

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 18<sup>th</sup> June, 2015

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

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

### PRAYERS

### STATEMENTS

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, is there any Chairperson ready with a statement? The House appears to be very empty.

**Sen. (Dr.) Machage:** On a point of order, Madam Temporary Speaker. Has it come to your notice that this House, as it is today, has neither leader of Government Business nor the leadership of the Opposition? Do you condone that kind of behaviour?

**The Temporary Speaker** (Sen. Ongoro): Definitely, we do not condone that kind of behaviour. As you are aware, hon. Senators are having a seminar in Mombasa. We will, however, proceed with the business of the Senate as indicated in the Order Paper.

There being no statements, we will proceed to the next order.

### BILLS

#### *First Readings*

THE KENYA NATIONAL EXAMINATION AMENDMENT BILL  
(SENATE BILL NO.7 OF 2015)

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

**The Temporary Speaker** (Sen. Ongoro): Where is Sen. David Musila? He does not seem to be in the House.

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Hon. Senators, at this point, I will give a communication from the Chair. The Kenya National Examination Council (KNEC) Amendment Bill, Senate Bill No.7 of 2015 has been read a First Time this afternoon. Pursuant to Standing Order No.130(1), the Bill stands committed to the Standing Committee on Education. The Standing Committee should facilitate public participation pursuant to Standing Order No.130(4) and report back to the House within 30 calendar days from today, pursuant to Standing Order No.134(1).

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT  
OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL NO.8 OF 2015)

*(Order for First Reading read - Read the First Time and  
ordered to be referred to the Standing Committee on Legal  
Affairs and Human Rights)*

Again, Sen. Hassan Omar is not in the House. However, we will proceed to commit the Bill to the right Committee.

Hon. Senators, the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No.8 of 2015) has been read a First Time this afternoon. Pursuant to Standing Order 130(1) the Bill stands committed to the Standing Committee on Legal Affairs and Human Rights. The Standing Committee should facilitate public participation pursuant to Standing Order No.130(4) and report to the House within 30 calendar days from now pursuant to Standing Order No.134(1).

THE NATIONAL HOSPITAL INSURANCE FUND  
(AMENDMENT) BILL (SENATE BILL NO.9 OF 2015)

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

Yes, Sen. Martha Wangari. Your Bill went through the First Reading. You do not have to say anything. Therefore, I will proceed to direct that the National Hospital Insurance Fund (Amendment) Bill (Senate Bill No.9 of 2015) has been read a First Time. Pursuant to Standing Order 130(1), the Bill stands committed to the Standing Committee on Health.

The Standing Committee should facilitate public facilitation pursuant to Standing Order No.130(4) and report back to the House within 30 calendar days from today. That is pursuant to Standing Order 134(1).

The Chief Whip has just walked in. She should give us the business for the coming week.

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**STATEMENT**

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 23<sup>RD</sup> JUNE, 2015

**Sen. Elachi:** Madam Temporary Speaker, pursuant to the provisions of Standing Order No.45, I present the business for the coming week.

The Rules and Business Committee (RBC) will meet on Tuesday, 23<sup>rd</sup> June, 2015 at 12.00 noon to schedule business of the Senate for the week. Subject to further directions by the RBC, the Senate will consider the Natural Resources Benefits Sharing Bill, 2015, and the Tobacco Control Regulations, 2014 at the Committee of the Whole stage. The Senate will also continue with the business that will not be concluded in today's Order Paper focusing on debates on Bills at the Second Reading stage.

On Wednesday, 24<sup>th</sup> June, 2015, subject to further directions by the RBC, the Senate will consider various Bills at the Second Reading stage, including the Reproductive Healthcare Bill, 2014 and continue with the business not concluded during Tuesday's sittings. The Senate will consider any other business scheduled for the RBC.

On Thursday, 25<sup>th</sup> June, 2015, the Senate will consider the County Allocation of Revenue Bill 2015 at the Committee of the Whole stage and also deliberate on Motions and any other business scheduled by the RBC.

Once again, hon. Senators, I appeal to you to make yourself available to dispose of business pending before the Senate, especially the County Allocation of Revenue Bill, 2015, which will enable the county governments prepare their own budgets.

I thank you and hereby lay the statement on the Table.

*(Sen. Elachi laid the document on the Table)*

**COMMUNICATION FROM THE CHAIR**

VISITING DELEGATIONS OF MEMBERS AND STAFF FROM  
ELEGYO MARAKWET, SIAYA AND KWALE  
COUNTY ASSEMBLIES

**The Speaker** (Sen. Ongoro): Hon. Senators, I have one communication to the Senate. I am pleased to acknowledge and to welcome to the Senate this afternoon the Members and staff of Elgeyo-Marakwet County Assembly, Siaya County Assembly and Kwale County Assembly who are seated in the Speaker's Gallery.

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I request that when their names are called out, they stand up so that they are acknowledged in our usual Senate tradition.

From Elgeyo-Marakwet County Assembly, we have the following:

Hon. Gilbert Kaptugen – Chairperson, Delegated Legislation Committee;

Hon. Neddy Kiptoo – Vice Chairperson, Delegated Legislation Committee;

Hon. Rose Cherop – Member and Chairperson, Agriculture, Livestock and Fisheries Committee;

Hon. Daniel Chirchir – Member and Chairperson, ICT and Public Service Committee;

Hon. Charles Cheronno – Member and Chairperson, Sports, Gender and Culture Committee;

Hon. David Yego – Member and Chairperson, Health Committee;

Hon. David Kipketer – Member and Chairperson, Finance and Economic Planning;

Mr. Joel Kimaiyo – Deputy Clerk;

Mr. Benard Yator – Committee Clerk;

Mr. Edwin Cheseret – Hansard Officer;

Mr. Willy Chepkole – Research Office; and,

Mr. Phillip Cheon – Serjeant-at-Arms.

The delegation from Siaya County Assembly consists of the following.

Hon. Sylvestor Madialo – Chairperson

Hon. Stephen Adera – Member and Deputy Speaker;

Hon. Peter Muhulah – Vice Chairperson; and,

Mr. Charles Ochieng – Staff Member.

Finally, we have a delegation from Kwale County Assembly.

Hon. Omar Boga – Chairperson;

Hon. Suleiman Nzalla, Vice Chairperson;

Hon. Michael Mutua – Member;

Hon. Hadija Khamisi – Member;

Hon. Anthony Lukuni – Member;

Hon. Juma Maone – Member and finally,

Ms. Salya Mboto – Staff Member.

*(Applause)*

**Sen. Murkomen:** Madam Temporary Speaker, I would like to take this opportunity to thank you for recognising the Members of the Committee on Delegated Legislation from Elgeyo-Marakwet County.

I am happy that they are here to see that their Senator is working very hard to ensure that more resources go to Elgeyo-Marakwet and to strengthen both the Senate and the county assemblies. In the process of strengthening this House and devolution, there are no greater supporters than of MCAs from Elgeyo-Marakwet, Kwale and Siaya county

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assemblies. They are welcome to the Senate. We, as a House, are very excited to have them because they are our counterparts. We are friends and partners in the process of protecting devolved governance.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lesan, are you on a point of order or do you want to contribute?

**Sen. (Prof.) Lesan:** I want to contribute, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Proceed.

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, I take this opportunity to thank the visiting delegation from Elgeyo-Marakwet County. A few weeks ago, we, as a Committee on Information and Technology, had the privilege to visit the county. I congratulate members of the delegation for paying us a visit.

The only one thing I wish to point out is that when we visited Elgeyo-Marakwet County Assembly, we found that every MCA is a chairman of something. I found that a bit unusual. It is an arrangement that is unique to Elgeyo-Marakwet County. I think they were advised on this arrangement by their Senator. I hope the arrangement will work for them very well and help them to serve their people diligently.

On the issue of chairmanship, some MCAs should just be members so that they are attended to by the chairman. Otherwise, I congratulate the delegation and I wish it well.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Thank you.

The Senate Majority Whip, Sen. Elachi.

**Sen. Elachi:** Madam Temporary Speaker, I also take this opportunity to thank delegations from Elgeyo-Marakwet, Siaya and Kwale counties. We hope that the Senate staff will assist them to understand how to do drafting of Bills and Motions as they do their benchmarking. I also hope that they will be assisted on how to build synergies as they move on.

While all MCAs are chairmen of committees, I hope that women are also being allowed to be chairpersons. We must adhere to the two-third rule of either gender in the committees. I hope that is what they have done in their counties.

I thank and wish them well as they move to prepare the new budget. They should ensure that their budgets are within the ceilings so that they do not find themselves in trouble.

**The Temporary Speaker** (Sen. Ongoro): Senator for Elgeyo-Marakwet County, I can see that you have another intervention

**Sen. Murkomen:** Madam Temporary Speaker, I appreciate the appreciation by Sen. (Prof.) Lesan. However, every county has its own unique way of doing things. Not all county assemblies are as huge as Nairobi City County or other counties. Elgeyo-Marakwet County Assembly has less than 30 MCAs. That explains why almost half, not all of them, are chairpersons.

Madam Temporary Speaker, I must point out that hon. Rose, who seated in the Speaker's Gallery, is the Chairperson of the Committee on Agriculture. Elgeyo-Marakwet County elected two women directly to be MCAs, including hon. Kimwayi who is the hon. Member of the Headquarters of the County. I do not know at the expense of which men, but I can assure you, come next election, we will increase our quota of women in the county assembly.

**Sen. Sijeny:** Madam Temporary Speaker, I also wish to extend my welcome remarks to members of the Committees on Delegated Legislation from Elgeyo-Marakwet, Siaya and Kwale counties. I, the Vice Chairperson of the Committee on Delegated Legislation, could not attend the meeting because I had other urgent matters to attend to. I apologise for that.

Our sister colleagues should know that they are well represented. If they have any issues; legal or concerning gender, they are welcome and can always get in touch with us. I am sure that we will continue working together. Welcome to the Senate.

**The Temporary Speaker** (Sen. Ongoro): Thank you.

There being no further requests to contribute on that, let us move on to the next Order.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF STUDENTS AND TEACHERS FROM NG'INDA GIRLS HIGH SCHOOL, MURANG'A COUNTY

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, before we take any contributions, I have a further communication to make.

Hon. Senators, I wish to recognise the presence of the students and teachers from Ng'inda Girls High School from Murang'a County who have visited the Senate, seated in the Public Gallery. As you all know, hon. Senators, the tradition of receiving and welcoming visitors to Parliament is a long time tradition and one we shall endeavor to continue upholding.

On behalf of the Senate, and on my own behalf, I extend warm welcome to the students and teachers of Ng'inda Girls High School.

Thank you.

*(Applause)*

Let us now proceed with the Bill. That is Order No.11; the County Allocation of Revenue Bill (Senate Bill No.5 of 2015).

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**BILLS***Second Reading*THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILL NO.5 OF 2015)*(Sen. Billow on 16.6.2015)**(Resumption of Debate interrupted on 17.6.2015)*

**The Temporary Speaker** (Sen. Ongoro): The last time we had this Bill, Sen. Orengo was on the Floor and had some minutes remaining, but he is not in the House. So, I will give a chance to Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, first, I wish to thank you for giving me the opportunity to make a contribution to this very important Bill. I also wish to congratulate my colleague Senators who have made significant comments on this Bill. This is, perhaps, one of the most important Bills that we can debate in this House. In fact, it is the yardstick Bill against which the Senators' functions are measured.

Madam Temporary Speaker, in supporting this Bill, I want to make a few comments relating directly to the Bill itself. First, in the last session where we dealt with the Division of Revenue Bill, we have done a commendable job. This can be seen by the fact that there has not been a complaining county as regards the division of revenue. In fact, most of the counties had only complaints of inadequate funds, but there were no complaints against the neighbouring counties or any other county having unfair advantage over the other counties. This is, of course, because we dealt with the issue of division of revenue as per the formula that has been provided for doing so.

Madam Temporary Speaker, let me just take the opportunity to make one or two comments as regards the formula that we have been using, which has been quite satisfactory up to this point. This formula, perhaps, has been used only up to this stage. As we go forward, we must be careful to look at this sharing formula to avoid bringing any disagreements within the counties themselves. I am looking at a situation where in the years to come, we are going to get exploitation of natural resources in various counties in this country. In future, it is important that in sharing resources, we need to look at the resources that are accruing as a result of the mineral or petroleum resources that exist. It is important that these resources are considered when we are sharing resources, not only between the national Government and the county governments, but also between the county governments and the other neighbouring county governments.

I know that there will be royalties that will remain in the counties that have explored resources. However, it is important to consider the neighbouring counties to those counties that may be very fortunate to have natural resources. This will ensure that we do not create conflict in counties that neighbour each other as a result of differences in

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the lifestyles, earnings or opportunities that accrue from exploitation of a natural resource.

We are aware that when communities have differences in their lifestyles or opportunities they have in life, there is likely to be conflict. It is, therefore, important that as we exploit natural resources, the resources that accrue from one county and have an impact on the neighbouring counties, we consider designing a formula, so that natural resources can be shared across the counties. This will bring good neighbourliness and peace and stability within the counties.

Madam Temporary Speaker, often times we have considered the use of population to share revenue. This has been a very fair consideration. However, the percentages that have been involved have, probably, not reflected the true position because a census only shows where people were on the night of the census. This way of conducting census will, probably, give unfair advantage to rural communities whose main population has moved to urban centres to seek greener pastures. In the process of the night of census, they have been counted in urban centres. This, therefore, denies this per cent or proportion to the rural communities. Next time we would want to look at this impact of population at 45 per cent, as perhaps being so high that it has a very big impact on the way we distribute resources.

The other important parameter that we need to look at very seriously is the land area. Over the last two weeks I had the opportunity to travel with the Committee on Information and Technology to the County of Elgeyo- Marakwet. I do not want to speak on behalf of the Senator for Elgeyo Marakwet, but I want to talk about my experiences that I had there. When I left Elgeyo-Marakwet County, I was thoroughly convinced that the cost of doing a road there cannot be the same as doing a road, perhaps, in Bomet County where I come from.

I saw the terrain, the geographical layout and the topography in this county, which I can now speak about authoritatively. It is a significant feature that will affect the operations of that county, particularly, in the construction of roads. It is very possible that in that county, which has three tables; high, middle and lower valleys, to attempt to construct a kilometre of road, ranging from one table to another, is equivalent to constructing ten kilometres of roads in other counties.

The land area issue should, therefore, not be considered alone. We need to also consider the topography of the land in order to equitably give resources to some of the counties with difficult terrains. Some areas can also be swampy and difficult because of certain physical features. This must be considered in the sharing of revenue.

Madam Temporary Speaker, sitting in the Senate, one of our greatest concerns in the last two years as regards the revenue that goes to counties is the enormous wastage that has been occasioned by the uses of funds in the counties. One very disappointing fact is that over the years, there has not been a single conviction, as a consequence of the enormous wastage of resources within the county. This is a factor that is of concern to this House as a House that overlooks the use of resources.



It is very unfortunate that the resources that we take to the counties are not commensurate to the development there. We are aware that the Government usually would require timelines in dealing with issues in the counties. However, I would also like to ask the national Government to deal with some of these prosecutions. They should work with timelines. This will ensure that we do not have to wait three years down the line to convict an individual who has wasted the resources of the country over the years.

Madam Temporary Speaker, I wish to also make a comment with regard to the conditional grants that have been given to the counties. I wish to commend the Government for taking note of the medical situation in the country, where diseases like cancer, heart diseases and others, have taken a great toll on the population of the country. It is commendable that the Government took measures and tried to alleviate some of the difficulties that the *wananchi* are going through. It actually assisted the counties by providing sophisticated equipment that can be used within the counties. This is commendable. Perhaps, the law that would govern this equipment has not been amended or streamlined in order to become a county function. But nevertheless, we should congratulate the Government for bringing this equipment.

