OF SITTING UNTIL COMPLETION
OF BUSINESS ON THE ORDER PAPER**

Sen. Murkomen: Mr. Temporary Speaker, Sir, I can see we are approaching 6.00 p.m. Considering that we are likely to go for recess tomorrow and we wanted to debate on this motion comprehensively, I rise pursuant to Standing Order No. 33 (a), to move that the House extends its sitting today until the current business in the Order Paper Nos. 10, 11 and 14 are concluded. I ask Sen. (Dr.) Khalwale to second.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it is very rare for the Jubilee Government leadership to come up with innovative ideas in this House. Due to this distinction today; that the Leader of the Majority has been very innovative, I wish to second his proposal Whole heartedly and congratulate him for the rare moment.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Anyang'-Nyong'o, you have three more minutes.

Sen. (Prof.) Anyang'-Nyong'o: Those are very few. I would like to move that my time be extended.

Regarding conditional grants, I have seen in the Bill provisions in annexes on frameworks for managing conditional grants. With regard to Level 5 hospitals, I hope that these conditions will be met.

Mr. Temporary Speaker, Sir, one proposal I would like to make is where it says that responsibilities for the national Government Accounting officers to set conditions for transfers and monitor compliance. I would like one of the conditions that should be set by this civil servant if I was in his position is that, when this money goes to the county treasury, it should not take more than two weeks before it is transferred to the Treasury or the referral facilities. It should not be in the county treasury for more than two weeks. When it gets there, since it is a conditional grant and the county government is just a recipient authority, the money should be transferred to the referral facilities.

Thereafter, the referral facilities, since they were previously managed by the national Government, should have regulations from the Ministry of Health on how to periodically account for this money to the county government. What is happening is that county governments are shortchanging referral facilities and monies are used for other things while health is suffering.

Finally, as we move in the last year of the first devolved government executives and structures, I am afraid that because of the tremendous sense of impunity that executives in county governments have shown, this Senate should take extra care to safeguard assets and revenues in county governments. This issue should be discussed substantively. We in the County Public Accounts and Investments Committee (CPAIC) have mentioned and discussed it with the Auditor-General, and I think it is an important issue and I hope that this Senate---

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I beg to second.

(Question proposed)

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I rise to support this important Bill. This is the effort which I have seen from devoted Senators when they stood and fought for their counties when they worked on the Division of Revenue Bill in ensuring that their counties are adequately resourced and financed, to ensure that services are delivered to the people that they represent. I know that we had a lot of back and forth in ensuring that we have a formula that does not leave any other part of this country marginalized.

Mr. Temporary Speaker, Sir, it is important to note that it is the spirit of devolution and of some Members of this House to ensure that some of the things that we have fought for over a long time will be seen. That is why, even as we look at sharing of revenue, I can see a significant increase in the money that will go to Samburu County, which is my county. There was a lot of 'give and take' for counties. The Senators ensured that no county will feel that it has been neglected or it does not get what it desires.

Mr. Temporary Speaker, Sir, what I would like to say, even as we debate on the monies going to the counties, for a very long time – and it was the aspirations of many Kenyans when we passed this Constitution, and I know many of us have set pace over and over again – that devolution was one of the driving forces. It was one of the things that made Kenyans clamour for a new Constitution because, for a long time, we have seen that when services and resources were based at the national level, then we continued to have counties and people of different parts of this country getting marginalized and left behind.

Mr. Temporary Speaker, Sir, that is why many of us in this House continue to aspire and fight for that aspiration shared by the many Kenyans who voted for this Constitution. They want to see that the resources that leave the national Government go to the counties and deliver the services intended for. Many a times when Senators rise to deliberate on these issues, especially when allocating funds, you would hear comments from other quarters that the Senate does not support devolution. If there is any House that supports and oversights on how the resources are used at the county level, it is this House.

Some people belong to the school of thought that those of us who come from areas that were marginalized for over 50 years should be happy and appreciate the little that we are getting, for example, the tarmacked roads and street lights. I implore our county governments to think of life-changing issues that can stand out in each county, beyond what is almost basic and standard like ambulances, tarmacked roads and street lights. They should have projects that stand out and directly transform the lives of the people in a big way. I implore our Members of the County Assemblies (MCAs) to not only do their oversight work, but also prioritize issues. For example, if they allocate funds for lighting and they complete it in the first year, they could allocate a huge amount of money to one project in the county that would have a greater impact and transform the lives of the people of the respective counties.

I hope that in the near future each county will stand out in the things that they are good at. For example, counties in the pastoralist areas should stand out in pastoralism since livestock is a devolved function. Counties should put structures in place and look for markets, including

selling their produce outside the country. They can also work with the national Government to source for the markets. This will change the lives of people in the counties.

The emergency funds that have been devolved to the counties are important. However, such funds can easily be misappropriated since one cannot easily determine what an emergency is. There are loopholes which lead to loss of funds. Floods and droughts can be considered as emergencies. We implore our county governments to ensure that resources that are set aside for emergencies are used for the same. In a county like mine, the menace of cattle rustling should be considered an emergency. Most of the time, a big chunk of resources goes to political leaders who hire choppers to visit emergency scenes. This money does not help those who have been affected by emergencies or calamities.

Mr. Temporary Speaker, Sir, health has been devolved to the counties. Apart from education, all of us will agree that health is a critical issue in our counties. We hope that the monies meant to elevate our health facilities to Level 5 hospitals will be used prudently, so that we can have functioning facilities. Likewise, the personnel at the counties should also be motivated and offered training so that we ensure that we have improved and professional services in our counties.

The same way we have devolved resources from our national Government, we should also devolve all resources at the county governments up to the village level. As much as that thinking is good, we have to think of the impact of the projects that are in the county governments.

What is the point of setting up health facilities in every village, yet the same facilities lack drugs or someone to attend to patients? When you go to health facilities, you will not get drugs or someone to attend to you. We would rather have a proper functioning hospital even if it is a few kilometers from the residents. Even if they have to take long to get there, they will be assured of getting treatment and the necessary facilities. Devolution of resources to the counties is a good idea. However, sometimes we will not be able to have tangible results that will help the common *mwana nchi* to access those services.

Mr. Temporary Speaker, Sir, the issue of maternity and the grants that are being given is a good move. For a very long time, mothers in the marginalized or pastoralist areas have suffered. The free maternity programme will ensure that women deliver safely. I know for a fact that my county is doing a lot to improve maternal health in partnership with the national Government and the Office of the First Lady. We have witnessed the mortality rate go down as more mothers deliver healthy children in the hospitals due to such efforts. That is something that the funds sent to counties for such purposes should continue to do.

In conclusion, I would like to speak about the timely transfer of these funds. We can allocate the funds but one of the functions of this House is to not always lament about what the county governments are doing or not. It is important that the national Government remits the resources in good time so that there is no excuse that resources are being held at the national level. Some of the bureaucracies should be looked into to see how best the resources will get to the counties in good time without compromising on accountability.

Mr. Temporary Speaker, Sir, we know that we are sending money to the counties at a time when we are heading to the next general election. I know that there are those who think that this is the time to keep some money to themselves to ensure that they win the coming elections. I can assure them that the Senate will be more vigilant. I am aware that Senators will also be

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preparing and gearing up for elections but we can assure county governments and assemblies that we will be very vigilant to ensure that no coin set aside for development of counties will go into funding elections or will be used inappropriately.

I would also like to encourage the MCAs to be more vigilant. I am aware that some have been compromised by the county governments and the executive to ensure that their role is not ably performed. However, I would like to remind them that a time will come when they will be judged by the electorate on whether they represented them well or not.

I beg to support.

