

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 21<sup>st</sup> April, 2016**

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

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

**PRAYERS****PAPER LAID**

**REPORT ON PETITION: VIOLATION BY THE NATIONAL REGISTRATION BUREAU  
OF THE RIGHTS OF RESIDENTS OF VIHIGA COUNTY TO REGISTRATION  
AND ISSUANCE OF NATIONAL IDENTITY CARDS (IDS)**

**Sen. Adan:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 21<sup>st</sup> April, 2016:-

Report on the Petition on the alleged violation by the National Registration Bureau (NRB) of the right of the residents of Vihiga County to registration and issuance of National Identity Cards.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator. Do we have any other Paper to be laid?

Next Order.

Hon. Senators, there are five statements to be issued. Before we get to that, are there any Senators seeking Statements?

**Sen. (Prof.) Lonyangapuo:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Proceed, Sen. (Prof.) Lonyangapuo.

**STATEMENTS****CONDUCT OF CHINA JIANGSU INTERNATIONAL (K) LIMITED**

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the conduct of China Jiangsu International (K) Limited, a Chinese company contracted---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, something seems to be wrong with your microphone or the system. Could you try another microphone? Please move to the dispatch box.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I hope this one works. I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the conduct of China Jiangsu International (K) Limited, a Chinese Company contracted to construct the Muruny-Siyoi Dam in Lelan Ward, West Pokot County. In the Statement, the Chairperson should:-

(a) State if he is aware that China Jiangsu International (K) Limited which is the main contractor, has 35 workers of Chinese origin, some of whom are alleged to have no valid immigration documents. The company has allegedly been dismissing its workers, especially, the locals; discriminating against them and abusing young children.

(b) Explain why the company employs non-locals for jobs that should ordinarily be reserved for locals, such as drivers, lab technicians and messengers.

(c) State why the company has opened a bar, the only bar in the entire ward against the wishes of the locals who are known to abhor the sale and consumption of alcohol, thereby breaking the laid down traditions of Lelan Ward.

(d) Explain what steps the Government will take to help the locals because the Resident Engineer is said to be arrogant and does not have good relations with them.

(e) Cite Corporate Social Responsibility (CSR) activities, if any, that the company has undertaken since it started work in 2013.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure, do you want to ride on that or to make a Statement?

*(Sen. Obure spoke off record)*

Do not jump the gun.

Where is the Chairperson of the Committee on Labour and Social Welfare? Is there a Committee Member of this Committee?

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Will you commit your Committee? Please, tell us when you will issue that Statement.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, it will be issued in one week's time.

**The Deputy Speaker** (Sen. Kembi-Gitura): Good. It will be issued in one week's time.

*(Loud consultations)*

Sen. Njoroge, one week is good. However, there is the issue of opening of a bar, for instance. So, you might ask the county government whether there was an application and all other things before---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Njoroge. That is why I asked you whether you will commit your Chairman. There are so many things that need to be examined so that we get an answer. If you can do it in one week, that will be very

good.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, I am sorry. I request for three weeks. A lot is required.

**The Deputy Speaker** (Sen. Kembi-Gitura): I give you two weeks.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, I hope two weeks is okay.

Proceed, Sen. Obure.

#### PROVISION OF AFFORDABLE AND RELIABLE POWER SUPPLY IN KISII COUNTY

**Sen. Obure:** Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to the Standing Order 45 (2) (b) to seek a Statement from the Chairperson of the Standing Committee on Energy regarding the provision of affordable and reliable power supply.

In the Statement, the Chairperson should:-

(a) Explain why despite promises made by the national Government to introduce various interventions to deal with frequent power blackouts in Kisii and its environs, the situation continues to worsen day by day.

(b) Explain the cause of the increase in billings in both domestic and commercial entities in the last three months.

(c) Explain the measures that the Government intends to put in place to abolish the numerous charges loaded onto electricity bills such as fuel cost, forex adjustment, inflation adjustments and maximum month deviations, among other charges.

(d) Explain what the Government is doing to ensure that the institutions that are charged with the mandate of energy generation and distribution are working effectively to provide affordable and reliable power supply.