It is also important that in this Bill, it is stated very clearly that the equipment that has been supplied to the counties is on a conditional grant. This means that the county governments do not have to pay anything for this. This is paid directly by grants which are given to the Government. Therefore, counties have no fear of accepting this equipment because they will be very useful to *wananchi*.

Madam Temporary Speaker, there is also an element of compensation in this Bill where monies have been set aside to compensate health facilities that offer maternity health services. This is a good thing. However, of concern is the delay in which compensation is done to the counties. There is an inordinate long delay before the compensation is done. It is my wish that this is speeded up so that the counties are compensated hence they do not have to reach out for other funds to use.

There is the issue of the Roads 2000 Project. This is a remnant of the old system of government. As an issue of equitable distribution of resources, this is a programme that must be completed or reverted to the counties so that it is in tandem with what is happening with devolved governments. As it stands at the moment, there are counties that continue to benefit from the Roads 2000 Project.

All these road projects should be given out as annuity programmes for the roads so that all the counties will negotiate and benefit from the usage of these funds. Otherwise, I support this Division of Revenue Bill. It will give the counties something to do in the next financial year. I hope it will serve the counties very well.

My last comment which worries me, as I said, is the wastage. I would wish that this Senate has the teeth to bite in order to make sure that the funds are used properly. The distribution and use of resources was all about devolution. If we are not successful in the usage of resources, the whole aspect of devolution dies. The existence of the Senate depends on how we oversight and how these funds will be used. If the Senate is unable to do so, it would be considered as a toothless bulldog that is overseeing the wastage of

resources in this country. That would be very unfortunate. I hope that this will change and we shall have some teeth to supervise the usage of funds.

Madam Temporary Speaker, I support this Division of Revenue Bill. I am sure that the funds that will go to the counties will be used usefully.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, even though it is not in the tradition of the House, I will accept the passionate plea by Sen. Orengo to be allowed to conclude his contribution. He had six minutes.

Proceed, Senator and do not repeat that again.

**Sen. Orengo:** Madam Temporary Speaker, I am sorry. Looking at the Business of the House, I did not think that my turn to contribute will come so fast. I appreciate your generosity for giving me this opportunity.

First of all, before I pick up from where I left yesterday, I wish to appreciate the fact that you have already introduced to the House the delegation from Siaya. As the Senator for Siaya County, I also appreciate the delegation.

*(Applause)*

Yesterday I talked about the Senate and its importance. There is a time when Sen. Murkomen said in this House; and now with the things which are happening, I am beginning to believe how true it was. He said that under Article 95, one of the roles of Parliament is to protect the Constitution. Even the Constitution needs protection. If you look at the powers of the President, his responsibility with regard to the Constitution is not as strong as the responsibility of Parliament. He is required to safeguard the Constitution, but Parliament is required to protect the Constitution.

Madam Temporary Speaker, judging from what has happened in the last two or three weeks, I am beginning to feel and there is ample evidence, that there is a reason why some of our friends from the other side are receiving rebuke in public meetings. We appreciated our Leader of the Majority that he stood firm in Nandi when the issue arose. This is because, at the end of the day, every institution will be judged. For that matter, time will come when we will also judge the Executive in so far as the commitment to the Senate is concerned.

Madam Temporary Speaker, it is becoming very clear that where there is contention between the Senate and the National Assembly, the Executive prefers to work with the National Assembly. That is not a matter that we are taking lying down. Some Bills which were required to come to the Senate for consideration under Article 110(3) have been assented to by the President of the Republic of Kenya. This Senate is doing so much in order to protect the Constitution. For example, in relation to protection of the counties, we have made sure that more money has ended up in the hands of the governors. Although, sometimes governors also feel that the Senate is after their interest or emasculating their role.

The Senate has said it wants its own kitty. This is something that Sen. Murungi is trying to do to make sure that they have their own kitty in so far as the funds which go to

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the counties are concerned. Now that we are providing this money to the counties as we have become so generous in providing for the counties, we must also fight for our very existence. Sometimes we may forget that we also need some preservation. The way things are going now, we need that self-preservation. A day will come when the Executive will have to account in so far as the Constitution is concerned; whether they are protecting and defending it.

Lastly, because I do not want to take more time, yesterday Sen. (Dr.) Khalwale tried to examine the funds which have gone to the counties. It is clear that some counties are being preferred. You may think that this is an accident. However, looking at what happened in the last elections, this is not an accident. In the last elections, a county like Kiambu which has a population of as many people as Kakamega, had more voters than Kakamega County; nearly twice the number of the voters in Kakamega. In allocating these funds, especially the conditional funds, you will find that the same trend is continuing. To that extent, it appears that this is not an accident. What happened during the election is also continuing in so far as the allocation of funds is concerned.

All these matters can only be addressed if together we, as a Senate, are ready and prepared to sit down and make sure that the Constitution is implemented in the correct way and support the efforts of the Motion which was passed while I was away on strengthening the powers of the Senate in line with what the makers of this Constitution wanted it to be.

Madam Temporary Speaker, I hope that, at the end of the day, when we have allocated these funds to the counties, it will be realised that the Senate was just doing its work in a manner required by the Constitution. However, it was an act of bad faith on the part of the National Assembly that having negotiated Kshs1billion, they took it away.

With those few remarks, I beg to support.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, we are considering a very important Bill, kindly consult in low tones.

Proceed, Sen. Murkomen.

**Sen. Murkomen:** Madam Temporary Speaker, thank you for giving me this opportunity to make my contributions to the County Allocation of Revenue Bill 2015. I am a very proud contributor of the County Allocation of Revenue Bill 2015, knowing very well that our contributions make a difference. There is no other year that we have robustly fought for our responsibility in the Division of Revenue Bill which has transited to being what we are seeing in the Allocation of Revenue Bill.

Last year, my county got about Kshs2.8 billion. Under the equitable sharing allocation, this year, Elgeyo-Marakwet County will get Kshs3.2 billion. In addition, with regard to the Second Schedule on conditional allocation, we will be getting Kshs93 million as the County Emergency Fund (CEF). This would never have been anywhere

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had we not increased allocation to the counties by Kshs3.3 billion. This is a direct contribution of our fight as this House to ensure that every county has a CEF.

Elgeyo-Marakwet County has one of the challenges of having low lands with a lot of disasters happening along the escarpment. There cannot be any excuse why the County Assembly of Elgeyo-Marakwet cannot sit down, do the budget and allocate the Kshs93 million to ensure that anytime there is a disaster; whether in Kocholwo, Tambach, Aror or Endo, it is managed effectively because there are enough resources. If River Embobut bursts its banks and causes disaster in the lower side of Elgeyo-Marakwet County, there is a CEF to assist our people immediately.

Madam Temporary Speaker, this is not a lot of money, but in another context, knowing that it could not have been there, had we not stood firm as the Senate, this is a good and important beginning. Other counties like Turkana and others are dealing with emergency issues have worse challenges. At least, we have an extra Kshs93 million for disasters and other emergencies that may occur in our county.

We have another allocation from development partners that goes to Elgeyo-Marakwet, which I consider very little. The World Bank is giving us Kshs20 million as a supplement to healthcare. Conditional allocation from loans and grants is kshs139 million. If you look at this extra allocation that is going to Elgeyo-Marakwet County in that schedule, our allocation is over Kshs3.5 billion.

Today, I am a very proud man because we are debating a Bill that we have made contributions to. I am also very happy to note that for the first time, there is a public acknowledgement of certain conditional funding that will go to the counties. As I acknowledge our good effort, there are disparities like Sen. Orenge explained. Yesterday, Sen. (Dr.) Khalwale captured it very well, that there must be a cogent explanation as to why county “x” gets Kshs500 million for roads and county “y” only gets Kshs19 million. That must be explained.

I do not want to go to the details of what Sen. (Dr.) Khalwale said yesterday, but going forward, in the next County Allocation of Revenue Bill next year, we must have a mechanism that explains why donor funding is negotiated by the National Treasury or the national Government and benefits certain areas and not the others. This is a House of equity. We were elected here so that we can defend the interests and the people in our counties.

Madam Temporary Speaker, I am raising these issues at a time when there is a lot of attack on the institution of the Senate. So many comments have come from different quarters. However, what annoyed me most are the comments from the ‘Lower House’ related to the Bills passed by this House. It looked like even the Speaker of the “Lower House” was enjoying himself when Members of the National Assembly were making fun of The Potato Produce and Marketing Bill that was generated by Sen. (Eng.) Karue. It came to this House and we worked on it. I received comments from the County Government of Elgeyo-Marakwet plus the MCAs who are here. We amended it and sent it to the “Lower House” only for that Bill to be mocked.

I asked myself: Why would the “Lower House” mock the Potato Bill when we have the Sugar Bill, the Cotton Bill, the Tea Bill and other Bills relating to different crops? The budgeting procedure in the National Assembly has refused to allow these agricultural products and their resources and functions to go to the counties. When we generate a Bill on potatoes which is a very important crop grown in Elgeyo-Marakwet and Nyandarua counties which are highlands, Members of the “Lower House” mocked us.

It is also an important crop which the people of Nakuru and Bomet depend on, yet someone in his right mind would mock this House for generating a Bill on a sector that necessarily needs our support to ensure that we fund it, so that we can have greater resources for this country. Potatoes just like tea, cotton and sugar are good resources. The fact that potatoes are grown in Elgeyo-Marakwet, Nakuru and Nyandarua counties should not attract mockery from the “Lower House” more than other crops that may not be grown in those regions.

We, as a nation, must learn to do things for the sake of the future of this country. Therefore, I have said and I will repeat that this House will remain firm in ensuring that the functions that are supposed to be done by the county governments are done. I am very glad that we are going for a retreat this weekend to audit transfer of functions.

Madam Temporary Speaker, as the Chairman of the Committee that worked on appeals from counties on transfer of functions, we will provide a comprehensive audit of all the budget that was left in the national Government to establish whether, after we had devolved certain amount of resources, functions that ought to be budgeted in the county are still being budgeted for at the national level. Our recommendation will be nothing else, but that the resources and the functions must be sent to the level of government that is supposed to perform that function. We will not waver on the role of defending and protecting the counties because the calling of the Senators to this House is to make a determination to ensure that is done.

It is very clear from this County Allocation of Revenue Bill that some counties are still being given little amount of money, especially relating to maternal health. For example, Tana River County was given Kshs19 million only while my county was given Kshs39 million. Some other counties which are more progressive get more resources.

That is why I am not ashamed to have been among the persons who led the debacle of ensuring that the Division of Revenue Formula that we had was defeated. That formula was not correct. You cannot give more money to Nairobi County for distribution of water than Tana River County that has a challenge of getting that water from River Tana to other places of the county. It is more difficult for marginalised areas to have or distribute the water.

As I said last time when we were discussing this formula, we have to sit down and lock certain important sectors for the country, like agriculture, health and irrigation. We must have an actual study of every county to ensure that their needs are met. The rest of the money can be loaded in a formula that looks at the population and land mass. By so doing, we would have secured and safeguarded sectors that cannot be divided based on

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population and land area. That is why I still believe that going forward, this year, as we consult over the new formula, we must ensure that the counties are given necessary consideration in that regard.

Madam Temporary Speaker, my final point is in relation to the question of accountability. As I said, over Kshs3.5 billion will go to my county; Elgeyo-Marakwet. It is the responsibility of the MCAs who are seated here to make ensure this money is well spent in the county. I have maximum respect for that county assembly. However, like many other county assemblies which I have visited in the last few weeks, the county assemblies have been inhibited. They are told that they will only be allocated Kshs200 million to manage Kshs3.5 billion. They have ensured that they are unable to have committee meetings and necessary training. Our Committee visited Tana River, Wajir, Mandera, Garissa and Turkana counties.

When the Senator for Nyeri County, Sen. Kagwe, and the Senator for Bomet County came back from my county, they told me we need more training not only for the MCAs, but their staff as well. We have to ensure that we have necessary facilities for that county assembly, so that we can have robust accountability at the local level. The reason the Senate is now being bogged down by the kind of appeals that are coming from the counties and petitions that people are giving us on accountability in the counties, is because we have weakened the county assemblies.

This year, as we also discuss the question of what ceilings are going to be given to the county executive and county assemblies in the counties, we must ensure that our county assemblies are enabled to carry out their oversight responsibility. This House was allocated certain resources by the National Assembly, having given the reasons and worked on the regulation. However, mid way, because we said that we wanted more money to go to the counties, they no longer want to give oversight funds to this House.

Madam Temporary Speaker, the responsibility of enabling this House to work is the responsibility of the Parliamentary Service Commission (PSC). It must ensure that they have a duty to the people of Kenya; to enable the Senators and the Senate to carry out oversight responsibilities across the counties. As I said on Monday, even though we have lost the resources for carrying out oversight, we will not waver in our determination and desire to ensure that the people that we represent get quality for the resources they have.

I request our MCAs to be robust. We have been told in other places of situations where the governors are dividing contracts with MCAs. The governors say if you make them busy doing contracts of roads or building water pans, they will not have the opportunity to carry out oversight responsibility. The MCAs must resist that temptation because this House depends on the county assemblies as primary institutions of accountability.

We also want to tell our governors that the crime of corruption cannot be extinguished. It cannot rot. They must ensure that they are not followed on matters of accountability, even if it is in the next 20 years, by walking the narrow path so that they

ensure that services are delivered to the people of this Republic, the nation and this House.

I want to tell my colleagues that time has come, and the time is now, that we must stand stronger, be firm in defending the Constitution and our responsibility as a House. We must ensure that this House becomes a robust House that the people of Kenya require. That is why the process we started on Monday must go on soberly, with wider consultations, but with an intention of ensuring that by the time we finish our term here, we will have a stronger Senate.

Madam Temporary Speaker, let me say that there is no mistake why it is only the Senate of the Republic of Kenya that has three party leaders; The Senator for Meru County is the Party Leader of “BUS”, the Senator for Baringo County, is the Party Leader of KANU and the Senator for Bungoma County is the Party Leader of FORD Kenya. Kenyans believe that the Senate is the next stage of leadership after the Presidency and we must defend it.

I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. Murkomen.

Please, proceed, Sen. Hargura.

**Sen. Hargura:** Thank you, Madam Temporary Speaker. I would like to join my colleagues in supporting this important Bill, which forms one of the main functions of this House. As we debate this Bill, we have to know that at least this time round, we had our way in making sure that unlike the first years. We made a difference in the Division of Revenue Bill stage, so that what we are sharing is out of what we have worked to make sure that the counties get their allocation. I would also like to say that the formula that was used in this Bill was the old formula. Although we had the opportunity of coming up with a new formula, we still insisted on using the old formula because the new one was detrimental to most of the counties.

However, that does not mean that we have to stop there. We need to have that formula reviewed, so that more weight is given to the factors which will advocate for more equitable sharing than it is now. The equitable share was at least shared using that formula and there is no much problem with it. However, when we come to the conditional funds; first, it is very clear that we have several items under conditional funds, like the Level 5 hospitals, which do not benefit most of the counties. They only benefit 11 counties. We need to upgrade hospitals in other counties, so that they also benefit from this conditional share.

If Kshs4.29 billion is allocated for free maternity care, please, go ahead and make it easy for this service to be available. The way that it has been shared also, we need to ensure that counties get at least enough funding in this area. Initially we knew very well that women were not able to access these facilities. If they are available now, then funding should not be an inhibition to them getting these benefits. These allocations also need to be increased to make sure that as the medical facilities grow due to investments by the county government, the funding for free maternity is improved.

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Madam Temporary Speaker, in the case of compensation for the health sector facilities, that also needs to be increased. This is because the health facilities and service provision were poor. Therefore, using the old data to see how much was being generated from those facilities in terms of revenue will not serve as a good basis. There is need to recheck how much the counties are forgoing, so that they are compensated adequately to provide these services. Otherwise, if not compensated properly, this could be another area where the health service will not develop and will not be accessible. In fact, the counties will not have the capacity to forgo the revenue, because they have to use part of the equitable share to foot these bills for forgoing the medical service based revenues.