The Temporary Speaker (Sen. Sang): Please, proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to start by drawing your attention to the Speaker's Gallery. It is empty. You should issue a reprimand to the Commission on Revenue Allocation (CRA). When we are discussing this Bill, they are supposed to sit there. That is the tradition of Parliament. When such a Bill on the budget is being discussed in the National Assembly, the National Treasury is ably represented by senior officers so that they can take into account some of the views hon. Senators are making for purposes of perfecting the Bill in the next financial year.

Mr. Temporary Speaker, Sir, I support this Bill but I would like the public to know that for the last three years, governors have been behind lack of knowledge surrounding this Bill by members of the public. They mislead them that the reason why they have challenges in the county is because there is a problem with the policy from the national Government. This is a lie. Therefore, as provided for in Clause 5, I would like the public to know that over and above the equitable sharable revenue for every county, this Senate through the Committee on Finance, Commerce and Budget has worked many long hours with the National Treasury and the CRA.

We have settled and provided for extensive amounts of money in the name of conditional grants. This includes grants for Level 5 hospitals, and special purpose grants for supporting emergency medical services. We thought about this in view of only two counties bordering the Somalia; to equip the hospitals in Lamu and Hola to meet the emergency requirements, especially surgical procedures. It includes conditional grants for maternal health care as envisaged by the announcement by the President earlier on in his term. He wanted to ensure that under the leadership of the Jubilee Government, the public would get access to free maternal health services. This has been provided for.

Mr. Temporary Speaker, Sir, there is a provision for an allocation to compensate county health facilities for foregone user fee revenue. Members of the public need to understand what this money is meant for. It allows all Government hospitals to give outpatient free medical services. The national Government then compensates the county administration for those services. Therefore, first, there would be no reason whatsoever why a member of the public should be asked to pay any fee at the outpatient. Secondly, there would be no reason why services would plummet for lack of money because this conditional allocation is given to the county governments.

Mr. Temporary Speaker, Sir, there is an equal allocation of Kshs95 million to all county governments to ensure that the medical equipment that was purchased under suspect procurement procedures by the National Treasury is actually paid for and is not a strain on the county governments.

Mr. Temporary Speaker, Sir, finally, there is a conditional allocation for maintenance of county government roads through the fuel levy fund. Therefore, there is no reason why governors should not maintain county government roads. I would like to speak specifically to the Governor for Kakamega; every time he goes to public functions, he tarnishes the names of Members of the National Assembly. He has taken it upon himself to attack the Members of Parliament (MPs) for Shinyalu, Khwisero, Lugari, Likuyani, Lurambi, Matungu and Mumias East. They do not subscribe to his type of leadership. He tells the public that they have refused to construct roads. The CDF is no longer for construction of roads, here is the money! Governors should use this money instead of using it to line their pockets.

Mr. Temporary Speaker, Sir, Clause 6 is about the issue of erroneous or fraudulent transfer of funds. I am now glad that it has been clearly indicated in this Bill. There has been a long standing fight between four counties in respect of the erroneous transfer of funds. One being Bungoma County and Busia County where funds meant for Busia County ended up in Bungoma County.

We would like that under the procedure provided for in the Bill, such erroneous transfer will be reversed. Similarly, there was an erroneous transfer between the County Government of Bomet and the County Government of Kericho. The population of one location was counted in the other. I am glad that this has now been sorted out in the Bill.

Mr. Temporary Speaker, Sir, Clause 9 provides for the resolution of disputes on payments on wasteful expenditure. Many governors may be tempted to proceed to court and in the process, delay the release of money because of a protracted court process. This Bill ensures that before a governor or any other organ proceeds to the court of law, they should seek alternative dispute resolution mechanisms.

I thank the Senate Majority Leader and the CRA for this Bill. However, the public should be reminded that the figures that we are about to discuss in the First Schedule will change. These figures are based on the first generation formula for sharing revenue. The second generation formula for sharing revenue which this House passed is yet to get the approval of the National Assembly. As soon as that is made, we shall make an amendment on this Schedule so as to keep it in line with the new formula that will affect the allocations. Some counties will have an increased amount and others will go down.

Mr. Temporary Speaker, Sir, I am saying this because some members of the public will keep this Bill and will not know when the amendments will be made. They can easily fail in their public oversight on their respective county governments or they could attack the county governments thinking they have misused money when the readjustment is downwards.

I would like the people of Kakamega County to know that their county government has, in keeping with the tradition that we have maintained in this House, again enjoyed the support of the Senate. The county government will get a whooping Kshs 9.6 billion up from Kshs 7.9 billion in the last financial year.

Mr. Temporary Speaker, Sir, I thank the Members because this gives Kakamega County an opportunity to have bragging rights that giving birth to many children is better than having fewer children. This is courtesy of the robust capacity amongst our women and men to do that which God sent us to do; that is, "Go yee and multiply".

Over and above the Kshs 9.6 billion, Kakamega County is getting a further---

Sen. Murkomen: On a point of Order Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale has pointed out to the question of allocation of revenue formula being delayed in the National Assembly. Would I be in order to ask whether it is still in order for us to proceed with a Bill that uses an erroneous formula? I am very careful because I am part of the moving of the Bill itself. Article 217 of the Constitution says:-

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

There is a lot of reference to the Senate. The resolution then goes to the National Assembly. Are we, therefore safe to pass this allocation of revenue in the manner it is or should we have been proactive to use the old generation formula? Could we perhaps ask the National Assembly to expedite the passing of the new formula, which now gives us the credibility to have no quarrels after passing the other formula?

Sen. (Dr.) Khalwale has raised a very valid issue; it is not a point of order against him. I am just asking for directions from the Speaker. I did not mean to interrupt him rudely.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, Sen. Murkomen is perfectly in order. When this matter came to my attention, I pursued it further; let me not go into details. I was persuaded and concurred that under Article 218 (1), in a period of at least two months before the end of each financial year, there shall be introduced in Parliament a Division of Revenue Bill.

We needed to do first reading before 30th April. We did the First Reading and are now in the Second Reading. However, the law does not stop us from amending the Bill once it is adopted into law. We can then amend it quickly, so as to align the schedules with the new formula the way it will affect this Bill. However, should you choose to make a substantive ruling, you can do it at your own convenience.

The Temporary Speaker (Sen. Sang): Sen. M. Kajwang, what is your point of order?

Sen. M. Kajwang: On a point of Order Mr. Temporary Speaker, Sir. On the same point, Article 218 (1) (b) says:-

“A county Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217.”

By the time we are looking at The County Allocation of Revenue Bill, which we are discussing today, the expectation is that everything started in Article 217 of the Constitution should have been observed and implemented. Since we have been magnanimous enough to extend time so that we can exhaust this matter, I would love to go home knowing very clearly how much, to the last cent, Homabay County, whose delegation I represent, will get.

Would I be in order to say that, if we look at Article 218(1)(b), what we are doing today is improper?

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Zani!

Sen. (Dr.) Zani: On a point of Order Mr. Temporary Speaker, Sir. I am not sure exactly which article to refer to in the Constitution. However, I know that there is a constitutional cover; that unless the new law comes into effect, the old one holds. Therefore, we are basing our argument on that. We are going to discuss using the old law, but when we have the new law, we can go back and amend. There is no lacuna, as it were, within the law.

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Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, may I attempt to respond to Sen. Murkomen and Sen. M. Kajwang in detail. I would like to invite Sen. Murkomen to look at Article 217. He has ably read Article 217(1). However, he should look at Article 217 (8), which reads:-

“The Senate may by a resolution supported by at least two-thirds of its Members amend a resolution at any time after it has been approved.”

Therefore, we shall make an entry under Article 217 (8), hoping that we will raise two-thirds majority. However, you can make further directions later on.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, you will recall that you raised this particular issue substantively before the Speaker and he agreed that there were issues that he would respond to substantively. However, if you look at Article 217(4) of the Constitution, you will find that it gives the National Assembly a window of 60 days. Therefore, that means they are still perfectly within the constitutional provisions for them to make a determination on the resolutions that we made as a Senate.