**Sen. Mwakulegwa:** Mr. Deputy Speaker, Sir, I will reply in two weeks' time.

**Sen. Obure:** Mr. Deputy Speaker, Sir, that is okay.

#### INVASION OF BOMET POLICE STATION

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order 45 (2) (b) to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the invasion of Bomet Police Station. In the Statement, the Chairperson should:-

(a) State whether the Government is aware that on 7<sup>th</sup> April, 2016, the Governor of Bomet County led a group of people in invading Bomet Police Station.

(b) Explain the circumstances that led to the action of the Governor.

(c) Explain whether there were any casualties and/or destruction of property following the invasion.

(d) Confirm if any arrests were made.

(e) Explain the actions that have been taken against the Governor and the other perpetrators.

(f) Confirm if both public and private property in Bomet County is properly secured and, in particular, the land and property belonging to Bomet Campus of Moi

University

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, allow me to ride on that Statement. It is unusual for an elected leader to storm a police station for nothing. Could the Chairperson also tell us the reason why the Governor went to that police station in the first place?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, your request is sought under number two. It is already there.

Sen. Adan, how long do you require to answer?

**Sen. Adan:** Mr. Deputy Speaker, Sir, I request two weeks to respond to that Statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, is two weeks good enough for you?

**Sen. (Prof.) Lesan:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, do you have a Statement to seek?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, my secretary is yet to bring it. She is on her way.

**The Deputy Speaker** (Sen. Kembi-Gitura): Going where?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, to bring me the written Statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): She cannot access the Chamber.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I have alerted the Serjeant-At-Arms.

**The Deputy Speaker** (Sen. Kembi-Gitura): I have an approved Statement from you.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, allow me to use your copy.

*(Sen. (Dr.) Khalwale picked a document from the Clerks-at-the Table)*

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am sorry, I asked this last week. I was talking about the other Statement which the Chair cleared.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay. I have been an agent of necessity for your needs. Are you sure you have asked that question yet I approved yesterday?

Sen. Ndiema, are you seeking a Statement?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I do not have a copy.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is the end of requests for Statements. I am not going to prompt the Members to seek Statements.

#### STATUS OF COMPENSATION OF INTEGRATED IDPS

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, the Statement that had been sought by the Senate Minority Leader was supplementary information. The Statement was issued shortly before we left for the short recess. It has been available since last week. The supplementary issues that had been raised were available since last week. I shared a copy of the Statement with the Senate Minority

Leader. We have also discussed and with your permission, I can highlight the key issues instead of reading the statement word for word. This is because we have discussed the crux of the information.

The first issue which had been raised was how much the Government spent in *toto* in resettlement and compensation of Internally Displaced Persons (IDPs) throughout the country. On the first page of the Statement, there is a breakdown of the various programmes and how much money has been spent. The programmes include “*Hameni Rudi Nyumbani*”, The Uganda Returnees Programme, Integrated IDPs Startup Capital and Land Resettlement Capital. There are also cash payments in various phases with a total of Kshs17.6 billion.

Mr. Deputy Speaker, Sir, the second important issue is how the monies were paid per county. There was a request for further information on breakdown per county. Pages two and three of the Statement give the breakdown per county in various phases.

Thirdly, the issue which had been raised was on the full list of the integrated IDPs countrywide and their distribution per county. The Ministry has given us the breakdown in terms of households and not the individual IDPs. They are approximately 75 000 households and it shows a breakdown per county. The list is on pages four and five. The integrated IDPs are spread in 45 out of the 47 counties of Kenya. Literally, it is the entire country. The respective households per counties are provided. It includes the Tharaka-Nithi County.

Mr. Deputy Speaker, Sir, the other issue is on what happened to the property of the IDPs who never went back. The Government does not have that information but has been encouraging the IDPs who might have been deprived of their property to provide information. Such information is not available at the moment. Therefore, the Government is encouraging the Internally Displaced Persons (IDPs) to report any cases of deprivation of their property by third parties.