Madam Temporary Speaker, the Kshs3.3 billion in the Bill has been shared using the Commission on Revenue Allocation (CRA) formula. That is why those who have been getting more are still getting more. However, within the Bill, there are road maintenance funds which are for specific counties, for example, based on the Roads 2000 Programme, which was based on the likes of the Sessional Paper which required development of high potential areas. If you look at the Roads 2000 Programme, it covers the western region, central region, Nairobi and parts of eastern region, from Meru. It is leaving out the arid areas; the northern parts of Kenya, upper eastern, Isiolo, Marsabit, Samburu, Turkana and the whole of the former North Eastern Province.

These counties do not get any specific funding like the Roads 2000-District Rural Roads Rehabilitation for road improvement project, which is based on the Sessional Paper that required improvement or development of the high potential areas. When the Roads 2000-District Rural Roads Rehabilitation funds are there and we have not less than Kshs9 billion going to these high potential areas, then we share the Kshs3.3 billion which comes from the Road Maintenance Levy Fund (RMLF) equitably using the CRA formula. That way, some arid areas which have been considered low potential areas and which incidentally have the largest areas, are left out completely. Next time, that area needs to be checked so that the ASALs also get a fair share of the RMLF because they do not benefit from the Roads 2000-District Rural Roads Rehabilitation Programme.

Madam Temporary Speaker, to make sure that these funds are used properly; there is need for proper oversight. The capacity of the county assemblies to oversight county governments has been mentioned. One area which needs to be checked and implemented is that county assemblies need to have financial management systems different from that of county governments. That is one area which undermines oversight as county assemblies are at the mercy of county governments or the governors. If they have to oversight or inspect something, they still have to get money from the county government. That way, they cannot have independent oversight because they will only go where the county government wants them to go and do what the county government wants them to do.

There is need to have separate accounting systems. This came out very clearly when we had a meeting with the Speakers of county assemblies in Mombasa. They said that one of the problems that they face is having to beg for money from their governors.



Therefore, they cannot oversight them. They have to work with the department that they are oversighting which augurs very negatively for oversight.

One area which needs to be checked so that it can be improved is IFMIS. Up to now, we are told that county assemblies do not have IFMIS lines. If they get the lines, then they can easily access their funds and plan their programmes and oversight without having to go through the County Treasury.

With those remarks, I support the County Allocation of Revenue Bill, 2015. I hope next time, especially on conditional allocations, those areas which have not had access to funds, like the Roads 2000-District Rural Roads Rehabilitation funds, will be taken into account.

**Sen. Murungi:** Thank you, Madam Temporary Speaker, for giving me this opportunity to make a few remarks on the County Allocation of Revenue Bill 2015. You will recall that just before this Bill, this House passed the Division of Revenue Bill, 2015, with amendments. That is the Bill which vertically divided resources between the national Government and county governments. You will also recall that the Senate proposed that we increase the amounts by Kshs7 billion to support health care in county governments through referral hospitals and also deal with emergencies that occur in our counties.

Our good intentions in passing that Bill were misrepresented. It has been a major source of controversy between the National Assembly and the “Upper House”. I am particularly very pained by the rejection of the National Assembly of the Kshs1 billion which had been allocated to the Senate for implementing its mandate under Article 96 of the Constitution – to provide oversight for the funds that the Senate has made it possible to be transferred from the national resources to counties.

Madam Temporary Speaker, it is like the National Assembly said, okay, give them all the money, but do not worry how that money will be spent. As the Chairperson of the *ad-hoc* Committee on Monitoring, Evaluation and Oversight which negotiated the Kshs1 billion for the Senate, that was a great insult to Members of this Sub-committee. I believe the decision to deprive the Senate of that money was influenced by some dark anti-devolution forces who do not want devolution to succeed in Kenya. It is more unfortunate because the decision itself is unconstitutional, illegal, immoral and, indeed, made in bad faith. Given the rush with which the amendment was made, it leaves the Senate in a situation which I would call “high and dry”.

However, this is not the end of that story. I think it was Wole Soyinka, the renowned African poet, who said that the man dies in every person who keeps silent in the face of tyranny. We, the men and women in the Senate, will be considered dead if we keep quiet in the face of injustice which has been done by that Mutava Musyimi Committee. I will not sit in this House and allow the Senate to be destroyed before my very own eyes. I was not here on Monday when the Motion was unanimously carried by the Senate, but I take this earliest opportunity to record my support for that Motion.

For those who read the Bible, there was a time when the people of Israel had been taken into captivity and they felt very low. However, I remember one of the prophets

saying, that we are going to contend with them, their children and their children's children. This Senate should let those dark forces of anti-devolution know that we will contend with them, their children and their children's children.

Madam Temporary Speaker, let me rest that one there. I feel very pained that after all the work done, a few people operating behind the scenes can try to scrap this Senate. In fact, some are saying it publicly that they want the Senate dissolved. I want them to know that this is not 1963. This time round, the Senate will never be dissolved. Indeed, we are going to struggle to make the Senate stronger than they have ever imagined.

Madam Temporary Speaker, the County Allocation of Revenue Bill is a Bill for horizontal division of revenue between Meru County, Elgeyo-Marakwet County, Embu County and the others. The resources are being divided between the counties according to the formula which had been adopted before this Senate came into force the way it is. An amendment formula was brought which we could not agree on and that is why we are using the old formula. In my own view, that formula is unfair and discriminatory, especially to my own county.

Meru County is one of the biggest counties in this Republic in terms of population, geography and other factors. As I am speaking here, there is a lot of poverty in my county, especially because our *miraa* trade with the European countries has been closed. I thought if we got those emergency funds, some of the funds could be used to alleviate the grinding poverty in the *miraa* growing area in Meru, but now there are no funds. That is very insensitive and we shall continue fighting for the formula to be revised so that counties which find themselves in special difficulties like my county can have a fund which they can turn to.

Madam Temporary Speaker, I have been an advocate of the county governments. When we talk about county governments, it is very clear from the Constitution that we are talking about both the county executive and the county assemblies. The county assemblies have been facing major financial problems because they are not in control of the funds at the county level. We cannot expect the county assemblies to play their oversight roles effectively if they are kneeling in the morning and in the afternoon begging for money from an officer of the executive in the county Treasury.

It is upon us, at the Senate, to empower the county assemblies by separating the monies going to the county executive from the monies going to the county assemblies. The Clerk of the County Assembly can be made an accounting officer for the county assemblies just like the Clerk of the National Assembly and the Clerk of the Senate are accounting officers of the funds coming to us here at the Legislature. Our Finance, Commerce and Budget Committee should be working on modalities of following the funds which are going to the counties so that the funds going to the assemblies are separated from funds which are going to the executive.

It is very painful to hear that some budget committees of the county assemblies cannot meet because of lack of funds. How do we expect proper budgeting in the county assemblies if the budget committee of the county assembly cannot meet to scrutinize the budget prepared by the Governor? This is a very simple, but a very important point. We

need to separate the finances of the county assemblies from the finances of the county executives.

Madam Temporary Speaker, allow me to also say that in some counties, we are finding difficulties when we go to counties. We find that in some wards, representatives are the ones asking: “How come nothing is happening in our wards?” Although we have transferred the funds to the county headquarters, we should continue to monitor the funds to ensure that those funds reach every ward in this country. The Constitution does provide for devolution beyond the counties. It provides for devolved units to be created through the counties.

It is for us at the Senate to facilitate a process where, for instance, we have the Ward Development Fund and the Ward Development Committees which are going to assist us in oversighting the usage of funds at the county level to ensure that, indeed, people in the whole county are benefiting from these funds. We want to see people in every ward benefiting from these funds. It is not enough for us to say that so much money has gone to Migori County or Mombasa County. We, as a Senate, should follow the money to ensure that it has reached the wards in those counties.

Finally, we, Senators, have been reduced to mere political flower girls. Wherever we go, we are being challenged even by MCAs and the other people to show what we are doing. They say that Senators are doing nothing at the grassroots level. We are not delivering anything. I have been in a position where one of the MCAs challenged me and said that the governor had given them Kshs20 million for provision of water, what had I, as a Senator, given because they also elected me? I was being asked to look for money to top up on what the governor had given.

Madam Temporary Speaker, I think the Senate should have a very clear outreach programme. It should have a very clear civic education programme around the country to explain to the people what the role of the Senators is because *wananchi* still expect the Senators to do the roads, provide water and build classrooms.

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. Would I be in order if I were to propose that Sen. Murungi is asking the wrong institution to carry out civic education when we know that the Ministry of Devolution and Planning is carrying huge quantities of money which should be allocated either to the Senators at the county level or institutions elected by the Senators so that the country can be educated with regard to the role of the Senator? The money is there. Let us not think that the Senator should spare some money for civic education.

This money has been given to Non Governmental Organizations (NGOs) which are using that money in little hotels calling the same individuals day in, day out, distributing that money to the same individuals. These are the same individuals; they started working with from January to December in the same little hotels instead of carrying out civic education. Would I be in order to propose that the Committee on Devolution asks the Cabinet Secretary responsible for devolution to come to this Senate and explain to us how the money for devolution, particularly money for civic education is being used?

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**The Temporary Speaker** (Sen. Ongoro): I think that was a point of information and not a point of order.

Proceed, Sen. Murungi.

**Sen. Murungi:** Madam Temporary Speaker, I appreciate the point of information which has been given to me by Sen. Kagwe. If there are those funds out there for civic education, then they should be utilized properly. I think civics means governance institutions. Those funds should have been brought and made available for the Senate to explain its role in our society.

In addition to that, we are the ones who are wearing the shoe and the ones who feel the pinch. The Senate has a duty to go out there and explain that the role of the Senator is to mobilize resources for the counties and oversight those funds. It is not our role to build classrooms, do harambees and roads. Ours is simply to talk and see the necessary people, provide necessary policies to ensure that enough resources are transferred from the national Government to the counties.

Thank you.

**Sen. Hassan:** Madam Temporary Speaker, I stand to oppose the County Allocation of Revenue Bill (Senate Bill No.5 of 2015). In English, they say that no good house is built on a bad foundation. No good house ever will.

Madam Temporary Speaker, we are here to defend the interests of counties. I am not at all in any doubt about what my role is. I cannot be a Member of this Senate who simply appreciate patch work. Literally, from the time we allocated revenue to this point where we are renegotiating this Bill, the Senate has always had to settle for second class.

I opposed the revenue formula. I also opposed the Division of Revenue Bill. I am now duty bound because of the oppressive nature of the formula for allocation of revenue or the division of revenue. If the formula for division of revenue is not fair, then the formula for allocation of revenue cannot be fair.

Madam Temporary Speaker, our Constitution is very succinct. In the preamble, it says:-

“Recognising the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.”

Madam Temporary Speaker, social justice is a value of the Constitution. Article 10(2)(b) of the Constitution states that:-

“The national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.”

Madam Temporary Speaker, when you talk about equity, then the formula on the division or allocation of revenue is extremely not good. The CRA continues to carry out the same miscarriages of the past by agreeing to a formula that is applied in a blanket way across counties. That is why, today in Kenya, people have the audacity to ask why Turkana is getting more money than their county which is more populous. That was the whole idea of devolution yet we must do more.

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Madam Temporary Speaker, in the last 50 years, some counties have deliberately been marginalised through policies and sessional papers of the Government. That has led to systemic marginalisation of certain communities and areas of this country. The Constitution came to ensure that the principle of equity is applied. The principle of equity – I have argued in this Senate time and again – means that those who are worse off must be made better off before those who are better off become well off. For the last 50 years, development has been skewed in this country. The Constitution is an opportunity for us to redress development.

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

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

Mr. Temporary Speaker, Sir, last week, I was in a county where we witnessed the first kilometre of a tarmac road being done. It is not a joke what this country has been through. For the first time, a county was commissioning eight kilometres of a tarmac road when other people have “superhighways” and what have you. Equity demands that we must make sure that all counties have roads to drive on before we start ensuring that the national trunk roads are only built in certain areas and counties.

Mr. Temporary Speaker, Sir, time and again, I have asked in this Senate. We want to know how much of national resources are allocated to each county. Resources are allocated to counties yet we do not know what the national Government has allocated to Mombasa County. The Government has not told us what it has allocated to Kisii, Nyamira or Kilifi counties. Therefore, the whole systemic avenue of marginalisation remains intact. The CRA must be a little bit more creative. It was given the mandate to ensure that counties with good roads are allocated less money so that counties with poor or no roads can construct them. That is what equity is all about; to bring up counties that have been marginalised historically.

Therefore, it is wrong to come to the Senate and think that it is a big deal to take a few billions to your counties yet you had the opportunity. That is why we are asking for a referendum that will ensure that we re-adjust fundamentally the allocation of the division of revenue to counties. However, even if after we have dealt with the demon of the division of revenue that we should share 45 or 55 per cent, we will still be left with a question to answer. How, then, do we divide revenue?

It is unfair to use the same formula to allocate monies to Nairobi City County as we used to and use the same formula to allocate money to Lamu County. In Lamu County, there are still preferred means of commuting. That is by use of donkeys. Therefore, it is important to ensure that there are roads in Lamu County before more roads are built in Nairobi City County. That is what equity is all about. If we do so, we will deal with the massive explosion of population in Nairobi. Once there are amenities by ensuring that there are hospitals, infrastructure and good schools in Elgeyo-Marakwet County, then people will migrate there. However, when you continue to marginalise other

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counties, a good number of the population will continue living in Nairobi City because it thinks that Nairobi City is the economic hub. About 78 per cent of the country's GDP is still concentrated in Nairobi. We need to devolve the GDP and our people so that expertise is felt in counties.

Mr. Temporary Speaker, Sir, look at the politics within the Ministry of Health. Everybody wants to be posted to Nairobi, Mombasa or Kisumu counties. Nobody wants to go to marginalised counties. However, when we take facilities to other counties, people will follow those facilities. When we build schools, people will know that their children can get quality education. Therefore, it is a betrayal for this Senate to support a very meek County Allocation of Revenue Bill. The Senate must set its bar very high.

Mr. Temporary Speaker, Sir, I missed the debate when you were here on Monday because I was in Wajir County. I was torn about seeing people marginalised while I am in the institution that should defend the rights of the marginalised. However, I saw it and transferred the experience. The Senate has set itself a very low bar. I have seen the CRA coming up with nothing scientific. It only plays around and says, "let us allocate five per cent here and two per cent there, and see how it works out." That is simplistic.

Madam Temporary Speaker, sorry, Mr. Temporary Speaker, Sir--- You know, when we started, Madam was on the Chair. Therefore, I had gotten into the gender frequency. I am trying to unwind my gender frequency. I am sorry for referring to you as Madam Temporary Speaker several times.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Hassan. Do you mean that I am not within the gender frequency?

*(Laughter)*

**Sen. Hassan:** You are a very gender sensitive Senator who agitates for women rights. Last time, I saw you agitating for women rights. I have not seen you pronouncing very clearly on the one-third gender rule. However, sooner than later, we will pronounce ourselves on the matter.

Mr. Temporary Speaker, Sir, look at what the Bill of Rights talks about. We keep celebrating it as the most elaborate Bill of Rights in the world. This should not just be rhetoric. Chapter Four of the Constitution is; The Bill of Rights. The first provision of the Chapter states that:-

"The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies."

Mr. Temporary Speaker, Sir, if that is the case, how have we protected the rights of Kenyans who are most vulnerable? That should be through the Budget Policy Statement (BPS). Initially, before I joined Parliament, I thought that BPS meant your "blood pressure." How has the BPS addressed the issue of human rights in terms of how have we protected the marginalised, the most vulnerable in our society and people who are most disenfranchised? How have we made sure that they have access to food, shelter and other basic amenities so that we put dignity into their lives?

Mr. Temporary Speaker, Sir, this Senate must set itself a much higher bar. That is why we lobbied with you and others to torpedo the CRA formula. If we will pay officers of the CRA from dawn to dusk to do the work they are doing, they cannot tell me that it takes them one year to produce the type of formula that they have produced.