Obviously, when that determination is achieved by the National Assembly, definitely, we will have to sit down and look at how to realign that with the County Allocation of Revenue Bill. I am aware that if they make that resolution within the shortest time possible, they could still amend this Bill during the Third Reading to realign it to the Second Generation Formula. Therefore, at this point, let us proceed. The Speaker gave a direction that he will advise on the same. This is the Second Reading and we still have the Committee of the Whole and the Third Reading of this Bill and more opportunity to deal with this issue as we move on.

Sen. (Dr.) Khalwale: So guided.

Mr. Temporary Speaker, Sir, I was speaking to the people of Kakamega. I told them that the rot in the health sector is not acceptable at all in Kakamega, especially the former Provincial General Hospital (PGH) which is now Kakamega Level 5 Hospital. The national Government has given, as it did in the last and previous financial years, Kshs406,936,416 specifically to make the former Kakamega PGH work. Kakamega PGH never used to receive hundreds of millions of shillings at the time I was in the Ministry of Health (MoH) in 1990. We never used to receive money. I was able to run that hospital with 972 nurses. Today, they have only 200 nurses. We had five medical specialists in gynecology, surgery, pediatrics---

(Sen. (Dr.) Khalwale's microphone went off)

The Temporary Speaker (Sen. Sang): Add him one more minute.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I therefore want to tell the people of Kakamega that after adding equitable share to conditional grants, they will receive Kshs10, 518, 265,490. With all that money, why should we not develop Kakamega?

Sen. (Prof.) Kindiki, in spite of your good advice to me, some of us want to retreat back to the county, so that the Kshs10 billion can count. We cannot just continue crying every day that the money is not being seen by way of projects when we are in a position to remove the governors. I urge the Senator for Nandi who is my neighbour not to stay here as a Senator. Because of the shared interest between Nandi and Kakamega, let us go and remove those jokers.

The Temporary Speaker (Sen. Sang): Order, Sen. (Dr.) Khalwale. This is the Chair.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, thank you. I support.

The Temporary Speaker (Sen. Sang): Sen. Murkomen.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I rise to support this very important Bill. This is a very important legislative function and one of those very key responsibilities for all Senators. There is a lot that has been said about this House, including earlier by Sen. Kajwang. It is not true that this Senate is weak or has less responsibility. It is true that this Senate is being frustrated. It is also true that there is a skewed interpretation of sections of the Constitution to narrow the legislative and oversight scope of the Senate. The truth of the matter is that if you had a liberal purposive interpreter of the Constitution in the other House, you would achieve a lot without necessarily going through this kind of abuses that this House has received over time.

There has also been a continuation of insults by sections of the society that if governors want us to do something like we did in the transfer of functions; like we did in increasing resources in the Division of Revenue Bill; and like we have done in passing legislations that are facilitating counties to operate; they have been ready to celebrate and support this House. However, when we raise oversight questions and mismanagement of resources you, Sen. (Prof.) Lonyangapuo and Sen. (Dr.) Khalwale and I know this. I have had occasions to discuss with them some of these situations. Most county executives led by the governor have this attitude that, in any case, they were going to receive money whether the Senate is there or not.

Mr. Temporary Speaker, Sir, let me tell them in basic and simple English that without the County Allocation of Revenue Bill, however much the formula is sitting there and you can imagine that there is money that could have come, until there is a signature of this House and that this House says something about allocation of money, there is no other way that they can receive that money. There is no other entity or institution that can correct the anomalies and errors that Sen. (Dr.) Khalwale talked about, of giving money meant for Busia County to Bungoma County.

There is no other House that can amend the County Allocation of Revenue Formula to respond to the challenges as required every year. It is only this House that sat down to determine the County Allocation of Revenue Formula. So, it is correct to say that the Senator of a particular county was the one that assisted that particular county to ensure that they receive the resources that they received; and that is their constitutional responsibility under Article 96.

I have no apology when I stand in Elgeyo-Marakwet County and say that through my efforts as the Senator of Elgeyo-Marakwet County, such and such money has been allocated to my county. This is because I have the signature and the final authority to speak on behalf of Elgeyo-Marakwet County in this House and persuade my colleagues that together, we can pass a particular Bill and allocate money to the county.

Be that as it may, I need to point out a few issues. One is that now, there is clear allocation of money, and particularly in the Second Schedule which provides for conditional allocations from the national Government to counties. As you may very well know, in the Constitution, that money can only be used for the conditions provided for under law. Again, it is this House that gives us the legitimacy to say that Elgeyo-Marakwet County will receive Kshs189 million as conditional grants for free maternal health care.

We do not wish to see a situation where we will have Kibor being born in Elgeyo-Marakwet County again. We want to eliminate all Kibors in Elgeyo-Marakwet County. We do not wish that any other child should be born on the road to the hospital or when a mother is coming from the river. The only way we can get a Kibor ---

Sen (Prof.) Lonyangapuo: On a point of order Mr. Temporary Speaker, Sir. Did you hear my good neighbor, Sen. Murkomen, talk of a strange name; Kibor? What is Kibor? He should tell this House what the connection between that name and free maternity hospital is.

Sen. Murkomen: Mr. Temporary Speaker, Sir, Kibor, for those of you who may not have had chance to understand what it means, is a person born on the way, by the roadside. These are people born when the mother was going to the river, or she might have been going on with her daily chores but because there is no determination of ability to be born in a maternity facility, we have so many Kibors that are born on the way. I have no problem if we retain the Kibors being born on the way to the hospital. But we must---

Sen. (Dr.) Zani: On a point of order Mr. Temporary Speaker, Sir, is Sen. Murkomen in order to continuously repeat using a word in a different language from what he started from?

Sen. Murkomen: Mr. Temporary Speaker, Sir, it is a name. It is like mentioning Sen. Sang. There is no English version of your name. That is the only name.

(Laughter)

Therefore, for that reason, I want to see my county, not giving excuses because they have already been given Kshs50 million, and they have the liberty to allocate the other money which is not a conditional grant; the part of the equitable revenue they receive for the same maternity care services.

Mr. Temporary Speaker, Sir, on conditional leasing medical equipment, there has been debate that some counties have received the medical equipment while others have not. Now that Kshs95 million has been set aside for Elgeyo-Marakwet County to receive medical equipment, there is no reason why Chebyemit Hospital should not have resources and why Iten County Referral Hospital should not have resources. I was asked this question over the weekend at a place called Kaptiony in Cherangany-Chebororwo Ward; they asked why they do not have Intensive Care Unit (ICU) services in Iten County Referral Hospital or in Chebyemit. Now, there will be no excuse from Elgeyo-Marakwet County and we will ensure that that is done.

Mr. Temporary Speaker, Sir, look at grants for roads and maintenance fuel levy; Kshs54 million has been given to my county. This amount of money can do wonders in Elgeyo-Marakwet County because it is able to open roads. The other day, I accompanied the President when he went to launch huge machinery for Uasin Gishu County. I saw Gov. Jackson Mandago; when they had problems with drainage and roads being impassable, he did not ask the question whether the roads fall under the Kenya Rural Roads Authority (KeRRA), Kenya Rural Urban Authority (KURA) or Kenya National Highway Authority (KeNHA) roads. He mobilized that equipment, went and opened the roads – some of us who were travelling by road through Uasin Gishu were assisted otherwise, we would have been blocked on the way.

In some counties, there is a debate. Governors are folding their hands and saying; that is a KeNHA, KERRA, or KURA road. We must allow service to be delivered to the people and we

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must ensure that Elgeyo-Marakwet County cannot have an excuse now. They need to buy more and better machinery so that they can use the Kshs54 million in fueling and buying the materials that are going to improve the roads to a level of murrum road.