An issue was raised about the policy of the Government of Kenya regarding IDPs. The policy is, first and foremost, to implement fully the prevention, protection and assistance of IDPs Act of 2012. In that context, the Attorney General has advised that the IDPs Act only deals with 2007/2008 post election violence. That is the official policy now. Other than that, the President has made a public statement that the focus going forward will be on integrated IDPs now that, essentially, all those who were encamped ought to have been settled. Although we are seeing new claims. The position of the Government is that those claims need to be investigated because some of them could be false. But the greater and more fundamental challenge of integrated IDPs being assisted is a chapter that the Government wants to look at now. As we have seen, the entire country is affected by this problem.

The last question was on the number of houses built for IDPs; how many are completed and how many are in the process of being built. The Ministry has provided the information. A total of 66,880 houses have been built; 2,502 permanent houses for Turkana IDPs are at various levels of completion; and, 2,400 low-cost houses for IDPs settled on Government procured land are programmed to be constructed, beginning this financial year. There is a summary of the various interventions and annexes, which give further details on the operations of the Government on the issue of the IDPs.

In conclusion, I want to assure this House that the issue of IDPs is a serious national security problem that affects our national cohesion and future as a united

country. The Jubilee Government will do whatever is within its power to ensure that we resolve this problem once and for all, as a basis of opening a new chapter for healing, reconciliation and rebuilding our country afresh, as we smart from the ashes of what happened to us eight years ago.

Thank you for the opportunity to be of service to this House.

**The Deputy Speaker** (Sen. Kembi-Gitura): Senate Majority Leader, before I allow interventions, did I hear you say that the issue of integrated IDPs is still open? Are you encouraging people to bring the names of the existing IDPs and details of those whose property got lost or was confiscated?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, first and foremost, the number that the Government has on integrated IDPs is 75,100 households, spread in 45 counties of our country. However, I have also added that on the question of the IDPs who might have lost land, which could have been taken over by third parties unlawfully, the position of the Government is that there are no complaints that have been lodged. The Government is encouraging such people to lodge complaints.

**The Deputy Speaker** (Sen. Kembi-Gitura): Does that include businesses; not just land?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Properly is property. That issue was brought by either Sen. (Dr.) Khalwale or Sen. Khaniri. The idea was to find out if there are people who are deprived of their land or fixed assets which have been taken over by third parties. That issue needs to be reported, so that action can be taken. That is the position of the Ministry.

On the issue of the Government's focus on IDPs, I think the President has made it very clear and repeated it informally; that we are not done with the issue of the integrated IDPs. It is true that the focus of the Jubilee Government will be to try and resolve with finality the issue of integrated IDPs, although some of them had been given some token; I think Kshs10,000. Therefore, we are not yet done with the issue of IDPs.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. If you listened to the Senate Majority Leader in his opening remarks, he said that they had discussed the Report with Sen. Wetangula and he was only giving us a summary of the Report. Once supplementary questions are asked on the Floor of this House, they are the property of the House and everybody is entitled to know the details. Is it in order that a local arrangement was done to the extent of denying us a lot of information that we may have desired to know?

For instance, in Migori County during the 2007/2008 skirmishes, information on destruction of property was collected by the Red Cross. Since the police refused to collect information, the Red Cross had an inventory of all the property that was destroyed in Migori. Would I be in order to request that the Chairman should go back and get more information? Eight years is a long time and he has said that it cannot be trusted that people will give the right report at this time. I find the answer to be totally inadequate for the purposes of which it was asked. Is he in order?

**The Deputy Speaker** (Sen. Kembi-Gitura): Is it inadequate because he did not read out the whole Statement in its entirety?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, it is not in order because he denied us the information by having an intimate discussion with Sen. Wetangula.

**The Deputy Speaker** (Sen. Kembi-Gitura): I hear you and will take that into

account.

Do you want to respond to that, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I did not deny the House this information. Sen. Wetangula requested for the Statement and it has been available for more than a week now, but for logistical reasons, we were not able to read it. The full Report will be tabled in this House and, therefore, it is not a secret document shared between the Senate Minority Leader and I.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, we will interrogate the Statement as much as we can, but like you said, it affects 45 out of 47 counties. Since it appears like everybody has an interest in this issue, I will allow the interrogation of the supplementary Statement by those who can do it, like Sen. Wetangula, who has had occasion to look at it. Normally when a Statement is laid on the Table of the House, it becomes the property of the House, like Sen. (Dr.) Machage has said. But many times, the Senators do not have a chance to look at it in detail before they can interrogate it.