You need to employ our creativity. The constitutional foundations must now be implemented in a manner that meets the expectations of the Constitution. That is why since my first year in the Senate I have voted against these two Bills, because most of us do not seem to have set the precedent necessary. We are fearful of one another. However, we must also be able to tell one another: - "You have had the lion's share of the cake for too long. Let others also get some bit of the cake." That is what we are here to do. That is why in this Senate, whether you were voted for by 800,000 people or 20,000 people, your vote is one. This Senate is about equality of counties and not what your numbers are somewhere else.

I was voted for by about 130,000 people in an electorate of about 400,000, but I enjoy the same vote as my brother Sen. Bule from Tana River County, my brother from Lamu County and even my brother here from Kilifi County. We have a common agenda and thread of destiny. That common thread of destiny is for me to defend Lamu, Turkana or Samburu counties. These are the areas that historically are marginalized.

Mr. Temporary Speaker, Sir, there is a very vicious theory being perpetuated somewhere within this country that the term "marginalisation" must end. The term "marginalisation" is in the Constitution because it is a political reality and fact. How can you deny that there was no marginalisation in this county? I have heard people at the highest level in this country saying that the marginalisation theory is now weak. The marginalisation theory is true. Marginalisation took place in 1960s through sessional papers and wrong policies of grabbing and ethnicity. That is what created the present situation that we are in. That is why this generation which was born of the marginalized forefathers is extremely angry of the destiny that you want to continue to relegate us.

In this Senate, we must ensure that we also speak for counties that are not necessary ours. I am of the opinion that some counties must get roads before we get them. But when we talk about this, issues others think that we hate them so much or we are out to eliminate them. This is the reality of this Constitution.

Mr. Temporary Speaker, Sir, looking at this Bill, it is just mathematics. This document must have some life and humanity. Do you think that it is just about numbers? It says Mombasa will get this and the other counties will get this and that? This Senate must have a soul. This Senate was supposed to defend the values and tenets set out in the Constitution. So, until this Senate is able to build a foundation, this House shall remain rocky. This revenue allocation formula is faulty. For that matter, I cannot support this Bill. I have voted against it two times and shall vote against it the third time.

I shall take my case to the people. I believe that we do not do it in the first Senate under this Constitution. The second Senate under this Constitution will fundamentally overhaul this type of formula that continues to perpetuate marginalisation, rely on

superficial figures and does not do any baseline study and analysis of development indicators.

Finally, we must, probably, relook at the architecture of our planning and financing, to see whether there is a need to determine how the national Government devolves its funds for development. We want to see how much is going to roads in every county. We must see this matrix in future when people come here to present to us budgets and budget policy statements, before we endorse them because we belong to certain parties or we are dealing with certain deadlines.

In fact, that is the most annoying thing in this Senate. All the time we are told that we have no choice because there is a deadline. Before they do that, let us ask them: “You, who is seated at the Treasury, how does my county benefit from your national resources?” That is why we have cutthroat competition for power in this country. Until we mitigate the attendant loss, we will continue to be in the situation that we are in.

Mr. Temporary Speaker, Sir, I will vote against it. I know that I am the only Member who votes against this Bill, but I gladly do it because my conscience is clear that this is not the type of allocation, where still you favour certain superficial things like populations, yet we do not take into considerations how these populations have used their numbers democratically to disenfranchise others. We must put in a contextual reality how we negotiate our formula.

With those many remarks, I hope that I have persuaded a few of you to vote with me when this Bill comes for voting. We need to oppose this lazy work, formula, allocation, marginalising and perpetuating Bill---

*(Sen. (Dr.) Machage gesticulated at the Chair)*

**The Temporary Speaker** (Sen. Murkomen): Order! Order! You cannot talk forever.

Sen. Machage, thank you for alerting me.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Have you just rewarded Sen. (Dr.) Machage with the Floor just because he alerted you?

**The Temporary Speaker** (Sen. Murkomen): Order! It is possible that he alerted me because he knew that he was the next in line.

Proceed.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. I rose to speak at 3.58 p.m. and that only comes to 12 minutes, yet I had timed myself to speak for 15 minutes. This microphone went off when I was just at the closing touchline of my remarks. Sen. Murungi was given 22 minutes.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Hassan! You are eating into another person’s time. You stood to speak at 3.55 p.m. and the Chair here has an automatically timed system. When you start speaking, it counts from 15 going down.

Sen. (Dr.) Machage, proceed.

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**Sen. (Dr.) Machage:** Bw. Spika wa Muda, sijui wivu ni wa nini nikitaka kuongea. Niachieni nafasi niongee kwa sababu ni wakati wangu. Niko na mengi ya kusema.

Mswada huu ni muhimu na ni wajibu wetu kuusoma vile ulivyo na kupendekeza mawazo yetu. Kukataa kutia maanani yalio katika Mswada huu ni hasira za mkizi kwa sababu utakuwa umeuwacha wajibu wako. Tunajua kwamba hasira za mkizi ni furaha ya kunguru.

*(Sen. Wako and Sen. Hassan consulted loudly)*

Bw. Spika wa Muda, hawa wawili walioko mbele yangu wana kelele na wananikera nikiongee. Tafadhali nisaidie.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Wako and Sen. Omar. Sen! Even Sen. (Dr.) Machage is unable to hear himself.

Proceed.

**Sen. (Dr.) Machage:** Bw. Spika wa Muda, asiye na mvi wakati mwingine hana hekima.

**The Temporary Speaker** (Sen. Murkomen): Sen. Machage, wawili hawa wako na mvi.

**Sen. (Dr.) Machage:** Wamepaka rangi, Bw. Spika wa Muda.

Sura ya kwanza ya Mswada huu inatupatia stakabadhi ambayo inatuonyesha mgao wa pesa ikitumia mfumo fulani kwa kaunti zote ili kuhakikisha mgao ni sawa. Sura ya pili inatupatia nyongeza kutoka kwa Serikali kuu. Mgao wa tatu unahusu mikopo na misaada.

Migao hii imefanywa kulingana na sheria, hasa Kipengele 218 cha Katiba ya Kenya ambacho kinatupa wajibu wa kuyafanya hayo wakati huo. Lakini baada ya mgao kutoka kwa Bunge la Kitaifa lililogawa na kusema sisi tupate pesa chache; karibu asimilia 15 ya mapato ya Serikali na nyingine asimilia 85 ya pesa zibaki kwa Serikali Kuu. Utapata kwamba kaunti zote zitapata chini ya Ksh300 bilioni. Pesa hizi ni kama za kugharamia shughuli za Wizara ya Ulinzi wa Kitaifa. Si haki, lakini hivyo ndivyo ilivyo. Ni wajibu wetu kugawa hizi pesa kwa serikali zote za kaunti. Lakini hata baada ya kugawa pesa hizi, wengine, hasa magavana hujitapa wakisema: “Mimi nimetoa hiki,” na kumsahau mama aliyetoa maziwa hayo wanayoyanywa. Tunatoa hizi pesa ziende mashinani zikasimamiwe na magavana kwa ajili ya ujenzi, maendeleo, malipo ya wafanyikazi na kadhalika kwa njia ya haki isiyo ya mapendeleo pasipo na wizi wala ufidhuli.

Bw. Spika wa Muda, lakini ukiangalia mgao wa mwaka wa kwanza na wa pili, ukitazama Migori Kaunti, kwa mfano, mwaka wa 2014/2015 walipata mgao wa Kshs5 bilioni. Mwaka huu tumetengewa zaidi ya Kshs6.2 bilioni. Pesa hizi zitatumika kuendeleza maendeleo katika kaunti yetu. Wito wangu ni kwamba pesa hizi zitumike vizuri kwa mpango uliopo na kuzingatia ndoto zetu. Hii ni kwa sababu serikali nyingi za kaunti hizitumii pesa zao kwa njia ya uadilifu.

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Magavana, mawaziri wateule na makarani katika kaunti zetu wanatumia pesa za umma kujitajirisha. Ni huzuni sana ukienda mashinani hakuna chochote cha kuonyehsa kama pesa hizo zilitumika kuambatana mipango na ndoto za kaunti hizo. Hakuna barabara zilizojengwa au urekebishaji wa zahanati. Pesa za umma zinatumiwa vibaya kule mashinani. Kwa mfano, katika mikutano ya magavana, kuna watu ambao wameajiriwa kubeba meza na viti vya magavana. Hiyo ndio kazi yao. Kuna kipaza sauti cha kila mtu katika mikutano ya gavana. Ukimaliza kutoa hotuba yako, gavana akisimama analetewa meza ya kipekee.

*(Laughter)*

Kuna baadhi ya magavana ambao viti vyao husafirishwa mkutanoni wakitumia farasi. Watu wanaofanya kazi hiyo wanatumia pesa za umma vibaya. Utapata kwamba gavana amewekewa zulia na ana zaidi ya askari 20, ilhali yuko nyumbani. Ulaghai na ulafi haukubaliki. Hayo hayako katika orodha ambayo Seneti imeweka ili itekelezwe mashinani.

Tunataka pesa hizi zikifika huko, tukifika nyumbani, tuone kuwa maisha ya watu wetu yamebadilika. Kwa mfano, tunataka kuona gharama ya maisha imeteremka. Wanafaa kuangalia shida za wananchi. Kilimo kiko vipi? Hii ni kwa sababu kilimo kiko chini ya serikali ya ugatuzi. Ikiwa wakulima wamevuna, watapata wapi soko ya mazao yao. Je, wamepata mbolea? Je, kuna matrakta ya kulima? Kama hakuna maji ya kunyunyizia, je kuna mabwawa ya kutosha? Mambo kama hayo ndio tunataka kuyaona mashinani.

Je, madaktari wamelipwa? Sasa hivi, ni migomo hapa na pale. Madaktari wakiuliza haki yao wanaambiwa pesa hazijatoka kwa Serikali Kuu.

Wakati huu katika Kaunti ya Migori, wabunge wa kaunti wako kwenye mgomo baridi kwa sababu hawajalipwa pesa zao tangu Februari. Na Spika wao na vibaraka vyake wamefunga safari kwenda Uganda. Haya ni matumizi mabaya ya pesa za umma. Wabunge wengine wanateta kwani watoto wao hawana chakula. Wengine wanafurahi kwani wameshiba, wanatapika kwa shibe ilhali wengine wanateta kwa sababu ya njaa. Hii si haki kabisa.

Sasa tumepewa pesa za vifaa ya hospital. Tuliambiwa kwamba magavana walikuwa wamekataa lakini sasa wamekubali. Pesa hizi ni mchango wa Serikali, sioni pahali pameandikwa kwamba lazima serikali za ugatuzi zilipe pesa hizi.

Kitita cha Kshs93, 617,021 kimetengwa kwa ajili ya majanga mashinani. Kwa mfano, labda mvua imenyeshwa na hospitali ikasombwa na mafuriko au watu wamepata ajali, kuna pesa za kusaidia. Lakini utapata kwamba hizi pesa zinakwenda kwa mifuko ya magavana. Watakadiria majanga ambayo hayaeleweki. Janga halisi likipatikana, hamna pesa za kugharamia. Ingawa tumenyimwa pesa za kutekeleza wajibu wetu mashinani na “Bunge la Chini”, tuna mdomo. Mimi nimemwambia Gavana wangu: “Ingawa sina pesa za kutembea huku na huku, lakini nina mdomo na nitakutupia matope mpaka sura yako igeuke. Mpaka ukubali kugeuza mawazo, sera na desturi. Lazima kila senti ambayo

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imetumwa Migori ifanye kazi.” Hatutakubali tuwe kwa hiyo jahazi, ijapo mwaka wa 2017 tutatupwa nje kwa sababu watasema kwamba tulikula pamoja na magavana.

Lazima ijulikane, ibainike na idhihirike kwamba magavana ndio walafi. Sisi Maseneta twatekeleza wajibu wetu kupeleka pesa mashinani na ndio tunafanya siku ya leo. Mwenzangu mmoja amesema kwamba hana haki ya kupiga kura. Hiyo ni shauri yake lakini ni wajibu wetu sote kuangalia stakabadhi iliyo mbele yetu, tutekeleze kazi na wajibu tuliopewa na wananchi ya kugawa pesa. Ni kweli kwamba kuna mambo mengine ambayo hatukubaliani labda kwa sababu wingi wa watu katika eneo fulani unatumika kugawa mali hii. Eneo la shamba, na kiwango cha umaskini pia vinatumika. Je, wana kipimo gani cha umaskini? Ni kipimo ambacho kinakubalika na kila mtu?

Je, wingi wa watu unaotumika unakubalika? Tunajua sensa ya watu iliyopita ilikuwa na tashwishi. Ni wajibu wetu kupitisha Mswada kwamba watu wahesabiwa upya. Tusipofanya hivyo, sensa hiyo iliyofanyika zamani itatumika. Ni lazima tukubali kutumia hiyo stakabathi kugawa pesa ili zitumwe mashinani. Ninaunga mkono kipengele hiki cha ugavi wa pesa katika Mswada huu. Kinaeleza kila kitu na kimeandikwa kwa ufasaha. Nafikiri kimeandikwa kila mtu haki kwa kila kaunti.

Bw. Spika wa Muda, tunajua ya kwamba kuna kaunti zingine ambazo zina mapato ya ziada. Sisi tunaishi hapa Nairobi. Kaunti ya Nairobi ina mapato karibu Ksh17 bilioni kutokana na mipango yake ya ziada. Kwa mfano, inapata pesa kutoka kwa kodi, ushuru wa magari na kadhalika. Kaunti zingine hazina mapato kama hayo lakini kigezo kinachotumika kinaipa Nairobi pesa zaidi. Hii ni kwa sababu ya wingi wa watu ambao wametoka mashinani kuja Nairobi.

Machoni pa Mungu, kila mtu ni sawa. Lakini kila mtu si sawa kwa mujibu wa mgao wa pesa hizi.

**Sen.(Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to this Bill which we have looked at very carefully in the Committee on Finance, Commerce and Budget. I share the sentiments of Sen. Hassan and the frustrations that he has expressed in this House, but as a Member of the Committee on Finance, Commerce and Budget, I am bound by collective responsibility to support the Bill in the House, although, I have a lot of misgivings about how we have arrived at the figure of Kshs285 billion to allocate to the counties.

Out of a budget of Kshs2 trillion, given the provisions of the Fourth Schedule and the fact that in this House, we have always said that resources should follow functions. If you carefully look at the Fourth Schedule and the functions that are performed by the national and the county governments, you will find that 35 functions in the Fourth Schedule are allocated to the national Government. This is an exercise that I have involved myself in. In part 1 of that Schedule, 18 of those functions are purely policy making functions.

In other words, they are functions that require governmental bureaucracy to make policy not to go out in the field and implement those policies. Those policies are made for implementation mainly by the county governments. For example, function number 28 on health policy, 29 on agriculture policy and 30 on veterinary policy means that when

policies are made, where the tyre hits the ground is in the counties. So, 18 out of 35 functions are purely bureaucratic functions and not operational functions.

Mr. Temporary Speaker, Sir, if you look further into the Fourth Schedule, you will find that there are certain functions which should be shared with the counties in the spirit of devolution. At the moment, they are actually shared functions in reality. For example, the police services, including setting up the standards of recruitment, training of police, use of the police service, criminal law and correctional services are national functions. However, in many jurisdictions, when it comes to correctional services and policing in general, the police function is a local government function.

I lived in the United States of America (USA), in the State of Illinois. There was something called the State of Illinois Police, then the Cook County Police, the City of Chicago Police and the University of Chicago Police. In another words, every entity had its own police force because security is a very immediate thing. If it is handled at the national level in terms of operation and policy making, then you find the kind of situation that we are in now where the Al Shabaab is hitting us left, right and centre and the national Government is incapable of responding.