Mr. Temporary Speaker, Sir, I was with MCAs from my county who visited the Committee of Devolution today and they told me that in most cases, they get surprised that roads leased equipment cannot break down but the ones for the county are frustrated by those who manage them and ensure that they break down so that extra money can be used to hire a consultant so that other people can get kick backs. If it is the county resources clearing the machines, there is no opportunity to eat. I

believe and hope that my county will not eat at the expense of its own people and at the expense of the benefits of its own people.

Mr. Temporary Speaker, Sir, Elgeyo-Marakwet County has been allocated Kshs3.5 billion and it has a wage bill of Kshs1 billion. The remaining Kshs2.5 billion should be allocated for development because we want to ensure development and service to our people. An amount of Kshs2.5 billion is money that was never seen before. We want to make sure that services are delivered to our people and not prioritize the construction of a governor's or County Assembly Speaker's house.

In my county, Kshs50 million was set aside to construct a house for the governor. The governor argues that he needs the house so that he can serve the people. How was he elected if he is not a resident of Elgeyo-Marakwet and did not live among his own people? I have argued that, that is not a priority for now because all of us are paid a house allowance. The Senator for Elgeyo-Marakwet lives in Nairobi and still serves the people of Elgeyo-Marakwet County. Our counties should prioritize development related programmes that will give services to our people.

I want to add that there is an appetite for county governments to finance national functions at the expense of the functions that are provided for in Part 2 of the Fourth Schedule of the Constitution that are related to county governments. Animal control and welfare, including licensing of dogs, facilitation for the accommodation, care and burial of animals are functions of counties. However, the counties have not implemented these services.

Veterinary services is a devolved function. Instead of counties hiring veterinarians to vaccinate domestic animals in West Pokot County, they are busy putting money in secondary schools and colleges, which is a national function. Why can we not first focus on trade development as provided for in paragraph (2), so that we have markets, fair trading practices and develop new products for local tourism? Why should we rush to finance a national function that is being financed by Constituencies Development Fund (CDF) and the national Government, just to get the glory; that there is more clapping of hands if you give money to a secondary school rather than allocating it to a function that is devolved?

Why should counties be forced to allocate money to universities when that is a national function and not a shared function? Universities should be funded from the centre. Counties should focus those resources on county health facilities, ambulance services, promotion of free primary education, cemetery and funeral parlours and crematoria, which are devolved functions.

I had an occasion to ask the Controller of Budget how she manages to approve some of these allocations. She said casually that the Transitional Authority (TA) allowed it. The TA did not have capacity or power to reverse a constitutional responsibility of one county. The only way provided for by law in Article 189 of the Constitution, is if there is a signed agreement between

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the two levels of government. I am not aware that there is a signed agreement between West Pokot County and the national Government for the county to put money in a secondary or primary school.

I have argued that since every constituency in a county gets about Kshs100 million, it should be enough to finance education infrastructure. There is no need for us to compete. If a Member of Parliament gives Kshs1 million to a school, the governor also does the same because he thinks that doing the same will lead to more clapping. They should put it in health facilities. What else can impress locals if they have better health facilities with medicine?

Mr. Temporary Speaker, Sir, we want the Senate to be facilitated to push the county governments to set up firefighting services. Why should my county build a house for the governor when a dormitory of Kapsowar Girls High School was burnt down and the property of 124 students was destroyed because there was no firefighting equipment? We do not want a situation where the control of drugs and pornography is messed up because there is no facilitation in terms of resources.

There are many other issues that I would have talked about. It is time we reformed our counties to fit into what the law requires.

I beg to support.

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Agnes Zani.

(Sen. (Prof.) Lonyangapuo stood up in his place)

The Temporary Speaker (Sen. Sang): Order, Sen. (Prof.) Lonyangapuo.

Sen. (Dr.) Zani: Which one do you mean? There are two upstanding professors.

The Temporary Speaker (Sen. Sang): I meant Sen. (Dr.) Philomena Agnes Zani.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. I can see rigging and biasness here. I was first to rise on my feet.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, it is whoever catches your eye first that you give opportunity to. Let Sen. (Prof.) Lonyangapuo wait until he catches your eye.

(Laughter)

The Temporary Speaker: Please proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I thank you for this opportunity to contribute to this Bill that seeks to allocate the revenue share of Kshs280.3 billion across the various counties. I thank all the players who worked so hard to contribute to this Bill including the Committee on Finance, Commerce and Budget, the Commission on Revenue Allocation (CRA), the National Treasury and all the other stakeholders for the negotiations and level of high participation in addressing the various issues so as to end up with an allocation that is acceptable in the various counties.

The amount of money being given to the counties can transform them. Looking at the coast counties where I have an interest, Kilifi County has an allocation of Kshs8 billion, Kwale County has an allocation of Kshs5 billion, Lamu County has an allocation Kshs2 billion,

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Mombasa County has an allocation of Kshs5 billion, Taita-Taveta County has an allocation of Kshs3 billion and Tana River County has been allocated Kshs4 billion. The whole idea of devolution was to ensure that counties get the resources that they were unable to access for a long time. As has been said by my colleagues, if this money is used properly within counties, there must be a transformation.

Mr. Temporary Speaker, Sir, at the recently concluded devolution conference, one of the issues that kept coming up over and over again was that of civic education, participation and holding the governors to account. The Senate plays an oversight role, but sometimes we need to put more emphasis and look at the provisions of the County Governments Act by having civic education units within the counties that are able to keep the governor on his toes. We should look at the budgets that the county governments will soon come up with and consider the provisions that they have made in those budgets and the extent to which they adhere to them.

Devolution will work because public participation is key as stated in Article 10, which is very explicit. There is correlation between development and public participation. The world over, in countries where there is extensive public participation, deliverables tend to be higher. I, therefore, encourage that public participation should be adhered to.

There is provision of Kshs5 billion for public participation within the counties and it should be enhanced across the various counties. I would also like to highlight that we are not yet using the new formula but we have discussed that processes can be put in place for amendments to be made later on. However, I would like to mention that we might want to start a formal or informal process of negotiations so that the National Assembly does not have to stay for the 60 days. If we engage them, there is an easier way to go about it. I am sure that we can have a process that can be expedited so that we move forward.

Mr. Temporary Speaker, Sir, we need to ensure that accountability is put in place especially for the conditional grants. Looking through the Bill, I have seen clear conditional grants that have been mentioned, for example, in technical reporting on matters of health; use of District Health Information Software (DHIS) systems and ensuring that the organizations that receive conditional grants have been registered and they have specifications on what exactly to use their money for.

Various conditional grants have been given apart from the equal share conditional grants for Level 5 hospitals. Those funds can be used effectively to make a change. There were reports in the newspapers that in Msambweni Hospital in Kwale County, patients are sharing beds with the dead. We need to address such glaring misnomers because the money is there. There is also money that has been allocated for free maternity health care that needs to be utilized so that we do not end up naming children in the way that Sen. Murkomen described, which are meant for people who were born on the way to hospital.

The Third Schedule addresses an important aspect of loans and funds from development partners. This is where sometimes we have a grey area. We do not address it as comprehensively as we ought to. We should ensure, for example, that the money that comes from loans and grants is used specifically for what it has been allocated for. In this case, we had organisations like the World Bank and DANIDA financing county health facilities. That needs to be adhered to and followed through to ensure that it is effectively done at every single point; looking through the functions of the devolved governments and ensuring that whatever functions have been devolved and the money allocated for those specific functions is utilized within those specific counties.

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So, whenever these conditions are put, it is important that they are followed very strictly. For instance, we should address the issue of timely direct payment to the providers. This has been mentioned by other Senators. It will ensure that we do not have money being put in a kitty and utilized for building houses and buying hotels, for example.