Even as we interrogate it, I will give direction. Both the original and supplementary Statements are now available to any Senator. If you want to look at it, study and take notes on it, I will give direction that you get a copy of it. Then, on Tuesday 26<sup>th</sup> April, 2016, during Statement hour, I shall allow the Senate Majority Leader to take the interventions on the Statement from those who will have looked at it by then. That does not mean that I will defer the Statement. Sen. Wetangula, you can still raise the issues if you wish. But on Tuesday 26<sup>th</sup> April, 2016 any Senator who wants to raise an issue on the Statement and the supplementary one, will have the Senate Majority Leader deal with them.

Sen. Wetangula, with that in mind, you can make your interrogation.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I want to thank the Senate Majority Leader for bringing this supplementary information. Having looked at the Statement and listened to the Senate Majority Leader, several questions come to light.

First, the Government announced two or three months ago that they were closing down all IDP camps and everybody had to move to settlement areas. Those of us who travel through Naivasha, Mai Mahiu and Nakuru still see those camps being operational. When will they be closed?

More importantly, on the policy of execution of the settlement of IDPs and the colossal sums of money that have been expended, the figure shown as used so far is Kshs17,604,996,977. In an earlier answer to this House from the then Minister for Devolution and Planning, Ms. Waiguru, the figure was indicated to be Kshs23 billion. Why has it shrunk to Kshs17 billion?

Wherever there are the so-called integrated IDPs, there are, in fact, other IDPs that are not integrated in many counties; the numbers are startling. Nakuru alone has 17,000 households; Uasin Gishu, 10,000 households; Trans-Nzoia, 6,300 households; Bungoma, 4,500 households, all the way down the list. But when you look at the levels of compensation and areas focused for compensation, you will find the contradiction that we are trying to cure. Those counties that have benefited from compensation are only 14 out of 45.

It is only Bomet, Isiolo, Kiambu, Laikipia, Elgeyo-Marakwet, Nairobi, Nakuru,

Nyandarua, Nyeri, Trans Nzoia, Turkana and Uasin Gishu counties. Then, there is a paltry number of 34 households described as “individuals with special needs.” I do not know who those are. What was the criterion of picking the 13 counties to focus on compensating Internally Displaced Persons (IDPs) and leaving out the rest when we have problems everywhere?

Mr. Deputy Speaker, Sir, thirdly, this is a fundamental point that you raised when you were not on the Chair. There are people who run businesses very successfully in various townships and markets. They had bank loans and huge stocks of businesses that were burnt down and destroyed completely. This happened in Naivasha, Burnt Forest, Migori, Mau Summit, Mumias, Kitale and several other places. What is the Government policy? When you talk of an IDP, it is not just a person who was sent away from his land.

There are people whose philosophy in life is not to own land but to earn a decent living by doing something else. What is the policy of the Government in compensating this category of people? It is a real risk that the Government – because of poor record-keeping, tracking and lopsided policies – has been compensating over and over the same undeserving people when there are more deserving people who are suffering out there. We are aware of cases where people have been given money, squandered it and gone back to live in camps to wait for more money. The policy of closing camps is okay but we want to bring this matter to a conclusion.

Mr. Deputy Speaker, Sir, more importantly, there are people like those from Kiambaa Church in Uasin Gishu and others who fled from their farms. If, indeed, the Government is keen on keeping proper data and record of IDPs, I am sure people would be asked where they were living, whether they had land, the land title number and so on and so forth. Why would the Government be disinterested in establishing the ownership of land that IDPs left? Some of the resources being used for compensation---. If somebody owned 50 acres of land in Turbo and fled and they are unwilling to go back, the Government could acquire that land and dispose it of and put the money into a fund that will help the owners of the land to buy land elsewhere. It is inconceivable that the Government is not able to tabulate and catalogue---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, remember you are seeking clarification. Do not take too long.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am seeking clarification and he is very busy recording and I appreciate that. Why would it be difficult to say that Sen. Billow abandoned two acres of land in Burnt Forest while Sen. Haji abandoned one acre in Endebess? It is very easy. All you need to do is to take details from the affected persons. Who is occupying those parcels of land? If my house was burnt down, my land was not burnt. It is still there and remains a critical component in evaluating the resettlement of the IDPs. It is extremely unfair for a person who was living and farming on 50 acres of land in Elgeyo-Marakwet or Uasin Gishu to be then compensated with half-an-acre in Mai Mahiu for no mistake of his own.