Sometime ago, the Governor of Mandera was pleading with the national Government to give him certain police powers to deal with the local security situation. He was not given. The end result was not very interesting. If 18 of those functions are actually policy making functions. The other three which I could go into details, can actually be shared with the county governments. When it comes to basic education, it is a local government function. Where there is a devolved system of government.

I cannot understand why counties get only Kshs280 billion in a budget of over Kshs2 trillion. The 14 functions of counties are operational functions. The national Government has 35 functions, 18 of which are policy and three of which can be shared, then, I do not understand why the national Government gets close to Kshs1.8 trillion for those functions whereas, the county government with 14 substantial operational functions gets Kshs280 billion.

There is something wrong with that budgeting system. I agree with Sen. Hassan, who says let us not do this mechanically, let us go down in detail and find out what exactly the national Government and the county governments are doing, so that we put resources that are requisite to operational functions, policy making functions and bureaucratic functions.

Mr. Temporary Speaker, Sir, something very interesting is happening at the Ministry of Devolution and Planning which has a lot of money. As far as I know, the Ministry of Devolution and Planning should be a policy making Ministry that involves itself with regulation for standard setting and for making sure that the laws are followed.

In fact, by now the Ministry of Devolution and Planning should have given us a Sessional Paper on how to operationalize the one very important provision in this Constitution. This Constitution says that the provincial administration will be restructured to conform to the spirit of devolution. I cannot remember the Article that implied that sooner rather than later,--

**The Temporary Speaker** (Sen. Murkomen): I think it is the Sixth Schedule, paragraph 17 or 18.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Temporary Speaker, Sir, thank you; you are right. It is the Sixth Schedule. I want to be on record on the HANSARD because this is very important.

There is a reason I am saying this. This is because having been a Member of the Committee on Devolved Government, under the chairmanship of the able Temporary Speaker there; I left so that my sister, Sen. Ong'era, could take the position having been exiled to the Pan African Parliament (PAP). Section 17 of the Sixth Schedule says very clearly, I want to read it, so that it is on record because these things are very important.

“Provincial Administration

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, I think that the effective date was sometimes in 2010 and it is 2015 today. Five years are over. I remember that in our first meeting with the Cabinet Secretary for Ministry of Devolution and Planning, Ms. Waiguru, it is I who asked her:- “Madam, Cabinet Secretary, when are you giving us a Sessional Paper telling us exactly how the Government is going to implement this particular article in the Sixth Schedule?” She said that she would do it soon.

I am no longer a Member of that Committee, but I do not think that the Sessional Paper has seen the light of the day. In the meantime, that Ministry is performing functions it should not be performing. What has the Ministry of Devolution and Planning got to do with the National Youth Service (NYS)? If I remember well, the NYS should be either in the Ministry of Interior and Coordination of National Government or if it is an educational thing, it should be in the Ministry of Education.

If I remember the original philosophy behind the NYS, it is a service in which people coming from high schools or even universities could go and get certain practical skills that they could use either as individuals or in groups when they are out there in life. However, that is not what is happening.

Mr. Temporary Speaker, Sir, I think that this is of great concern to Kenyans because we would like governmental structure and systems to follow the Constitution. We all swore to support this Constitution and it is important that we do that. I am glad that we are going to interrogate the system of budgeting and looking at how these divisions of functions are being operationalised in the budget making system. I think that for the next budget, we should start very early and ensure that we cost functions and work with the necessary governmental agencies in costing these functions in detail before such a Bill is brought to this House. It should not be an exercise in futility but in reality.

The other thing that we need to do and this is with regard to the counties, is that if we are going to put a budget for a programme like irrigation, for example, the requirement for irrigation in a place like Turkana County is obviously much higher than

the requirement for irrigation in Kisumu County. This is because that county is vast, more arid and, obviously, if you are going to get water, perhaps you have a much more difficult task. However, in Kisumu County, if you are going to do irrigation, we have River Nyando, River Awach and Lake Victoria. So, we have to allocate the resources according to the needs of a particular county.

There is something that has now up come called programme budgeting which can be very deceptive, because you can allocate a certain amount to a certain programme holistically and when you begin repartitioning that money into specific projects, certain projects which demand more money than others may get less. I think that this is the point that Sen. Hassan was trying to make in this House; that please let the budgetary allocation look at the present needs and the past lost opportunities which could help improve the productive forces better in a particular place.

Mr. Temporary Speaker, Sir, the whole idea of marginalisation is that certain regions and places could have missed opportunities before. I remember Sessional Paper No.10. If you read it, you will see that the philosophy was very clear; we want to put money where it will earn the maximum return. That was Tom Mboya's argument; that if we are going to develop Kenya fast, let us put our investments where the returns are higher, which is a good capitalist argument, that you put your money where returns are higher. That means that where the returns are low, too bad; that can wait. However, that means that over time, where the returns are higher, they will continue going higher while where the returns are low will stay behind.

I think that the whole idea in this Constitution, about equity and inclusivity, is that we should readdress this issue because where you think that returns are low could actually prove to be a very high potential area. For instance, for a very long time we have ignored Turkana, yet today everybody is running there for every piece of the earth because there is oil there. The mistake that was made before of not building roads or putting water resources, we now find that we left things undone which are now very necessary, because we have suddenly discovered that the place has higher use value than we thought it had before.

Mr. Temporary Speaker, Sir, I think that this process of budget making, and I am just trying to elaborate on Sen. Hassan's argument, is important that. At the moment, it is rather superficial. The amount of money allocated to the counties, Kshs280 billion, compared to the functions that the county is expected to do, is very sad indeed. It means that we are going to be very perfunctory in the way in which we hold the countries to account. We are giving them very little money and most of it is going to be used in recurrent expenditure; where the rubber hits the ground, very little difference will be made.

For example, in my county, I would like us to invest a lot of money in agriculture, not just to improve the one that exists and know today, but to research into other forms of seeds which are high yielding, invest in traditional vegetables which are much more nutritious and better to health, make sure that the marketing of those traditional vegetables is there and begin preservation process for example pulping of mangoes.

**The Temporary Speaker** (Sen. Murkomen): Your time is up.  
Please proceed Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. I join my colleagues who have supported the County Allocation of Revenue Bill (Senate Bill No. 5 of 2015). This is because it is what is now going to release the funds that the governors have been waiting for in order to build the counties. Right now, the governors and their teams are waiting for these funds. The moment their hands land on these funds, you will see a lot of flurry of activities rotating around one man, because I know there is no woman who is a governor. They forget where the money has come from and what it has taken.

Mr. Temporary Speaker, Sir, let me revisit the total budget that has just been passed last week by the National Assembly and was assented to, which was about Kshs 2.1 trillion. We, as the Senate, struggled to convince everybody to the point where we lost funds which were supposed to assist us to oversight the usage of the Kshs291 billion allocated to counties, which is equivalent to Kshs0.29 trillion. In this budget, there is some Kshs35 billion that has gone as Constituencies Development Fund (CDF), which is equivalent to 0.035 trillion. I am equating to trillions because the money that is going to remain in the national Government this financial year alone is Kshs1.775 trillion as opposed to Kshs0.29 trillion going to the counties.

If we were genuine enough as Kenyans, since one budget is done per year, what is written in the Constitution, states that we are only supposed to be dishing out money to the counties based on the last audited accounts. The last audited account is as old as two years ago.

*(The Temporary Speaker  
(Sen. Murkomen) left the Chair)*

*(The Temporary Speaker  
(Sen. (Dr.) Machage) took the Chair)*

That amount that we were sharing is now based on a figure that is very old and it is because the National Assembly has refused to work. Why? They have been cheated with the Constituencies Development Fund (CDF) and have stagnated to become like the watchdog and protector of the money that remains in the national Government, which is Kshs1.775 trillion, this year. We are told by the Constitution – I am now thinking that we should be ready to go on a referendum to change it – that this financial year, we are basing the distribution on the audited accounts of 2012. This was the year when I was still a Permanent Secretary (PS) and June 2013 when we had been in the Senate for just three months – March to June, 2013. These figures are that old and we should not be cheated because this Government is digital. Do you remember we were told that even Class One pupils will be given laptops? This means any child above Class Two knows how to operate a computer.

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Mr. Temporary Speaker, Sir, the Senate should read a lot of mischief in what the National Assembly is doing. We should have been talking about the last audited accounts being last year, 2014/2015 and those figures should be with the Treasury. Had we done this, the money would have been more. We are now being told that it is 33 per cent, but 33 per cent of what? If we were to calculate using the raw data which is Kshs2.1 trillion as opposed to Kshs0.29 trillion, we are talking about 13.9 per cent. The opposition talks about 15 per cent minimum but it is a minimum of something which is not making sense. Somebody can just wake up and say, no audited accounts at all, use the audited accounts of 2012 until you finish in 2017. The Senate should pronounce herself here and say that we need correct figures for people to get money.

As I mention this, I see that two types of funds have been given – the Conditional Allocation and another called Conditional Additional Allocation; very interesting one. The Conditional Allocation that we know was going to Level 5 hospitals and it will go to only 13 counties, amazingly, because the 13 level 5 hospitals are found in some 13 counties. It is time the Senate, the National Assembly and the national Government began to see that we have devolved health function and we should have a minimum 47 Level 5 hospitals equipped to the required standards.

Mr. Temporary Speaker, Sir, last year, Kshs13 billion was supposed to go to the Tana Delta Irrigation Project (TDIP) where 1 million acres were supposed to be irrigated. Nothing was done and the money was returned this year. Also, Kshs17 billion had been set aside to purchase laptops for children but it has been returned. Suppose we re-allocated that Kshs30 billion, we would have quickly upgraded all county hospitals and our people would have gotten services closer to them.

For example, in my county of West Pokot, there is no Level 5 hospital. The nearest is found in Kisumu County and another in Nakuru County. How can my people move from Kapenguria, cross Trans Nzoia and Uasin Gishu counties to go and crowd Nakuru County? How many counties are crowding in Nakuru County? They are very many; over 14 counties. This is because of that hospital that we are giving Kshs377 million to upgrade it to the required standard. By the time you reach there, how much money has the county spent to ferry sick people all the way from where they are?

In the next allocations, the Senate should look at the formula that we rejected recently. We will then come up with an appropriate formula that will look at Kenya from Lokichoggio to Mombasa, Migori to Mandera and across the country rather than looking at where human beings are crowding. We need to look at how we can open up some regions so that people who are crowded like in Kisii, should go to West Pokot and do business there because they have the skills. How do they get there when there is no water, irrigation, roads or electricity?

As we move forward to approve this County Allocation of Revenue Bill, 2015, we must ask ourselves how that can be done. I have talked about Conditional Additional Allocation for Level 5 hospitals and roads. However, it has a very strange connotation where they say that the national Government and county governments will have an inter-



governmental agreement in line with Article 187 of the Constitution on how that money will be spent and how to access it.

This is new drama. How do we approve money here and then you come with conditions that the CEC or governor in charge should do this and that? This will bring nepotism and toll stations along the way because some people will not reach Nairobi. Imagine how much the Governor and people of Turkana spend to come to Nairobi to access this money. After we approve and the money is released, we should have rules and regulations that can be used to monitor how they have spent the money.

Mr. Temporary Speaker, Sir, I am happy that the Senate has sat and listened to my plea as the Senator for West Pokot County and given me this money. The money that will go to my county for free maternity health care is Kshs41 million. I see that I am also listed for Kshs95 million, money that will go toward leasing of medical equipment. On top of the Kshs4.2 billion that we have been given, I also have conditional allocation to compensate the county government for user fees revenue – money that they have forgone as a result of not charging people in hospitals. I have Kshs11 million conditional allocations for maintenance of roads. This year, my ratio of funds has risen from Kshs3.5 billion that went to West Pokot County last year to over Kshs5 billion.

I am a bit cautious when I now reach this point. Two days ago, my county government advertised for positions of employment just because they heard a rumor that the Senate will add money to counties and that Senators have fought until the money has come. County governments have turned that little money that we send to them as employment bureaus. Instead of looking for experts who can do things digitally and who know what they are supposed to do, they are employing everybody who is running around in vehicles. This is something that must come to a stop. Otherwise, we will waste this money.

Again, I do not know if you have noted that it is being said that county governments are doing a lot of development. The development that they are doing is constructing Government buildings. That is not development. You are coming up with a building that is not going to generate money. It will require employment of human resource to be there, they will have to be paid a salary and they compete for this.

Mr. Temporary Speaker, Sir, we require that every county should identify a niche product that can sell their county and put more of their money there. That way, people can be employed when they process the product. Your county is very close to Lake Victoria where God has given you fish for free. Has anything been done to process this fish? In West Pokot, we love cows including the horns and hooves. Nobody has taken advantage to see how they can be utilized. We should tell governors who are thinking that the money belongs to them, that this money should be used to develop the capacity of the people in a way that they can even set up their own businesses, for example, coming up with co-operatives and small groups which can access funding and do businesses.

Lastly, the amount of money which is going to CDF is now a complete replica. They are now trying to struggle to know what to do. Yesterday, I read an article in the newspaper where the Deputy President was directing Members of Parliament to devote

95 per cent of CDF money to constructing classrooms for primary and secondary schools, which is a function of the national Government. I am wondering aloud because the Deputy President is not a Member of Parliament, how does he give instructions and yet he is not a Leader of Majority or Leader of Minority nor the Speaker of the “Lower House”.

Mr. Temporary Speaker, Sir, this action led me to the understanding that the National Assembly has completely lost direction and is now working with the national Government to bring problems on the ground. The Senate should demand that the CDF money should be rechanneled to the county governments and the Sang Bill with regard to County Boards should be operationalised so that the Members of Parliament, Senators, Women Representatives and Governors should sit three to four times in a year to discuss how this money is spent. Right now, I am the one talking on behalf of the people of West Pokot because I represent them here, but as soon as the county government receives money, the Senator becomes past tense. We want to see how this money can be utilized for the benefit of the people.

I agree with you, Chair, when you spoke as the Senator for Migori that as we draw near to 2017, some people must go home first before the election period starts. How do you shut out the person who has brought the money? I was surprised the other day to see a small plot in Kapenguria Town full of houses.

I support.

**Sen. Madzayo:** Asante sana, Bw. Spika wa Muda, kwa kunipa nafasi hii ili niunge mkono Mswada huu wa ugawaji wa hela kwa serikali za kaunti 47. Hakuna kisicho na kasoro isipokuwa Mwenyezi Mungu, na Mswada huu wa ugavi wa pesa katika mashinani pia una kasoro fulani ambazo ingekuwa vizuri zichambuliwe kwanza kabla ya kuupitisha.

Pesa tunazopeleka mashinani ni pesa nyingi sana; Kshs259 billioni. Tunawaeleza magavana kwamba pesa hizi si zao. Inafaa wakae wakijua kwamba pesa hizi ni za wananchi waliowachagua katika zile kaunti. Lakini kuna mtindo ambao tunauona hivi sasa, ambao unaendelea mpaka kila mtu katika kaunti, hivi sasa ukimuuliza atakueleza kwamba pesa zinazokuja mashinani ni pesa za gavana ilhali pesa hizi ni za wananchi. Majukumu haya yako kwa wananchi wenyewe kuangalia pesa hizi ambazo tunazipeleka katika mashinani ikiwa zinafanya ile kazi inayotakikana. Kama hazitumiki kiusawa, wana jukumu kama wananchi kusema kwamba pesa hizi zinazokuja mashinani hazitumiki sawa sawa kwa maana tunaona mtafaruku. Wananchi wanalalamika kwamba Maseneta wamenyama huku pesa zinatumika vibaya. Hili sio jukumu la Seneta peke yake bali pia ni jukumu la wananchi wenyewe wanaotengewa zile pesa.