There is a submission of quarterly financial and technical reports. This must have been already agreed to. It has to be formulated through the key agencies; the National Treasury, the Controller of Budget and the Commission on Revenue Allocation (CRA). This has to be adhered to so that all those reports are processed at the right time. The idea of having functional management boards also need to be put in place. Having approved work plans are critical for money that has been disbursed to ensure that they are used effectively. The technical and financial reporting that I had already mentioned is key.

Mr. Temporary Speaker, Sir, there are also various allocations that have been proposed by the CRA: Kshs5 billion for rehabilitation of primary and secondary schools for addressing school infrastructure in the counties. It will be key. There has been a lot of pressure, especially for the governors, even though primary and secondary schools is not yet a devolved function. Some of the ECDE classes have been the model of the best classroom. It has created that need even for the primary and secondary section. The governors feel that there is need to do something.

Also, Kshs5.2 billion has been allocated for establishment of an emergency fund. This is seed money towards establishment of county emergency fund for any kind of emergency that counties might have, for instance; floods, and so on. Further, Kshs6.3 billion has been allocated to build, equip and renovate polytechnics. One of the functions that have been devolved is polytechnics and ECDEs. It is critical because everybody will not go to the universities. There are many people who will not make it to the universities. It is important that the key technical skills are developed appropriately. They will apply these skills in their counties.

Mr. Temporary Speaker, Sir, as we move forward, one issue that has come up is county ceilings, especially, for the county assemblies and executive. There have been various consultations about this. We have county ceilings that have been agreed to and a process that involves both the CRA and the County Assembly Forum (CAF) to ensure that the ceilings have been adhered to and are agreeable on the formula that has been used. Certain components of the formula, for example, the 7 per cent of revenue of the county and personal emoluments (PE) times two factor that had been used have created a disharmony because there is a big variance between the 7 per cent of revenue for the county and the PE times two factor. The variance is very large and no particular process has been adhered to, to ensure that there is a balance. The formula then takes the lower of the two. In most cases, it is the 7 per cent of county revenue across the various counties.

However, engagement has already started between the CRA and specifically the County Assembly Forum to ensure that there is agreement about those specific ceilings. Therefore, even as the budget and the monies are cascaded down to the specific emoluments that need to go to the county, that needs to be taken into consideration.

Mr. Temporary Speaker, Sir, there is also Kshs4 billion which has been proposed for the five county headquarters, specifically Tharaka-Nithi, Isiolo and Laikipia for purposes of ensuring that they have headquarters that can be used appropriately.

There is a Senate to oversight but the best eye on the county governments is public participation. Therefore, we need members of the public to be involved so that they understand what all this is about. We cannot overlook the provision of Article 96 of the Constitution which provides that the Senate is not only responsible for disbursement of funds to the counties but also oversight. When we raise the issues of oversight, it will raise sensitivity. Such sensitivity should not be there because we are oversighting public funds. This is not anybody's money but the taxpayers'. Every Kenyan has a right to raise questions on its use.

The confusion in counties is a self-created problem. If the governors do not work, we should engage in a formal process so that we know what the right and left hand is doing. With the limited information released to the public, we cannot reach a level of success that is expected. The pilferage of funds is unacceptable. The Senate should ensure that it does not occur.

Mr. Temporary Speaker, Sir, the disbursement of funds on time is critical. This will meet the use for specific situations that the counties require. Therefore, we should be looking at it through the County Public Accounts and Investments Committee. One of the things that we discovered when talking about civic education is that the roles of the various organs are sometimes unclear. We need to tell the public what our role is so that when we are playing our role, they know how key it is.

I support.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, may I join my colleagues in supporting this Bill. I declare to all and sundry that when we came in 2013, we had to come up with a County Allocation of Revenue Bill, 2013. Then, for every other year, the County Allocation of Revenue Bill has been passed by this House.

I went home and found an erroneous statement being paraded by people in the county that no Senator brings money to the county. They went ahead to say that whether or not the Senate exists, money will still flow to the county. What an erroneous belief. If this Senate does not vote for this Bill, then county governments will cease to receive funding until such a time when their representative, who is the protector, votes in this House. It is important that we tell everybody that the lies being floated around by every other person should be ignored. The Senate is the ultimate authority. The Commission of Revenue Allocation (CRA) is an arm of Senate. They bring a proposal and if we reject it, there is nothing they can do.

This year, more money has been allocated to the counties than last year. It is not enough but it is more per county and, more particularly, the grants that go to counties should be seen on the ground, because they are given deliberately for a particular purpose, say, allocation for maternal health care. There is a very particular arrangement in the tabulation; a column for county, number of deliveries and projected income.

The number of deliveries state that Bungoma had 32,000 newborns. As a result of that number of children being born, they have been given Kshs189 million to be distributed among the health facilities they have there. Kiambu had 37,000 newborns, meaning that they will get Kshs221 million. My county, West Pokot, has 8,757 deliveries recorded. So, it will get Kshs51 million.

Sen Murkomen talked about a man called Kibor. There are so many Kibors and Chebors in West Pokot who are not born in hospitals. Why do we give more money to people who have clear systems to access these facilities, yet others have not been captured? I expected places like

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West Pokot to be given more money. Today, West Pokot has the highest birth rate in Kenya. We should be leading in the number of deliveries. Instead, they have assigned that number to Kiambu, Nakuru and Nairobi.

According to the data at the Kenya Bureau of Statistics, West Pokot is leading. Therefore, the number of deliveries must be more, hence more money. Where did CRA or whoever gave this number of deliveries get this? They should get it directly from this authority, which has just declared that West Pokot should be monitored, we are increasing too fast in number. Secondly, it also says that we are leading in malnutrition. This means that when one has too many children, they are unable to feed them; they compete for the little food. That means higher deliveries in the area as well. That should be captured properly.

Some hospitals in my county, like Ortum Mission Hospital, are not getting this money. They should be given money by the Government. This is just a mission hospital like the others. I have asked my governor to work with the mission hospital so that they are also brought on board just like hospitals managed by counties.

Mr. Temporary Speaker, Sir, I want to look at financing of level 5 hospitals. This is another issue that is giving us problems. We have a few hospitals referred to as level 5 hospitals and they include Machakos, Embu, Garissa, Kakamega, Meru, Mombasa, Nakuru, Nyeri, Kisumu, Thika and Kisii. The moment we declared Kenya to have 47 counties, it follows that every county must have a county referral hospital even if it is under a tree. We only have 10 level 5 hospitals listed here but we must identify others. Since Kapenguria is a level 4 hospital, it has to be elevated to a level 5 hospital so that we can access this money because it is the only one in my county.

Mr. Temporary Speaker, Sir, Mombasa will get Kshs369 million while Kisii will get Kshs397 million yet the services are the same. In the next allocation, we need to see to it that every top hospital, whether a level 5 hospital or not, so long as it is a top hospital per county, gets the money. Otherwise, there is discrimination in this House. How can, for example, the Senator for Embu get money with regard to where people go to hospital but the Senator for West Pokot does not? Therefore, this is very key.

I have also looked at how allocations have been done. There is support of abolishment of user fees in health centres and dispensaries. This is particularly interesting. Page 38 shows allocations per county. A new column entitled "Population as at 2015" has been introduced. That means that the Kenya National Bureau of Statistics (KNBS) has the current data of every county and it is shown here. Baringo has 668,534 and West Pokot has 615,829. However, the data we are using for calculation of funds is very old because it is based on the Population Census of 2009. I would like us to use the same new column referred to as "Abolishment of user fees in health centres and dispensaries" which was used for allocation of medicine.

Further, we are saying that Nairobi has 3.99 million people and hence it has been allocated Kshs79 million. West Pokot has 615,829 people and it has been allocated Kshs12 million. Healthwise, we need to dig deeper. How many people among the 3.99 million of Nairobi pay for themselves? We should not waste money. Up to 40 or 50 per cent of people of Nairobi are able and their economic power is high and they go to private hospitals like The Nairobi Hospital. We should focus on the people of Kibera, Mathare and Huruma. Those are the ones that are equivalent to where I come from. So, when we talk about distribution of resources with

regard to health, we should reduce the number of Nairobi from 3.99 million people to a sizeable number so that other counties can access these funds.