Mr. Deputy Speaker, Sir, we want to bring this to a closure. I thank you for directing that this matter should come up again on Tuesday. I know that the Senate Majority Leader has been taking notes and there are other issues that we will still need to raise. We should spare Tuesday next week to deal with this issue as you have directed. These are some of the clarifications I have and many more that I will come back with.

**Sen. Haji:** On a point of order, Mr. Deputy Speaker, Sir. Did I hear the Senate



Minority Leader say that somebody who had 10 acres of land in Burnt Forest was compensated with half-an-acre in Mai Mahiu? Could he clarify that?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, the highest amount of money given to any IDP has been Kshs400,000 for those in favoured areas and Kshs10,000 for those in neglected areas like Bungoma, Kakamega, Trans Nzoia and others.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, you have to be a little bit careful when you make that kind of statement. You started by saying that the issues of IDPs, both integrated and otherwise, cuts across the whole country. So, if you take that line, you must be ready to defend it when you start talking about favoured areas.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Minority Leader should substantiate and come out clearly. He has stated some facts here which are a bit disturbing. He has said that there some people who come from--

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, I requested you to move from that microphone because it does not work well.

**Sen. (Prof.) Lonyangapuo:** I have been moving around like a nomad.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, move to your normal sitting position because I cannot see you properly. Something is wrong with that microphone. Could you move to where you normally sit?

*(Sen. (Prof.) Lonyangapuo moved to his place)*

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, the Senate Minority Leader has mentioned some interesting facts here which we need him to substantiate. Does he mean that there are lesser Kenyans than others? He said that some IDPs were given Kshs10,000 while others Kshs400,000. Could he elaborate and tell us whether he meant the same IDPs or something else because this is very serious?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, the distinguished Senator for West Pokot probably does not live in this country. The President and his deputy themselves went out to give our money to the IDPs. They announced beforehand that they were giving Kshs400,000 to each IDP. I also know that in Bungoma where I come from and represent here, with a staggering 450,000 households, not a single IDP has ever received the Kshs400,000. Not one!

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, let me give guidance on this issue. I deferred this issue essentially to Tuesday, so that Senators can interrogate this document. Therefore, you should ask the categorisation of the payment; whether it was Kshs400,000 or whatever number that was paid without talking about “favoured areas.” It is important that you seek the reason for categorisation of the payment before you talk about some areas being favoured more than others. This is an issue – like you have said correctly – that is not localised. So, I want us to look at it with the seriousness that it deserves without trying to trivialise or make it look like it is not a serious issue.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. You are right. Sen. Wetangula was a Minister and I was a Permanent Secretary (PS) in the previous Government. Therefore, are the figures that the previous Government gave different from those that this Government has given? Let us not confuse this. We need to

know the reasons why the IDPs were initially given Kshs10,000 and then Kshs400,000 later.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I rise to ask for the Chair's guidance.

**The Deputy Speaker** (Sen. Kembi-Gitura): The Chair of the Committee?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I am seeking guidance from you, Mr. Deputy Speaker, Sir. This matter is of great national interest and it is affecting each county in our nation. I have no problem getting the kind of further clarification that is required now or in the future because it is not difficult. I was wondering whether it would help this House better and conclusively if the relevant Committee would summon the Cabinet Secretary (CS) so that he comes with his technocrats. This ping pong game might go on and on. If I am asked further questions, I will bring answers, and it may not even resolve the issue substantively, especially given the dichotomy between the legislator and the Executive, I do not know whether this will be appropriate for Senators. Even if it is in a *kamukunji* or the relevant Committee, let the Cabinet Secretary (CS) himself come with the officers so that these issues can be thoroughly dealt with to finality. However, I am more than happy to continue getting clarifications.