Bw. Spika wa Muda, pia katika ugavi wa hizi pesa, tunasema kwamba Bunge za kaunti zitengewe pesa za kutosha ambazo zitawawezesha kujikimu na kuongeza ujuzi katika vikao vya kutembelea bunge zingine. Hii ni kwa sababu serikali ya mashinani inaangaliwa, hasa zaidi na Seneti. Kama nilivyosema hapo awali, katika mengi mazuri yaliyoko hapa, hakukosi kasoro. Sisi kama Wakenya tunasema kila siku kwamba Kenya ni moja, sisi ni watu wamoja au ndugu mmoja. Lakini ukiangalia zaidi, ugawanyaji wa

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kazi katika Serikali ya Kenya hata katika Serikali Kuu ni ugawanyaji umelemea upande mmoja.

Taifa hili lina makabila 42 na sisi tunamhimiza Rais aweze kuangalia ili makabila yote yapate kazi. Vile vile kwa upande mwingine, hata hivi juzi tuliona kwamba kuna mahali pengine ambapo watu ni wanyonge. Lakini tunasema kwamba kuna tofauti ya mbavu na mtu mwenye kifua kilichopanuka. Kila mtu ni binadamu na ni Mkenya.

Kwa hivyo, ni lazima kila mtu apewe heshima yake. Juzi kuna mhandishi anayeitwa Beja wa Beja ambaye alifanya *interview* katika Public Service Commission (PSC) lakini jambo la aibu ni kwamba kati ya watu sita, yule aliyekuwa wa nne ambaye anatoka sehemu ya Milima Kenya alipewa nafasi hiyo na wakamwacha Beja wa Beja sijui kama sababu ni kwamba anatoka pwani. Ukiangalia zile hesabu kulingana na wale waliowakagua wakati wa *interview*, Beja wa Beja alichukua nafasi ya kwanza katika mahojiano ya uteuzi wa Chief Mechanical Engineer katika nchi ya Kenya. Hivi sasa tukisema ya kwamba sote tuko wamoja, je, huo ni ukweli? Huo si ukweli hata kidogo.

Bw. Spika wa Muda, kumekuwa na kilio kikubwa sana; watu wa kutoka pwani wakidai kwamba pwani si Kenya kwa sababu ya mateso wanayoyapitia. Vikundi vingi kama vile Mombasa Republican Council (MRC) wakiambiwa kwamba hao ni watu wabaya. Lakini mimi ninakanusha maoni haya. Kilio ni kwamba watu wa pwani wanataka mashamba yao na kupewa kazi katika Serikali Kuu. Hiki si kilio bila sababu.

Bw. Spika wa Muda, tukizingatia upande wa kazi, kampuni za *Export Processing Zones Authority (EPZA)* zinaangaliwa sana na ndugu zetu matajiri wa Kihindi na Kichina. Wafanyikazi katika kampuni za EPZA wanateseka sana. EPZA iliyoko Mazeras katika Kaunti ya Kilifi huwataka akina mama wanaofanya kazi pale wafanye kazi kwa masaa kumi na mbili badala ya kufanya kazi kwa masaa manane. Masaa manne ya ziada hayahesabiwi. Hayo ni mateso kwa wafanyakazi. Kwa hivyo, lazima Serikali iangalie mambo hayo na irekebishe hali hiyo.

Bw. Spika wa Muda, hatuko hapa kuongea mazuri ili kuwasifu watu walio katika Serikali. Sisi Wabunge wa Upinzani hatuko hapa kuongea vile tunavyofikiria ama jinsi Serikali inavyotaka tuongee. Tutaongea mambo yanayohitaji kujenga Wakenya. Lolote liwalo, Kenya itakuwa ya kwanza kisha nafsi zetu zitakuwa nafasi ya pili. Hata hivyo, ikiwa tunataka kusaidia Kenya na kuijenga nchi yetu, lazima tupendane. Vile vile, ni lazima nafasi za kazi na maendeleo kama vile ujenzi wa barabara kila mahali utolewe kwa usawa.

La uchungu ni upande wa mashamba. Kama kuna watu walioathirika tangu Uhuru upatikane ni watu wa pwani. Kuanzia mwaka wa 1963 tulipopata Uhuru, ardhi za watu wa pwani zilipeanwa kama zawadi. Sijaskia kama kuna mahali popote nchini Kenya ambapo ardhi ilipeanwa kama zawadi. Lakini katika pwani ya Kenya, pindi tu *the 10 mile strip* ilipoondolewa, ardhi hiyo ya ufuo wa pwani ilipeanwa kama zawadi. Ikawa ni Rais pekee anaye uwezo, katika Katiba, wa kutia sahihi ili mtu apate shamba.

Bw. Spika wa Muda, ni jambo la kusikitisha kuona kwamba hivi leo, hakuna mtu hata mmoja wa pwani aliye na hata inchi moja ya ya ufuo wa bahari. Hilo ni jambo la kusikitisha sana kwa kuwa ni zaidi ya miaka 50 tangu tupate Uhuru. Hakuna mtu yeyote

wa pwani ambaye ana hoteli. Itakuwaje hivyo kisha tunasema kuwa sisi sote ni Wakenya na kwamba kila kitu kiko sawa? Hilo halifai. Ikiwa tunataka Wakenya wawe sawa sawa, mashamba ya pwani yaliyonyakuliwa huko yaregeshwe.

Hivi juzi katika *Chakama Settlement Scheme*, kuna orodha iliyoundwa. Orodha hiyo ililetwa Nairobi na sasa imebadilishwa. Majina ya wenyeji ambao ni Wagiriama yameondolewa na majina ya watu wengine yakawekwa. Mambo kama hayo yanafanyika ilhali tunasema kuwa sisi sote tuko sawa. Haiwezi kuwa hivyo. Hii si Kenya tunayotaka kujenga. Hatatukuwa kama ndugu endapo mambo kama hayo yanafanyika.

Bw. Spika wa Muda, nitagusia sehemu ambazo tuliona pesa zikigawanywa. Ugavi wa kutengeneza barabara katika nchi yetu ya Kenya hauko sawa. Kutoka Kilifi hadi Ganze ni mahali pa dakika ishirini. Hata unaweza kwenda kwa miguu na bado utafika lakini barabara ni mbaya. Kuanzia miaka yote tangu tupate Uhuru mpaka leo, Ganze haijakuwa na barabara ya lami. Hilo halikuwa jukumu la serikali za mashinani bali la Serikali ya Kuu. Ni lazima sote tuwe sawa na tuwe kama ndugu katika nchi ya Kenya. Ni lazima mtu yeyote atakayekuwa na hatama ya uongozi aone ya kwamba ugavi wa raslimali, fedha za kutengeneza barabara na fedha za maendeleo unaenda kila mahali katika nchi ya Kenya.

Bw. Spika wa Muda, bidii tuliyoifanya kama Seneti ni kubwa kuona kwamba serikali za mashinani zimeongezewa pesa. Hivi sasa, tumeongezea zaidi ya *Ksh94 milioni*, hususan, ni *Kshs93,617,021*. Pesa hizo ambazo tumewaongezea si kidogo. Hata magavana wenyewe wameona kwamba tuko tayari kuumia kwa sababu ya kaunti zetu. Mimi niko tayari kuhakikisha kwamba kaunti yangu imepata *Ksh94 million* ilhali nimepokonywa pesa ambazo zingenifaa kuweza kuangalia kazi inayoendelea mashinani. Hiyo si adhabu kubwa. Kama adhabu ni kwamba watu wangu wa Kaunti ya Kilifi watapata haki yao, basi niko tayari kwa adhabu hiyo. Niko tayari hata kama sitapata chochote lakini *Ksh94 million* zipelekwe Kilifi ili zisaidie watu wa huko. Hata hivyo, siko tayari kuona pesa hizo zikitumika vizuri wakati zitafika mashinani.

Pesa hizo zilipewa katika kaunti zetu kwa minajili ya kusaidia hospitali zilizoko nyumbani. Pesa hizo zinafaa kutumika kwa maendeleo kadhaa wa kadhaa. Tunaomba magavana watumie pesa hizo kwa uangalifu kwa sababu uchaguzi mwingine ukija, huenda tukalaumiwa. Tutaulizwa hivi, “Seneta, mwenzako alikuwa akileta pesa fulani, wewe ulileta ngapi? Mambo kama haya tunayaona tunapokwenda katika shughuli za kuchangisha pesa. Gavana anaweza kutoa *Ksh300,000* ilhali Seneta anatoa *Ksh20,000* zake binafsi. Atakayethaminiwa na watu ni nani?”

Magavana hawataki kuambia watu kuwa pesa wanazotoa katika shughuli za Harambee zinaletwa na Seneta. Hawana asante. Asante kwetu imekuwa ni asante ya punda. Ukweli wa mambo ni kwamba wanapopata pesa hizo, lazima washukuru kwamba wamepata pesa ambazo zimeletwa na Seneta kusaidia katika maendeleo katika kaunti zetu.

La mwisho, Bw. Spika wa Muda, ni kwamba Gavana wa Kaunti ya Mombasa hapewei nafasi ya kusema katika Bandari ya Mombasa. Itakuwaje wewe mwenye nyumba usiwe na uwezo wa kuongea ya kwamba unataka makochi fulani katika chumba

chako au unataka kiwe kwa njia fulani? Ananyimwa kufadhili. Kama ni kutengeza barabara, basi Mombasa iwe ya kwanza kwa sababu ya Bandari ya Mombasa.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order.

*(The Temporary Speaker (Sen. (Dr.) Machage)*

*consulted with the Clerks-at-the-Table)*

**Sen. Chelule:** Asante sana, Bw. Spika wa Muda, kwa kunipa nafasi HII ili nichangie Mswada ambao umeletwa katika Seneti kuhusu Ugawaji wa Rasilmali. Nilikuwa nikiangalia na kusoma kwa undani kuhusu vile pesa katika nchi hii zimegawa ili zitumike katika serikali za kaunti. Neno moja ambalo ningependa kuwambia viongozi katika kaunti zetu ni kwamba waangalie jinsi pesa hizo zitatumika. Najua kuwa sisi sote tuna haja ya kuhakikisha kwamba pesa hizo zimetumika vizuri kwa manufaa ya wananchi wa Kenya.

Nawaambia viongozi kule mashinani; wakilishi wa wadi wanaojulikana kama *Members of County Assemblies (MCAs)* ambao walichaguliwa na wananchi kuwa hizi ni pesa ambazo tunakusanya kutoka kwa wananchi wa Kenya katika Serikali yetu ya Kenya. Wananchi wanangoja pesa hizo zitumike kwa njia ambayo itawanufaisha.

Tunajua kwamba katika nchi yetu ya Kenya kilimo kinachangia sana katika maendeleo ya taifa letu. Watu wengi katika nchi yetu ya Kenya wanashiriki kilimo cha aina mbali mbali. Kuna wale wanakuza mahindi, pareto na viazi. Pia, kuna wafugaji wa ng'ombe. Watu hawa wanafaa kushughulikiwa sana. Kwa hivyo, magavana na serikali za kaunti zinafaa kutumia pesa za wananchi kwa njia ambayo itawafaidi.

Mswada huu umetaja mambo ya watoto mayatima, wajane na hata wazee. Pesa zikifika katika kaunti vikundi hivi vinafaa kufaidika. Mara nyingi pesa ambazo zinawalenga mayatima haziwafikii. Hivi sasa, kuna mayatima ambao wako nyumbani kwa sababu ya ukosefu wa karo. Kama asilimia 30 inafaa kuwafikia wananchi. Ninashangaa kwa nini asilimia 70 inabaki kwenye kaunti. Ningefurahia sana kama asilimia 40 au 50 ingeenda kwa maendeleo kwa sababu inalenga wananchi wengi. Jukumu la viongozi ni kuhakikisha kwamba pesa zimewatumikia wananchi vile inatakikana.

Bw. Spika wa Muda, ningependa pia kugusia vile pesa zinatumika. Utashangaa kuona pesa ambazo kaunti imepewa zikirudishwa katika Hazina kuu kwa sababu ya sheria zinazohusu matumizi ya pesa, ilhali wananchi kule mashinani wanaumia. Kwa hivyo, mipango na sheria za matumizi ya pesa zinafaa kuzingatiwa ipasavyo. Kwa mfano, ikisemekana kwamba Kaunti ya Nakuru inafaa kupata Ksh7 bilioni, ambazo zikitumika vizuri wananchi watasaidika, pesa hizo zinafaa kutumika ipasavyo. Kwa hivyo, natoa mwito kwa viongozi wote katika kaunti zote kuhakikisha kwamba wakati pesa zinapowafikia zinatumika kwa njia inayofaa ili Wakenya waweze kunufaika.

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Kuna pesa ambazo zimetengwa kama “*conditional allocation*.” Lazima kuwe na usawa katika ugavi wa pesa hizo. Kwa mfano, Kaunti ya Nakuru itapata Ksh103 milioni ambazo zinalenga ukarabati wa barabara. Barabara nyingi nchini ziko katika hali duni. Kwa hivyo, pesa hizi zinafaa kutumika vizuri sana. Wananchi pia wanafaa kuelimishwa kuhusu pesa hizo. Kabla bajeti za kaunti zipitishwe, lazima kuwe na mikutano baina ya wakilishi wa bunge za kaunti na wananchi. Mwito wangu ni kuwa kila mwananchi anafaa kuelimishwa kuhusu pesa ambazo Serikali kuu imetengea serikali za kaunti. Wanafaa kujua pesa zipi zinalenga mambo gani ili waweze hata kujihusisha katika matumizi ya pesa hizo.

Bw. Spika wa Muda naunga mkono Mswada huu.

**Sen. Ong’era:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to make my contribution to the County Allocation of Revenue Bill, 2015, which I support.

Even as I support this Bill, I am very saddened to see the manner in which the counties are spending these resources. Specifically, I am saddened in terms of how the procurement policy in the counties is being effected. You will find that in many counties today, there are so many briefcase contractors. You will find that the very officers who are working in the counties, who we have entrusted with these resources, are actually the owners of these briefcase contractors.

As we approve the allocation of this money, we want to see a clear procurement policy in the counties. There should be equitable allocation of resources. We know that there is a requirement that 30 per cent of the contracts awarded are reserved for women. I am yet to see a county where women have actually benefited from those contracts. What is happening is that, indeed, there could be names of women during the tendering, but the real owners of those contractors are neither women nor persons with disabilities. That clearly indicates where this money is going.

Mr. Temporary Speaker, Sir, I would like to see the officers, who are also the briefcase contractors, being arrested. There should be a clear policy on how to deal with corruption in the counties. We want to see clearly how the counties are spending their revenue. We are yet to see how much revenue has been generated from the counties. I read the report where the Commission on Revenue Allocation (CRA) was actually complaining that the fees or revenues, which are being generated from the counties, cannot be accounted for.

We do not want just to be giving money from the national Government without seeing a clear policy and how revenue is being generated in the counties. We do not want to see counties returning money to the national Government. There is no use for us fighting so hard, including allocating an additional Kshs3 billion to the counties - the distinguished Senators have actually been made the sacrificial lambs by losing their Kshs1 billion – then we find at the end of the financial year, the governors returning money back to the national Government.

Mr. Temporary Speaker, Sir, I want to speak about Nairobi City County which received the highest allocation in the current and last financial years. I was saddened to

read in the World Bank report that Nairobi was amongst the lowest spenders of revenue on development, yet we have allocated it one of the highest amounts of money in this Bill. We want to see other counties also, including Turkana County, spending the money that we are allocating them on development projects. We also want to see the revenues which have been collected. For example, we know that they have a natural resource in oil. We would like to see Turkana County beginning to tell us a different story.

We visited Turkana County last Friday with the Committee on Devolved Governments. We were saddened to see that the Governor did not even have the presence of mind to wait for our distinguished Committee and show us the developments that they have done in that county. In Turkana, we are yet to see even a road being constructed within the town. We were shown a tarmac road which is 400 metres long which was constructed from the airport up to the county assembly. It is a shame to give counties so much money and we cannot see tangible development.

Mr. Temporary Speaker, Sir, in Kisii County, for example, I would like to see that the procurement of services and goods is properly done. We do not want to read in the newspapers everyday that there are some contractors who have colluded with officers within Kisii County to be awarded contracts. We want to be assured that, indeed, the resources that are being given are properly spent.