Mr. Temporary Speaker, Sir, there is also projected money given to counties as grants by the Danish International Development Agency (DANIDA) and other agencies. When I add all the monies that have been allocated to my county for healthcare services alone, it comes to about Kshs600 million. Hence, from the table which I have been given here, which is found on page 15 to 16, the amount for West Pokot County is around Kshs5.5 billion compared to when we came; it was Kshs2.8 billion. It has reached a staggering Kshs5.5 billion and some even have excess money. That is why I am saying counties like Nairobi, Turkana and Mandera are unable to spend and sometimes roll over Kshs2 billion to the next financial year. Rolling over Kshs2 billion or Kshs4 billion to the next financial year means that we gave them more money.

Mr. Temporary Speaker, Sir, as we proceed to make the next formula to look at the County Allocation of Revenue Bill in the coming year, I want us to go back to 2013, look at the allocation to every county, their consumption level and what they rolled over. Then, we can tell where we went wrong. As I look at what is happening here, we need to tell governors and people who are dispensing this money --- I do not want to use the statement that Hon. Duale and Gov. Rutto are synonymous with: "*Pesa sio ya mama yako.*" In English, it means that this money does not belong to you or your mother. The money belongs to everybody. So, we need governors to be very keen.

As we speak, the people of Nandi County have no medicine and they are not being attended to. Yet, this is the money that has been sent and the governor has the audacity to roam around – I hear he came to Nairobi – I do not know what he came to do when he has this money. Where has all the money that has been sent to them gone? Buildings are being put up in every corner by county governments without regard.

You may have been surprised when Sen. Murkomen talked about my governor and others competing with the national Government. They want to know how much the Constituencies Development Fund (CDF) brought before they allocate money from the county government. A governor allocates Kshs20 million to build a secondary just so that he can be popular and everybody claps for him because they know how to clap. However, they do not want to finance building of nursery schools and polytechnics and yet this is what has been devolved.

Every constituency hospital must have a working mortuary. If you go to the one in West Pokot County, you will find the small one that was built in 1976 and nobody has improved it. These are some of the things that we are saying that as we give out this money, we must demand for better service delivery. That is why we say that a disservice has been done to this Senate, where we should be given oversight funds to walk the talk and see that the money that we dispense here has done what it should, during that particular financial year.

Mr. Temporary Speaker, Sir, it is key that we pass this but let it be known that we are here to watch and see that we get value for money. If it is the issue of funds, it does not mean that we must stop. I have heard Sen. (Prof.) Anyang'-Nyong'o say that the Kisumu County Governor has refused to give money to Jaramogi Oginga Odinga Referral Hospital. So, he wants the money stopped. No, we should not stop giving the money. We should deal with the character who is blocking the money so that the hospital gets the funds and have it accounted for.

Let me stop at this point. I support this and hope that this money will be put to good use.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I wish to support this Bill, knowing very well that my job description as a Senator is in Article 96 of the Constitution. For avoidance of doubt, Article 96 gives me and the rest of my colleagues the power to determine the allocation of national revenue among counties. That is the purpose for which we are discussing this Bill today. I just wish that all of us would have taken this particular mandate very seriously. If you go further in the Constitution, Articles 217 and 218 also talk about the process which this Bill should go through before it finds its way to this House.

Mr. Temporary Speaker, Sir, I also want to echo the sentiments that have been put forth by my colleagues that money cannot get to the county if the Senator does not approve or vote for this County Allocation of Revenue Bill. As you sometimes put it, when you come to Nairobi to legislate and represent the people of your county, you are like someone who goes to shake a tree so that the fruits can fall down. Today through this Bill, we are shaking this tree so that our respective counties can get their fair share of revenue allocated to them from the nationally generated revenues.

For the people of Homa Bay County, I have got good news because this Bill proposes an increment in the amount of money that they are going to get as compared to the previous years. The equal share for Homa Bay County has increased to Kshs6 billion, up from Kshs5.6 billion in the previous year. When you sum up the equal share and the conditional allocations, Homa Bay County stands to get Kshs6.4 billion, up from Kshs5.9 billion that it received in the previous year. The additional Kshs500 million that goes to Homa Bay County, I want to believe that the executive at the county will put it to good use.

I believe they will invest it in projects that will uplift the standards of living and provide relief to our mothers and sisters who suffer from acute water shortages in certain parts of the county like Rachuonyo area. I hope this additional Kshs500 million will go towards improving and modernizing the health facilities in the county.

Mr. Temporary Speaker, Sir, when our health facilities are not in good shape, it is our women who suffer most. I hope this additional Kshs500 million will go towards combating the HIV/AIDS situation in the county. My county has the highest HIV/AIDS prevalence rate in the country and probably the highest prevalence rate globally. I hope this additional Kshs500 million will go into some of the sectors that will have a direct impact on the lives of the people.

Mr. Temporary Speaker, Sir, we have had a debate on how to treat the second generation formula which this House has already approved but is still lying in the National Assembly. When I look at the new formula which forms the basis of allocation of revenue, I do not see a significant difference because the weight that was assigned to population remained at 45 per cent. The weight that was assigned on land area remained at 8 per cent and fiscal responsibility remained at 2 per cent. It is equal share where the percentage shifted from 25 per cent to 26 per cent and a development factor was introduced. I do hope that when we now apply the second generation formula to the amount of money that has been set aside for counties, Homa Bay County is going to get slightly more than what has been apportioned here.

Mr. Temporary Speaker, Sir, I must point out that Parliament has occasioned unnecessary delays in the process of passing the two Bills; the Division of Revenue Bill and the County Allocation of Revenue Bill. The Public Finance Management Act has got very clear timelines within which some of these decisions need to be made. As we speak, the counties should be attempting to develop their budgets. The County Budget and Economic Fora should be holding

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meetings so that they can come up with their Finance and Appropriation Bills before the end of the financial year. We hope that the delay by the Senate and the National Assembly to dispose of these two critical Bills will not lead to a situation where the counties are going to stampede their Finance and Appropriation Bills and exclude the public from participating in giving their views on the budget for the next year.

Mr. Temporary Speaker, Sir, when I look at the content of this Bill, I realize that there is not much that we can do because once we have approved the revenue sharing formula, then that is applied on the equitable share that has already been determined by the Division of Revenue Bill. We are setting aside Kshs301 billion which is 32 per cent of 2013/2014 audited revenues. I have previously argued that we should not peg the equitable share on the approved audits because we are getting kshs301 billion from 2013/2014 audits, yet according to the law, the 2014/2015 audited reports should have been adopted by the National Assembly. If we were to use that, then counties would obviously get more than Kshs301 billion.

We must speak out against the delays by the Auditor-General to conclude audits and present them to the National Assembly. The National Assembly and the Public Accounts Committee (PAC) should not delay in concluding these audits and have them adopted by the House. If the Auditor-General released his reports by 31st December and the PAC did its job dutifully, then we would not be basing this revenue on the accounts of 2013/2014 but 2014/2015.

Mr. Temporary Speaker, Sir, we passed an amendment when we were discussing the Division of Revenue Bill in this House to base the revenue growth factor for purposes of allocation to counties on 15 per cent, which was the average revenue growth. There was an amendment that was brought by Sen. (Dr.) Khalwale, which we passed as a House, but I do not know at what point it disappeared. We have now gone to the 7.9 per cent that was proposed by the National Treasury.