**Sen. Elachi**: On a point of order, Mr. Deputy Speaker, Sir. We know that during the Grand Coalition Government, Internally Displaced Persons (IDPs) received Kshs10,000 and land was bought for them. Maybe we now need to know who these were and who received the land that was bought by the Government. We even had others who received Kshs25,000 and houses were built for them. He has to bring a comprehensive response which will explain why they received Kshs10,000, at how much was land was bought, where was the land and who the beneficiaries were. More importantly, we need details of the Kshs25,000 and the houses that were built by Government.

**Sen. (Dr.) Machage**: On a point of order, Mr. Deputy Speaker, Sir. As I request this point of order, let me declare my interest. I am one of the victims that lost a lot of property in Migori County. Could the Chairperson clarify whether the Government was only interested – this has been asked by Sen. Wetangula and it has not been clarified – in compensating for land only or for other property that was lost during this time? There was an investor, I think from central Kenya, who had invested in the famous big hotels in Kisumu County. He lost billions and that is not being addressed. I lost millions, amongst others, and I have not even received Kshs10,000. Could he also collect more information from the Red Cross as he brings the next answers?

*(Sen. Wetangula stood in his place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, why are you in a hurry?

**The Senate Minority Leader** (Sen. Wetangula): Okay, fine.

*(Sen. Wetangula resumed his seat)*

**The Deputy Speaker** (Sen. Kembi-Gitura): No, I will give you the Floor because

I think we must get direction one way or the other.

*(Loud consultations)*

**Sen. Njoroge:** On a point of order, Mr. Deputy Speaker, Sir. Would I be on order to ask the Senate Majority Leader, while preparing the answers to bring before this House on Tuesday--- I would like to know the criteria that was used. There are several levels of payments which have been done. There are those people who received Kshs400,000---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Njoroge, is that not exactly what I said not so long ago about categorization?

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, okay. The last one that I would like to know is the exact acreage, which was not given back to the victims who were the owners  
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**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Njoroge, the trouble is that we are going back and forth and we are discussing the same issue. Sen. Wetangula and Sen. (Dr.) Machage have raised the issue of property and businesses lost. It is coming out as the Lowest Common Multiple (LCM).

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, most obliged. I think we will interrogate  
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*(Sen. Wetangula stood in his place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I will hear you but we have to make two decisions. I have already ordered that that matter comes back on Tuesday, 26<sup>th</sup> April, 2016 and that Senators will have the opportunity to interrogate the document properly. It is a matter of great importance. I do not want trivialization of the issues. Remember as I sit here, I represent a county and I am unable to debate with you on the issues that are coming up. I want it to be treated as a serious issue that is affecting everybody, so that we can deal with the issues.

*(Several Senators raised their hands)*

Why are you raising your hands? Why can you not press your buttons and intervene?

*(Loud consultations)*

**Hon. Members:** We have pressed.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, when you were sitting at the back there was a problem. Is there still a problem at the front?

**Sen. Adan:** On a point of order, Mr. Deputy Speaker, Sir. I wish to support the proposal given by the Senate Majority Leader because this matter is simply very important to the people of this country. If these questions will be asked by all of us, I am sure he might not be able to exhaustively answer most of them.

I support, come Tuesday, if possible, the Cabinet Secretary (CS) for the Ministry of Devolution and Planning should come and answer most of the questions that will be

asked by Members.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula I want to hear you for me to make a decision on this issue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, before I come to that point, Sen. Haji asked about half-an-acre of land *vis-à-vis* Kshs10,000. All over the farming areas of Kenya today, you can hardly get an acre of land costing Kshs400,000. With Kshs400,000, you will only buy half-an-acre or so and you are a victim who was evicted from a developed 50 acres that you owned and you cannot go back to your land or access it.

I also join you that we do not trivialize this very critical issue. I do not ask many questions in this House. The reason I brought this is because it is extremely important and it affects the whole country. For some of my colleagues to start talking that IDPs were paid Kshs10,000 by the Grand Coalition Government. That is completely going off target. IDPs are IDPs. We have IDPs who were occasioned in 1992, 1997, 2002 and 2007, and they are Kenyans. We have not even mentioned some former colleagues who are occupying over 6,000 acres of land that was meant for settlement of IDPs. It is not even in Uasin Gishu but in Nyeri County.