We want to see the County Public Accounts and Investments Committee which is chaired by Sen. (Dr.) Khalwale, bringing us reports of how these resources are being spent. Are there clear audit systems that have been set up by these counties? Are there clear ways in which this money is being spent?

Mr. Temporary Speaker, Sir, it is sad to see that many governors are spending the money that we are allocating in employing many people. We do not want to say that we do not want our youth out there in the counties to be employed but we do not want to see a county that is burdened with over-employment. We do not want to see thousands of these people having been employed and yet they do not have enough money to pay them.

I speak about this because today in Kisii County, we know that the County Assembly employed 400 young people yet they do not have money to pay them. To date, these young officers have been working without being paid for over six months. This is a very sad situation. These are the kind of issues that we expect to be interrogated so that we can put a final rest to these issues.

As I finally conclude, I would like to speak a little bit on county inequalities. One of this is on the question of health. We all know that we all want to have good health services in our counties and this is why we devolved health services. It saddens us to realise that today in Kenya, the Government policy has been that there should be 36 doctors to every 100 people. That translates to 1 doctor to 2,778 people. If you compare the number of health workers *per capita* across counties, we can see that there are substantial inequalities.

Mr. Temporary Speaker, Sir, you are a doctor and you cannot expect that one doctor per 400 people, for example, in Uasin-Gishu can be enough; you cannot expect that one doctor per 378 people in Kisii County can service our people correctly.

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We want to be assured that there are enough resources for paying our doctors and nurses. We should have more human resources in the health sector being devolved to the counties so that our people can receive good health services that they need without the doctors having to strike because they feel that they have not been paid. Some of them have been given facilities that are below standards. We want our doctors and nurses to be comfortable so that they can give us the good services.

The second thing on inequalities is costing. It is true that there is no costing of services in Kenya. It saddens me that the Commission on Revenue Allocation (CRA) and the National Treasury has not done real costing of this Budget. I hope that the next time when they prepare the Budget, it will be based on real costing and not estimates so that we can interrogate a Budget that we are sure on how it has been arrived at.

Mr. Temporary Speaker, Sir, I hope that the CRA will set up a series of public forums on revenue sharing so that our people can clearly understand how the principle of revenue sharing is acquired and the issues that Sen. Hassan spoke about in terms of inequalities especially in the marginalised counties are clearly addressed and we can understand how we can resolve these issues.

We need to think about the marginalised counties seriously. We have just finished our tours in these counties with the Committee on Devolved Government. We visited Tana River, Wajir, Garissa, Mandera and Turkana counties. Some of the things that we saw in these counties; they really need help so that they can have enough resources to develop.

We have also seen very beautiful stories especially in Tana River County whereby with the meagre resources they have received, they have very good development plans in terms of road and health sectors.

I beg to support.

**Sen. Sang:** Mr. Temporary Speaker, Sir, I register my support for this Bill. The County Allocation of Revenue Bill is one of the greatest moments for the Senate because we are discussing an important Bill that ensures that the monies that we allocated through the Division of Revenue Bill gets to our counties.

This year, the County Allocation of Revenue Bill comes at a time when we have had a very protracted dispute between this House and the National Assembly in the passage of the Division of Revenue Bill. I am proud that though we lost the Kshs1 billion allocated to the Senate to carry out oversight, which led to an increase of Kshs.3.3 billion to the counties. I am excited that all the speakers on this particular matter made it clear that as Senators, we are willing to pay the cost of ensuring that we support devolution in this country.

However, it is important to note that as we send these resources to counties, the county governments have to be genuine and honest in the utilization of these resources. A lot of things have been said. This is one of the ways through which the Senate carries out its mandate of sending monies to counties.

It is absurd to find sometimes that county government staff, Members of County Assemblies and even governors questioning the responsibility of this House knowing



very well that all these counties will not receive their annual revenue allocation without the Senate sitting down and working on the County Allocation of Revenue Bill.

Therefore, it is important that county governments appreciate the role being played by the Senate. We were willing to even sacrifice our own oversight resources. My appeal to the county governments is that whereas the Senate has lost the Kshs1 billion which was meant for oversight, the best the county governments can do is to ensure that they utilize the Kshs286 billion that we are sending to counties without the need for oversight. They should be able to utilise it in an accountable manner. I am proud that in the first allocation, Nandi got Kshs3.4 billion. In the second year, we managed to increase those resources to Kshs4.2 billion.

In this financial year, we are increasing that allocation for Nandi County from Kshs4.2 billion to Kshs5.1 billion which constitute Kshs4.7 billion directly to the county, Kshs332 million conditional allocation and Kshs18 million towards ongoing donor projects within the county. Really, Kshs5.1 billion is a lot of money and I hope that this amount will change the lives of people in Nandi.

This can only happen if county governments will cap their spending on Recurrent Expenditure. Many counties in this country spend over 60 per cent of the resources on Recurrent Expenditure despite the fact that we have legislation under the Public Finance Management (PFM) Act which says that at least 30 per cent of those resources must go to development. I do not expect that the county governments will work with the bare minimum of 30 per cent allocation going to development. The sole responsibility and objective of devolution was to change lives at the county and grassroots levels.

This can only be achieved by increasing the amounts of resources going to development expenditure as opposed to recurrent expenditure. We know that there is an increase from Kshs226 billion to Kshs286 billion for counties. We want to appreciate the fact that these resources are still not enough. However, a prudent county government has to work on the prioritisation of the projects to engage in.

Mr. Temporary Speaker, Sir, it is saddening as was said by many Senators as they contributed to this Motion that county governments are allocating Kshs300 million to construct palatial homes for their governors. They are spending Kshs146 million to buy a house for the deputy governor and spending Kshs54 million as entertainment allowance for the governor's office while in the same county, the residents have to go for many kilometers to Level 5 hospitals in other counties to access dialysis services from those hospitals. A county government has to be prudent in the way they spend the little resources that they are receiving. They should prioritise and put enough recourse to health which is a fully devolved function.

In my county, we do not have a dialysis machine in any of the health facilities. So, a patient would have to travel for three to four hours from Tinderet or Kobujoi to Moi Teaching and Referral Hospital, Eldoret. For example, people with kidney challenges that have to go through dialysis have to travel twice a week. It is already draining for somebody to be in the dialysis machine for two hours once or twice a week. If you

include the energies they have used to travel for three or four hours, you will see that lives of those individuals are put at a risk.

I hope that the county governments will prioritise medical equipment. I know that there are agreements between the national Government and the county governments on the leasing of this equipment and the quipping of two medical facilities in each of the 47 counties with modern equipment. I expect that county governments, those in the agricultural regions, for example, my county, will allocate enough resources for agriculture. If we want to change the lives and improve the living standards of people in our counties, we must identify the key economic activities. I look forward to my county government allocating adequate resources towards employment of agricultural extension officers and agricultural health officers who will service our farmers within those areas.

I expect to see the county government putting enough resources towards Artificial Insemination Services within the county, so that we help our farmers and residents in our counties to elevate and push them towards economic stability through the economic activities that they engage in.

Mr. Temporary Speaker, Sir, many farmers are unable to access markets because of the poor state of infrastructure. We hope that county governments will prioritise infrastructure in their budgets. I want to also caution our county governments as they do the budgeting process, they should concentrate on devolved functions and leave the national Government functions to the national Government. This year, the Cabinet Secretary for the National Treasury read a Budget Statement of Kshs2.1 trillion. We are only giving county governments Kshs280 billion. The other remaining budget is left to the national Government.

Why should the county governments be expending very little resources that they are getting to fund national Government functions? I hope we will not see county governments putting their own resources towards security and building airports which are national Government functions. There is a craze across the 47 counties to build universities. They should negotiate with the national Government but it is important for them to focus first on the functions that have been devolved before they can go on to start looking at the national Government functions.

Mr. Temporary Speaker, Sir, one of the greatest challenges that the county governments are facing right now is inability to collect local revenue. It shocks that the county governments are performing worse than the local authorities were doing in terms of collecting revenue. County governments must seal some of these loopholes and generate local revenue to support some of the development projects within the counties. We are told of situations where in the markets, there are official receipts to collect revenue to the counties. However, there are fake receipts that are being issued under the hands of the some of the county staff. We hope that the county governments will seal all those loopholes and ensure that they collect all the revenues at the local level to increase investment opportunities and development work that is done within the counties.

Finally, most of the county governments have been unable to carry out meaningful public participation processes. For example, in the making of budget, if

someone tells you that there was public participation in a budget that lead to allocation of Kshs300 million towards the building of a palatial home for a governor, you are left wondering whether that was the case.

We need county governments to also develop some recourse towards ensuring that county assemblies and county governments engage members of the public in identifying the priority areas that they need to fund.

Therefore, these public participations must be meaningful. I would be excited to know that a county government or residents in a county would support the putting up of monuments at exorbitant cost as opposed to putting those resources towards buying of medicine for our hospitals. The component of public participation must be addressed within our county governments. Therefore, I call upon the county governments to ensure that they use the little resources that come to them for the benefit of the local residents. The spirit of the Senate is clear; that in the next financial year, we will allocate more resources to counties, we will not tire but we are also demanding accountability in the use of these resources.

I am happy that in this financial year, the budget to Ethics and Anti-Corruption Commission (EACC) and that of the Director of Public Prosecution (DPP) was increased. We also hope to see tangible deliverables from the EACC and DPP with regard to corruption issues in the counties. We must hold accountable members of the county executive and county assemblies engaging in corrupt activities because it is until we deal with these corruption cases in the counties, that we will get meaningful development at the county.

Mr. Temporary Speaker, Sir, with those many remarks, I support this Bill and appreciate the work that the Senate is doing in ensuring that counties have resources.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, I rise pursuant to the Standing Orders No. 54(3). Looking at the House, we have insufficient delegations. I, therefore, request you to kindly consider putting of the Question on the County Allocation of Revenue Bill (Senate Bill No. 5 of 2015) to Tuesday next week.

**The Temporary Speaker (Sen. (Dr.) Machage:** It is so ordered.

*(Putting of the Question on the Bill deferred)*

Next order!

*Second Reading*THE REPRODUCTIVE HEALTH CARE BILL  
(SENATE BILL NO. 17 OF 2014)*(Sijeny on 21.5.2015)**(Resumption of Debate interrupted on 26.5.2015)*

**The Temporary Speaker (Sen. (Dr.) Machage:** Sen. Sijeny, are you ready to reply?

Is there somebody who wants to contribute? Please, proceed Sen. Ong'era.

**Sen. Ong'era:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also make my contribution to this Bill. From the outset, let me state that I would like to congratulate my sister, Sen. Sijeny, for being very brave to bring this Bill to the House. I know that this Bill has received a lot of negative vibes, but I am very pleased to see that finally it was brought to the House and Sen. Sijeny stood the test of time to help many women who cannot speak about these issues.

The Reproductive Health Care Bill (Senate Bill No. 17 of 2014) is supposed to help all of us be it men or women. There are many myths that people have said about this Bill. Some said that it is the "Condom Bill" and others said that it was a Bill meant to make sure that our young children in schools take contraceptives. All these are myths that were brought about for lack of understanding with regard to what the intention of the Bill is.

This is one of the Bills that will help us in having an effective family planning way and will save many lives. There are hundreds of women who have been disadvantaged and do not have access to family planning services and information in this country. However, I know that through this Bill, some of these issues will be addressed.

Mr. Temporary Speaker, Sir, this Bill will contribute enormously in having a framework particularly, on the area where we have not dealt with clearly, on the reproductive area. Many women, especially those who have infertility issues have no clear policy to assist and guide them. There has been a myth that this Bill is supposed to help women procure unnecessary abortions. However, we are all aware that there are constitutional provisions with regard to the regime of how and when a woman can procure an abortion. This Bill goes ahead to provide for proper safeguards against which a woman can procure an unsafe abortion, by prohibiting termination of pregnancy on demand and providing that termination of pregnancy should only be carried out if there is a trained healthy care professional.

This myth made many of the churches think that this Bill provides for abortion.

**The Temporary Speaker (Sen. (Dr.) Machage:** What is it, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. The Senator indicated initially that there were a lot of myths that have been peddled against this Bill. However in her contributions, she mentioned something about procurement of abortions. I wonder if that is what is really captured within the legislation.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Sang. Can you be very attentive and listen to the contributors? I would order that you look for the HANSARD immediately to relook at what Sen. Ong'era has been talking about. I do not have to comment further than that.

**Sen. Ong'era:** Thank you, Mr. Temporary Speaker, Sir, for coming to my aid. I request the distinguished Senator for Nandi County, whom I have high esteem for, to listen to what I am saying.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Ong'era. I have already ordered on that.

*(Laughter)*

Please, proceed.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, this Bill, appreciates the need to help couples who cannot have their own children, due to medical reasons for one reason or the other, to utilize the available assisted reproductive technologies to bear children. As a lawyer, I can tell you that it is very important to have legislation that guides us around these new reproductive technologies; that we are able to know when a surrogate mother can claim that the child is hers.

We need to have a regime of law that can govern this new reproductive technology, so that people do not fight or kill each other when the biological mother claims that because she bore the child in her womb for nine months, that child is hers, yet she was a surrogate mother. These regimes are necessary and, therefore, this Bill goes a long way in establishing clear legislation that can help us in these issues.

With those remarks, I beg to support this Bill greatly and once again congratulate Sen. Sijeny for being very brave in presenting it before this august House.

**The Temporary Speaker** (Sen. (Dr.) Machage: I see no other interests.

I, therefore, call upon Sen. Sijeny to reply.

Please come to the dispatch box

*(Sen. Sijeny moved to the Dispatch Box)*

**Sen. Sijeny:** Thank you, Mr. Temporary Speaker, Sir, for guiding me to come here just in case I need to refer. I can see that Sen. Sang is in the mood of points of order.

I wish to thank my colleagues who have supported me in so many ways, especially those who have contributed to this noble and important Bill; starting with Sen. (Prof.) Anyang'- Nyong'o, who seconded the Bill, as well as you, The Temporary Speaker, who also contributed, Sen. (Prof. Lesan), Sen. (Dr.) Zani, Sen. Obure, Sen. M.

Kajwang, Sen. Okongo, Sen. Muthama and Sen. Ong'era. I have listened with keen interest and very attentively---

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Am I in order to request that Sen. Sijeny also gives a list of those people who supported the Bill by giving her moral support, good will and drummed up support for this even in the media? This is because she has just given the names of the people who contributed to the Motion, appreciated them and left out those of us who supported it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Sang, that would be your wish if you were seconding. Sen. Sijeny has her own pattern of how to present the conclusion of her Bill at this stage. I would rather you hold your horses and give her the opportunity to present it. She may wish to thank whomever you have in mind, but she may not have the list that you have in mind in hers at all.

Please, proceed, Sen. Sijeny.

**Sen. Sijeny:** Thank you, Mr. Temporary Speaker, Sir. All the Senators have indeed given me assistance here and there, advice; legal, medical, professional, some cultural---

**The Temporary Speaker** (Sen. (Dr.) Machage): Maybe mention Sen. Sang in person.

**Sen. Sijeny:** Sen. Sang, the Senator for Nandi County, has given me tremendous support and advice so often, and so has Sen. Murkomen, who walked away, as well as the Senate Majority Leader, Sen. (Prof.) Kindiki. Even as we were outside, we were debating on the same Bill, to make sure that all that Sen. Ong'era talked about, the so called myths, are no longer brought on board. That misinterpretation and some other things were just malicious.

Mr. Temporary Speaker, Sir, the Committee on Health has taken me through it all. They were there with me during the first public hearing. We have scrutinized the Bill left, right and centre and it has gone through a lot of proposals. There are few amendments which, of course, do not change the main object of the Bill, which I received from the Senate and other stakeholders. Now that I am in the process of appreciating the people who have assisted me, there are other stakeholders who also contributed tremendously to this Bill.