I want to urge my colleagues that the new Constitution places a prime role on the National Assembly and the Senate, in matters to do with budgeting and allocation of revenue to counties. It is not enough for us to accept a position simply because the National Treasury has held that particular position. In fact, we fail if we uphold the position of the National Treasury against the position for the Commission on Revenue Allocation (CRA). Appendix (1) of the Bill only has two views; the view for the CRA and the view of the National Treasury. You rarely find some input by the Committee on Finance, Commerce and Budget to say that CRA recommended 15 per cent, the National Treasury recommended 7.9 per cent and Senate recommended 10 per cent. We must take our role more seriously.

On conditional grants, if counties are getting an equal allocation, how is it possible that the managed equipment for some counties is working and operational while in other counties the equipment is just lying somewhere? Could the difference be an issue of competence? If everyone has been given talent in equal measure in the form of managed equipment, why is the equipment working in some counties and not working in others? In some counties, the equipment is still covered up in polythene.

I propose that in future, we must look at the level of utilization of this equipment. I know that it is a lease and we will have to pay for it whether we use it or not. I now see some of the reservations that the Council of Governors (CoGs) had. Since it is a lease, if you do not use it in the first and the second year, you will still pay. This is a cost to the taxpayers. We must revisit

this and where necessary, find ways of compelling governors in the counties that are laggards to put this equipment to useful use.

My aspiration for Homa Bay County has always been that we can have a county hospital where the Senator or governor can be admitted if they fell sick. I hope the additional Kshs500 million will help us to get close to that.

The CRA had proposed that primary and secondary schools infrastructure development be handed over to counties in the form of a conditional grant. I support this position because in as much as primary and secondary education is a responsibility of the national Government, Article 187 of the Constitution provides mechanisms for inter-governmental arrangements and for the national Government to cede some of its functions to the county government.

As a Senator, I am invited to fundraisers for primary and secondary schools almost every weekend, yet this money has already been disbursed to the counties at the level of the constituencies. We must have some candid discussion in the nation and make sure that the money that has been set aside for national Government functions at the constituency level, which we previously called Constituencies Development Fund (CDF), is given to counties as a conditional grant, so that they continue to do those roles that are supposed to be done by the national Government.

The county should become the implementation agency rather than taking it to the constituency. The constituency is not a level of government. We have only two levels; the national Government and county level.

How I wish this House would have made a recommendation when we were discussing the Division of Revenue Bill and not the County Allocation of Revenue Bill. We could have had some debate on whether we should take the billions that have been set aside for national Government development at the constituencies and give it to the counties. This is because the job of the Members of the National Assembly is to legislate; there is no difference between them and us. Members of the National Assembly are not supposed to be sitting on Kshs100 million which they dispense with abandon.

I wish that we could have addressed the issues of revenue collection because as much as we are sending Kshs301 billion to the counties, we do not have a good picture of how much money they are collecting through their own initiatives. My own county is expected to collect Kshs200 million in terms of local revenue. However, if you do a simplistic calculation, you get a feeling that the county can do more. In future, we must have a parameter that places some premium on the revenue collection efforts of the counties.

As Senate, we have come up with many suggestions that counties should automate their revenue collection efforts. However, automation of inferior processes will only lead to inferior results. We must have a situation where there is fidelity and absence of corruption in these counties because you sometimes find that the money that is collected from cattle markets over the weekend is not banked in the relevant accounts.

Mr. Temporary Speaker, Sir, on the issue of roads and infrastructure, I have seen a conditional grant that has been given to the counties. However, we must ask ourselves why the Ministry of Transport and Infrastructure continues to get a huge budgetary allocation yet we know that there are certain classes of roads that should be handed over to counties. If you look at the number of kilometres handed over to the counties and the number that has been retained by the national Government, the counties have been handed a larger unit of roads under their

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jurisdiction. Yet when you see what the counties have been allocated under conditional grants for roads, you get the feeling that there is something that is not proper. We must interrogate the amount of money that remains at the national Government.

Mr. Temporary Speaker, Sir, I will bring an amendment as we look at the next County Allocation of Revenue Bill. There are certain functions such as transport, infrastructure and inland water transport that need to be looked into. A county like Homa Bay has got a challenge of setting up piers, ports and harbors on Lake Victoria yet there is no special allocation to take care of the special circumstances. We need to look at these things in future.

I would like to invoke the scriptures by talking about Mathew 25:14 which is about the story of a rich man who went on a journey. The Bible was set at a time when things were good. If the Bible was written today, there would have been three categories of workers. There would be the worker who buried his treasure and the one who multiplied his treasure. However, there would also be the worker who looted 20 per cent of the treasure and gave the boss 80 per cent.

Mr. Temporary Speaker, Sir, if the governors were there when the Bible was being written, maybe, we would have been told about the worker who was given talents, squandered 20 per cent and when the rich man came, he gave him back 80 per cent saying that is what is due to him. That is the situation we are seeing in the counties. I hope that the Kshs300 billion will not result into 30 billionaires who take up 10 per cent of the funds.

I beg to support.

The Temporary Speaker (Sen. Sang): There being no other interest to contribute on this matter. I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I take this opportunity to thank all Senators for the interesting and vibrant debate. It is clear that we all support devolution because it is the silver bullet that will rescue our country from marginalization. Through this Bill, we are affirming that devolution is here to stay. We are sending more money to counties than ever before and I am sure that this will continue in the foreseeable future. It is also clear that all of us abhor the corruption that is taking place in our counties.

We say categorically that time has come for all the thieves who are scavenging on county resources to be put on notice. This House will not rest until we are sure that the money we send to our counties is used to achieve the functions of the Fourth Schedule of the Constitution.

Regarding the story of “teething theft” which we have been told of many times, I have always argued that there is no teething problem called “theft.” You do not have to have any capacity to know that stealing is bad and is a crime before God and the people of Kenya.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move.

If you allow me, I request that you use your power and discretion to defer the putting of the question under Standing Order No.54(3) of the Senate Standing Orders.

The Temporary Speaker (Sen. Sang): Very well. I so direct that we defer the putting of the question

(Putting of the question on the Bill deferred)

What is it, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I need your clarification and guidance. My brother, Sen. Murkomen, is advising me that it does not matter but I think it does. The clarification I seek is whether that deferment is to tomorrow. The reason is that we expect the Senate to go on recess. If it is not clear, then the Bill will be in the Order Paper for Division. So, I request that the matter be deferred for Division tomorrow.

The Temporary Speaker (Sen. Sang): Very well. We have always deferred putting of the question to the next available day for voting; in this case, recognizing that we are likely to proceed to recess, I, therefore, direct that it be deferred to tomorrow.

Hon. Senators, we approved a Motion that extended the sitting of this House until we complete two orders on our Order Paper; Order Nos.10 and 11. Those two items relate to Committee of the Whole. Therefore, we will do so for the two items, at a go, so that we dispense with the two items.

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

THE COUNTY ASSEMBLY SERVICES BILL (SENATE BILL NO. 27 OF 2014)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are now in the Committee of the Whole. We will start with The County Assembly Services Bill (Senate Bill No. 27 of 2014).

Clauses 3, 4, 5, 6 and 7

*(Question, that Clause 3, 4, 5, 6 and 7
be part of the Bill proposed)*

Division will be at the end.

Clause 8

Sen. Murkomen: Mr. Temporary Chairperson, Sir, I beg to move:-
THAT clause 8 of the Bill be amended by-

- (a) Deleting sub-clause (a);
- (b) Deleting sub-clause (c) and substituting therefor the following new sub-clause-
- (c) Community and cultural diversity of the county.

Mr. Chairman, Sir, this is take into consideration the importance of cultural diversity of the county.

(Question of the amendment proposed)

Clause 9

Sen. Murkomen: I beg to move:-

THAT clause 9 of the Bill be amended in the introductory phrase by inserting the words “under section 12(3) (d) of the County Governments Act” immediately after the words “member of the Board”.

This amendment is to align the law with other sections of the law. It is cross referencing.