*(Sen. Sang crossed the Floor  
without bowing To the Chair)*

**The Temporary Speaker (Sen. (Dr.) Machage):** Order, Sen. Sang! Do you know what you have just done?

*(Sen. Sang bowed to the Chair)*

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**Sen. Sijeny:** Mr. Temporary, Sir, special thanks go to the Kenya Medical Women Association (KMWA) who showed a lot of interest in this Bill, shaped it up, and helped me understand medical issues. They are the people who dealt with it hands on, came in and supported it. They helped me reach other stakeholders like the inter-religious groups, Ministry of Health, other associations within the medical fraternity like the Nurses' Association and others.

The Kenya Legal and Ethical Issues Network on HIV/AIDS (KELIN), Pharmaceutical Society of Kenya (PSK) also supported this Bill tremendously. The Department of the Reproductive Health Network within the Ministry of Health also assisted a lot. The Kenya Medical Association (KMA), Kenya Health Care Federation (KHCF), the Association of Medical Engineering of Kenya (AMEK), Kenya National Commission on Human Rights (KNCHR), National Nurses Association of Kenya (NNAK), Reproductive Health Rights Alliance (RHRA), the personnel of the Nairobi Hospital and the Law Society of Kenya (LSK) for supporting and disseminating the Bill to all the lawyers within the country.

Mr. Temporary Speaker, Sir, we have also held several meetings with other stakeholders who are basically religious or faith based. That is, within the World Youth Alliance (WYA) who were accompanied by their lawyers, Lumumba and Lumumba Associates who arranged a meeting between the Kenya Medical Women Association (KMWA) and Inter-Religious Council of Kenya (IRCK). In the meeting with IRCK, all members comprising of religions from every corner of the country were present. The Pulse and Trustees, National Council of Churches in Kenya (NCCCK), the Supreme Council of Kenya Muslims (SUPKEM), Seventh Day Adventist Church (SDA), Evangelical Association of Kenya (EAK), Christian Association of Kenya (CAK), Kenya Women of Faith Network (KWFN), Organization of African Instituted Churches (OAIC).

Those are just a few. The list is not exhaustive because I receive e-mails, telephone calls and messages to do with this Bill. The Catholic Church even sent its bishops who already had the Bill in soft copy with the necessary amendments which have helped us in various chapters in this Bill. I appreciate all of them.

Mr. Temporary Speaker, Sir, this tells me that the whole country and the world realised that we have problems or issues to address within the reproductive health world. When I presented this Bill in New York in the Commission on the Status of Women (CSW) conference, I received a standing ovation. It is because they recognised that Kenya is moving ahead of many countries. They recognised the fact that we have appreciated and that we are coming up with a proper reproductive healthcare Bill that will safeguard the lives of all Kenyans and other people living within Kenya.

During the last debate, I received feedback on the issues of the need to train health professionals. I assure Kenyans that if this Bill is enacted and implemented, only trained medical professionals who are registered – it is defined within the Bill – will attend to Kenyans and ensure their safety.

In dealing with the Chapter on the termination of pregnancy, I am using your feedback where you had proposed an amendment to ensure that only trained medical

professionals take care of the citizens. I appreciate this and it shall definitely be implemented. With your help, I am sure the Bill shall be enriched. This confirms that no quacks or people who are endangering the lives of Kenyans deal with issues of reproduction of human beings.

Mr. Temporary Speaker, Sir, I also listened to what Sen. (Prof.) Lesan said. Let me assure him, Sen. M. Kajwang' and other people, that this Bill does not in any way advocate for termination of pregnancy on demand. This has been catered for and the people who would have brought that will not have that room. This is because that Chapter begins with, "Termination of pregnancy is not permitted according to this Act". We are dealing with issues that cause maternal and infant deaths. This is to safeguard and preserve, help and prevent women and children from dying unnecessarily and providing them with quality healthcare services.

I have looked at some of the comments, and I assure Kenyans that there is a Reproductive Healthcare Board (RHB) which has been brought on board with this Bill. This is a very serious Board that constitutes the Cabinet Secretary (CS) and the people who will sit on it will be extremely qualified.

I got feedback from Sen. (Dr.) Zani that perhaps we reduce their number but the demand of the stakeholders who came forward insisting that they wanted to be part of this team are also very high. However, we shall look at it at the Committee Stage. I urge Senators that together, we go back to the Committee on Health and I believe we shall come up with better proposals because we listen.

Mr. Temporary Speaker, Sir, this Bill is generally talking about healthcare and if it passes, it will ensure that everybody who lives in the country and even non-Kenyan citizens, have access to quality reproductive healthcare services. Health has been devolved and it means that we should have at least one Level 5 hospital that is well equipped in each county. There has been attempt by the Executive to start the process of equipping these health institutions with the relevant medical equipment. This is what the Bill is talking about.

There needs to be legislation to ensure that that is done properly and everybody accesses health care services. We do not want a situation where as we have read in the papers, a pregnant woman has to sit on a motor cycle while bleeding and goes to a hospital five miles away and finally losses her life. Her husband is left with triplets, he does not know what to do and now wants to give them away. We know what it means to lose a mother.

In certain situations, the man is unable to cope because as it is, in this particular case, they already have four children. When you give birth to triplets and you have no means of supporting them, what can you do? That is why we need to protect the lives of mothers.

Mr. Temporary Speaker, Sir, the Bill will also promote reduction of maternal and infant deaths by providing safe motherhood. Safe motherhood will ensure that adequate medical care is provided, trained officers are there and there is proper medication and nutrition before a woman conceives. Mothers should be made to space the time between



births so that they give birth successfully. Mothers should go through prenatal care until the time they deliver. At 42 days thereafter, the infant child should be given proper immunization and treatment. If this is done, this Bill will ensure that the women of Kenya give birth safely so that Kenya is not on the list of those countries where child bearing is not safe.

The Bill will ensure that all counties have well equipped hospitals and healthcare facilities with well trained care providers and not quacks or traditional birth attendants who cannot deal with emergencies. The medical practitioners should be well trained persons. I am sure the Chair is well informed about this field that I am trying to explain to other Kenyans who do not know.

Mr. Temporary Speaker, Sir, the Bill will also provide a legal framework to prepare adolescents to be self reliant and responsible citizens. It was very embarrassing when we went to New York in March and when we were listening to presentations on reproductive healthcare; it was the statistics in Kenya which were being given. This was about the high mortality rate and maternal deaths in Kenya and the high rate of adolescents dropping out of school because they do not have proper information.

Most of the adolescents have been left idle. Not all of them manage to go to secondary school because they do not have parents and if the parents are there, they are ill, alcoholics or incapacitated in one way or another. This Bill will give the legal framework that will allow for vocational training for these children. It will give these children a chance to be mentored; given spiritual guidance, moral values and life skills. They will also have a chance to be counseled against drug abuse, pre-marital sex and communication skills.

We have various institutions that are already doing some of these things, for example, churches and schools but this is without the legal framework. When this Bill is enacted, we shall stop having data of 2000 where about 14,700 girls were dying because of pregnancy and other related complications. Since then, things have changed and we cannot say that we have not been empowered. We have good teachers, good medical health care providers and we should not sit and wait for our population to keep going down.

Mr. Temporary Speaker, Sir, I must commend President Uhuru Kenyatta for having come up with a programme that is going to mentor the adolescents. We even saw them in the media sitting on his Presidential Chair to feel what it means to be a President. All those adolescents who go to State House will learn to work hard so that in future, they can also be at the State House not just as visitors but as the leaders of this nation.

When I tabled this Bill, the statistics that we had were scaring. About 360 out of every 100, 000 women were dying every year in 2012 as a result of childbearing complications. We know something is being done, but we do not want the Government to relax. We know that there are other Bills that are pending and we hope and believe that this will become even better. No woman deserves to die while giving birth. It is every woman's right to live even after giving birth.

I beg to move that the Reproductive Health Care Bill (Senate Bill No.17 of 2014) be read a second time. However, I have looked around and noticed that we do not meet the threshold for the question to be put. I would like to request you to invoke Standing Order No.54 (3) to postpone putting of the question to Tuesday next week.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is so ordered. Next Order!

*(Putting of the Question on the Bill deferred)*

### MOTION

#### ESTABLISHMENT OF SELECT COMMITTEE TO LOOK INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED

**THAT**, aware that the Government of Kenya has a 29.8% shareholding in Kenya Airways Limited thereby being the largest single shareholder in the company;

**COGNIZANT** of the fact that Kenya Airways Limited, the National Flag carrier, has been experiencing tremendous delays and cancellation of flights;

**AWARE** that each delay and or cancellation has led to grave losses to the airline thereby worsening the debt burden of the corporation;

**REALIZING** that the airline is now in debt to the tune of 18 Billion Kenya Shillings;

**FURTHER AWARE** that the current business plan of the airline does not seem to take into full account necessary measures to turn the company around;

**CONCERNED** that the situation, if left unchecked, may lead to the collapse of the company and great loss to the nation, investors and the Kenyan taxpayers;

**NOW THEREFORE**, the Senate resolves to establish a select committee to conduct an inquiry into the affairs of Kenya Airways Limited and its subsidiaries, and report to the Senate within three months, taking into account the following

- (i) The leasing and buying arrangement of aircrafts since 1996;
- (ii) The role of off-shore companies in the investment affairs of the airline;
- (iii) The identity of the share holders of these off-shore companies and their relationship with the management of Kenya Airways Limited;
- (iv) The employment policies and practices of personnel, including engineers, pilots, cabin crew and ground personnel;
- (v) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein; and
- (vi) Any other matter that may shed light on the financial and management crisis currently facing the airline;

**AND FURTHER** that the Members of the Select Committee are:-

1. Sen. (Prof.) Anyang' Nyong'o
2. Sen. Mutahi Kagwe

3. Sen. Hassan Omar
4. Sen. Daniel Karaba
5. Sen. (Dr.) Boni Khalwale
6. Sen. (Dr.) Agnes Zani
7. Sen. Lesuuda Naisula
8. Sen. Peter Mositet
9. Sen. (Prof.) Wilfred Lesan
10. Sen. Billow Kerrow
11. Sen. James Orengo

*(Sen. (Prof.) Anyang'-Nyong'o on 27.05.2015)*

*(Resumption of debate interrupted on 27.05.2015)*

**The Temporary Speaker** (Sen. (Dr.) Machage): If there is no other Senator interested in contributing, I call upon the Mover to reply.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I rise to support this Motion by Sen. (Prof.) Anyang'-Nyong'o. Of particular interest is the composition of the of the membership that was identified where I note with concern – this is so that in future we make amends – that out of the 11 Members, four of them are Chairpersons of Standing Committee and four of them are Vice Chairpersons of Standing Committees and three are ordinary. People who are already laden with work should not be given more strenuous work in future. I just wanted to mention this so that in future as we compose other *ad hoc* committees, we also pay attention to this fact.

I support.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I wish to support this Motion. I thank Sen. (Prof.) Anyang'-Nyong'o for bringing it. I am aware that very many Kenyans have invested heavily in the Kenya Airways. Many people have bought shares in the Kenya Airways. Some who have passed through my office; many orphans have been left with only the shares which they inherited from their families. For someone to be careless to let the Kenya Airways to sink, that would mean that the future of very many Kenyans would sink.

I urge the Government to be very careful and look at all the issues about why the Kenya Airways is not doing well. We have seen the Government putting in a lot of effort; like what it did for Uchumi Supermarkets when they were sinking. It did everything to ensure that the supermarkets stay afloat. Why is the Kenya Airways being treated differently? What are the other airlines affiliated to the Kenya Airways? I do not know how the Jambo Airlines and many others could have been affiliated to the Kenya Airways. This is not something which happened without somebody knowing. This was an intentional thing. I support the team and urge it not to leave any stone unturned in order to protect Kenyans.

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

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**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Professor?

Sen. (Prof.) Anyang'-Nyong'o, there is no other professor here.

**Sen. (Prof.) Anyang'-Nyong'o:** Could I move to the Dispatch Box, Mr. Temporary Speaker, Sir?

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, you may move to the Dispatch Box.

*(Sen. (Prof.) Anyang'-Nyong'o moved to the Dispatch Box)*

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you very much, Mr. Temporary Speaker, Sir, for giving me the opportunity to reply to the wonderful debate that we have had in this House regarding the Motion that I moved; paying attention to what is happening to the Kenya Airways.

Mr. Temporary Speaker, Sir, I must thank many Senators who contributed to this Motion; my two colleagues, Sen. (Prof.) Lonyangapuo, Sen. Sijeny, Sen. Kagwe, Sen. Mositet and many others in this House who have made wonderful contributions on the Motion. The essence of the Motion is to save a very serious situation.

I was, recently, flying from Dakar, Senegal to Nairobi. First, I flew from Nairobi to Dakar and then from Dakar back to Nairobi using the Kenya Airways. As we were flying out from Dakar, I saw an Ethiopian Airlines' huge plane that looked like a Dreamliner. It must have had double the passengers that the Kenya Airways had.

I thought that if the Kenya Airways had dominated the West African route for a long time, how come we were in a 777; a very old plane? The plane was either 777 or 737 yet the Ethiopian Airlines had such a big plane. When I got on the plane, I noticed that the chair I was in the business class could not recline. My colleague next to me had the same experience. He remarked that; "next time I fly this route, I will use the Ethiopian Airlines." I then called the air stewards who were with us. I asked them why they had put on that route, a very lucrative route, such a plane which had denied us the market. They were basically tongue-tied.

Therefore, Mr. Temporary Speaker, Sir, something has gone wrong with the Kenya Airways and we should look into it. As the Motion states, there are six key issues that we must look into. The first one is about the leasing and buying arrangements of aircrafts since 1966 that the Kenya Airways has engaged in. A lot of documents that have been brought to my office indicate that there is a lot to be desired in the leasing arrangement that the Kenya Airways has engaged in. The Kenya Airways has gone to the extent of leasing ordinary equipment that it should own because it makes much more sense to own the equipment. However, we have to look into these issues.

Secondly, the possibility that the management could actually be doing business with the airline it runs results to conflict of interest. It is something which is unconstitutional and needs to be looked into.

Mr. Temporary Speaker, Sir, the third thing, which is extremely important, is that we know that in developing counties one of the things that bedevil public institutions is

corruption. The Kenya Airways was privatized precisely so that this can be avoided. As a private sector initiative, where the Government is just a shareholder, it should have been an example of how public corporations should be run in the private sector. It should show that a big corporation like that can be run profitably when it is in the hands of the private sector. Now, if Ethiopian Airlines, which is a wholly owned state enterprise, is doing better than a private enterprise like Kenya Airways, then something is seriously wrong.

Fourthly, if the personnel working for Kenya Airways – the cabin crew, pilots, messengers and sweepers – are not happy, then it is very difficult for such a company to succeed. The personnel are the foundation of such a company. We know that Kenya has been proud of having very good workers and professionals.

Finally, the whole reason behind these delayed and cancelled flights is the best way to lose your clientele and passengers. Unless something is done and Kenya Airways is rejuvenated, we may lose it. There may be some people in Kenya Airways who are interested in sinking this airline. We would like to arrest that possibility because the airline must not sink.

I am quite sure that when we begin our hearings, a lot more will come out. I am sure that the Senate will publicize this issue widely in the media, so that when we begin hearings, more and more people can come and give evidence. I am looking forward to this Committee being properly resourced, so that we can do a very good job in three months. I know that in the last Parliament something was done about this, but we would like to revisit it and do it properly.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): This is not a county matter. I will, therefore, put the question.

*(Question put and agreed to)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, pursuant to Standing Order No. 32(1) and taking cognizant of the fact that Senators have had to catch early flights to Mombasa for an important mission, I will interrupt the business of this House. We shall all stand. The Senate, therefore, stands adjourned until Tuesday, 23<sup>rd</sup> June, 2015 at 2.30 p.m.

The Senate rose at 6.25 p.m.