(Question of the amendment proposed)

Clause 10

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

THAT clause 10 of the Bill be amended by deleting the words “A appointed” appearing at the beginning of the clause and substituting therefor the words “A person”.

(Question of the amendment proposed)

Clause 11

(Question, that Clause 11 be part of the Bill proposed)

Clause 12

Sen. Murkomen: Mr. Temporary Chairman, sir, I beg to move:-

THAT clause 12 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (a)-

- (aa) sue and be sued;

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(Question of the amendment proposed)

Clauses 13, 14 and 15

*(Question, that Clauses 13, 14 and 15
be part of the Bill proposed)*

Clause 16

Sen. Murkomen: Mr. Temporary Chairman, sir, I beg to move:-
THAT clause 16 of the Bill be amended at subsection (2) by inserting the words “and the Board” immediately after the words “chairperson of the Board”.

(Question of the amendment proposed)

Clauses 17 - 29

*(Question, that Clauses 17, 18, 19, 20, 21, 22, 23,
24, 25 26, 27, 2 and 29 be part of the Bill proposed)*

Clause 30

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-
THAT clause 30 of the Bill be deleted.

(Question of the amendment proposed)

Clauses 31 - 42

*(Question, that Clauses 31, 32, 33, 34, 35, 36, 37, 38,
39, 40, 41 and 42 be part of the Bill proposed)*

Clause 43

Sen. Murkomen: Mr. Temporay Chairman, Sir, I beg to move:-
THAT clause 43 of the Bill be deleted.

(Question of the amendment proposed)

Clauses 44 and 45

*(Question that Clauses 44 and 45
be part of the Bill proposed)*

Clause 46

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 46 of the Bill be amended at subsection (3) by deleting the words “Cabinet Secretary” appearing immediately after the words “the authority of the” and substituting therefor the word “Board”.

(Question of the amendment proposed)

Clause 47

(Question that Clause 47 be part of the Bill proposed)

New Clause 14A

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 14-

Allowances for
members of
the Board

14A. Members of the Board shall be paid such
allowances as the Salaries and
Remuneration Commission may determine.

The uptake for this is to ensure that the institution of Salaries and Remuneration Commission which is the Constitutional body to undertake these matters of allowances takes charge.

(Question of the amendment)

(New Clause 14A read the First Time)

*(Question, that the New Clause 14A be
read a Second Time, proposed)*

New Clause 47A

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clauses immediately after clause 47-

Amendment of No.17

47 A. Section 12 of the County Governments Act ^{of 2012}

is amended by-

(a) Deleting subsection 3 and substituting therefore the following new subsections-

(3)The Board consists of—

(a) the Speaker of the county assembly, as the chairperson;

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(b) a vice-chairperson elected by the Board from the members appointed under paragraph (c);

(c) two members of the County Assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly; and

(d) one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.

(b) inserting the following new sub-section immediately after subsection (3)-

(3A) The members of the Board appointed under section 12(3)(d) shall serve on a part-time basis.

(c) deleting subsection (c) of paragraph (5) and substituting therefore the following new subsection-

(c)if the person is the Speaker, when the person ceases to be such Speaker.

The uptake of this is to tighten the membership of the board to make it more representative and easier for decision making. As it is now, that representation in the county assembly is too weak.

(Question of the New Clause 47A proposed)

(New Clause 47A read the First Time)

(Question, that the New Clause 47A be read a Second Time, proposed)

New Clause 47B

Sen. Murkomen: Mr. Temporary Chairman Sir, I beg to move that the Bill be amended by inserting the follwng new Clause 47B

Transition
and savings

(1) Subject to subsection (2) each county assembly shall appoint the members of county assembly service board under sections 12(3)(b), (c) and (d) within thirty days after the commencement of this Act.

(2) Upon the commencement of this Act and before the first general elections held after the coming into force of this Act, a person, who immediately before the commencement of this Act served as a member of a county assembly services board appointed under section 12 (3)(d) of the County Governments Act in force before the commencement of this Act, shall continue to serve as a member of the Board, as one of the persons appointed under section 12 (3)(d).

(Question of the New Clause 47 B proposed)

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(New Clause 47B read the First Time)

(Question, that the New Clause 47B be read a Second Time, proposed)

First Schedule

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the First Schedule to the Bill be amended in paragraph 1 by inserting the words “under section 12(3)(d) of the County Governments Act” immediately after the words “in the membership of the Board”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): The division will be at the end.

Second Schedule

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Second Schedule to the Bill be amended -

(a) by deleting paragraph 8; and

(b) in paragraph 9 by deleting the expression “Subject to any regulations made under paragraph 7” appearing at the beginning of the paragraph.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): The division will be at the end.

Third Schedule

(Question, that the Third Schedule be part of the Bill, proposed)

Clause 2

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

Title and the Clause 1

(Question that the Title and the Clause 1 be part of the Bill, proposed)

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The Temporary Chairperson (Sen. Sang): We will defer the division and go to the second Bill.

THE COUNTY HALL OF FAME BILL
(SENATE BILL NO.33 OF 2014)

We are now considering the County Hall of Fame Bill (Senate Bill No.33 of 2014).

Clauses 3 – 21

*(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 be
part of the Bill, proposed)*

New Clause 6A

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after Clause 6—

Vacancy. 6A. (1) The office of a member of the Selection Committee nominated under section 6(d) shall become vacant if the member-

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Selection Committee;
- (e) resigns in writing addressed to the Governor;
- (f) is removed from office by the Governor for –
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
 - (ii) failing to declare his interest in any matter being considered or to be considered by the Selection Committee; or

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(g) dies.

(2) Before the removal of a member under subsection (1)(f), the Governor shall request the Committee to-

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

(Question of the New Clause 6A proposed)

(New Clause 6A read the First Time)

(Question, that New Clause 6A be read a Second Time, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

New Clause 8A

Sen. Murkomen: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after Clause 8—

Conflict of
Interest

8A. (1) If any person has a personal or fiduciary interest in matter any matter before the Selection Committee, and is present at a meeting of the Selection Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(Question of the New Clause 8A proposed)

(New Clause 8A read the First Time)

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(Question, that New Clause 8A be read a Second Time, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 2, Title, Clause 1

(Question, that Clause 2, Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): We will defer all the Divisions to tomorrow.

Sen. Murkomen: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.39, I beg to move that the Committee do report progress to the Senate on its consideration of the County Assembly Services Bill (Senate Bill No.27 of 2014) and seeks leave to sit again.

Sen. (Prof.) Lonyangapuo seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Sang): Before we proceed to report progress, let us move to the next one.

Sen. Murkomen: Mr. Temporary Chairperson, I beg to move that the Committee do report progress on its consideration of the County Hall of Fame Bill (Senate Bill No.33 of 2014) and seeks leave to sit again.

Sen. (Prof.) Lonyangapuo seconded.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(The Temporary Speaker (Sen. Sang) in the Chair)

The Temporary Speaker (Sen. Sang): Order Senators. Proceed, Chairperson.

PROGRESS REPORTED**THE COUNTY ASSEMBLY SERVICES BILL
(SENATE BILL NO. 27 OF 2014)**

The Senate Majority Leader (Sen. Prof.) Kindiki: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Assembly Services Bill (Senate Bill No. 27 of 2014) and seeks leave to sit again tomorrow.

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

Sen. (Prof.) Lonyangapuo seconded.

(Question proposed)

(Question put and agreed to)

**THE COUNTY HALL OF FAME BILL
(SENATE BILL NO. 33 OF 2014)**

The Senate Majority Leader (Sen. Prof.) Kindiki: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Hall of Fame Bill (Senate Bill No. 33 of 2014) and seeks leave to sit again tomorrow.

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

Sen. M. Kajwang seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, we have completed today's business and it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 5th May, 2016, at 2.30 p.m.

The Senate rose at 8.00 p.m.