In furtherance of what my brother, Sen. (Prof.) Kindiki has said, I seek your indulgence and suggest that calling the Cabinet Secretary (CS) and his technocrats will not help. He will just come to read this Statement to us. If my brother agrees with me, I suggest that this House brings a Motion and we set up a Select Committee of this House to comprehensively investigate the matter of IDPs; their categorization; the levels of their losses and those who lost land, shops and all manner of things so that we give the report to the Government. The implementation Committee can then follow up and deal with this issue with finality.

I am ready with my brother to bring a bipartisan Motion and set up a bipartisan committee that can then interrogate this matter fully. Where are these Internally Displaced Persons (IDPs), why are they called Integrated? Why are others here? Why have some been settled and why have others not been settled? What about those who lost their shops, their businesses, and so on? This will bring this matter to a conclusion that we, as representatives of counties, protectors of the interests of counties and their governments can make a contribution. Then, the National Government and the county governments can participate in resettling IDPs once and for all.

*(Several Senators raised points of order)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator. Order! All the points of order that are coming up have been contributions. So, let me deal with the people who want to contribute first. Sen. Billow, did you seek the Floor?

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

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

**Sen. Billow:** Mr. Deputy Speaker, Sir, I want the Senate Majority Leader to clarify with regard to IDPs what the Government's definition and policy regarding IDPs is. Is it about the IDPs of post-election violence in Rift Valley only or is it IDPs of conflicts that arise, for example, in North Eastern? For instance in Mandera County, everyone knows that there was conflict four years ago and up to now, we have thousands

of IDPs in plastic sheets and they do not feature here. That happens in many other places.

Mr. Deputy Speaker, Sir, I want the Majority Leader to clarify if these IDPs who are Kenyans only cover the 2008 post elections violence or it includes the rest of Kenyans who have fought and also have become IDPs? Even these ones in Mandera fought and that is why they are IDPs. So, I want the Majority Leader to clarify and tell us the Government's policy and how much of the Kshs17 billion has been spent on IDPs in Mandera County and other counties in the northern parts of this country where there have been perennial conflicts between communities.

Thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, please, be brief. Remember that these are interventions.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to agree with the Majority Leader that we have many con artists in Kenya who will want to take advantage of an attempt to register new the IDPs. Since you already have 75,00 households, could he confirm to us how much they intend to pay them and when they are going to make that payment?

Secondly, the people who became IDPs and lost land; that land was not lost. The land is still there. So, unless the Government wants to promote impunity and gloss over criminal activities, could the Majority Leader tell us when the Government is going to offer security to the IDPs so that they can go back to their former pieces of land?

Finally, in one of the cases, an IDP by the name of Mr. Adrian Muteshi was displaced from his land in Turbo. He was a strong man, he went to the High Court and an order was made that he goes back to the land. Could the Majority Leader come with the answer and confirm that security has been given to Mr. Muteshi to go back to his land in Turbo and that the Deputy President, Hon. William Samoei Ruto, has paid Mr. Muteshi the Kshs5 million that he was ordered to pay him for having displaced him from his land in Turbo?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I want to thank the Leader of Majority for handling this matter well and also to thank you for postponing it to give us time to look at it. As he goes to do it, I remember when this issue came, I asked one thing: What is the definition of an IDP? I did not get an answer.

Mr. Deputy Speaker, Sir, is a person who was displaced and went back to his land and is now settled still an IDP? There are people who were squatters somewhere and they were also displaced. They did not have land but they were displaced from their place of residence. Are these also IDPs? I also asked, since the Government is committed to tackling the issue of IDPs, could it go further and look at historical IDPs? There are those communities which were completely dispossessed by the colonialists and they are still landless. Those are the original IDPs. Could we start from where the rain started beating us?

Mr. Deputy Speaker, Sir, there are those IDPs who were displaced to foreign lands like Tanzania and Uganda and are considered as foreigners there. I heard that there are some of them who came back from Uganda. Have we profiled them and ensured that they are also treated equally like other IDPs?

**The Deputy Speaker** (Sen. Kembi-Gitura): This issue is becoming too protracted because if you look at the issue by Sen. Billow and the one that has been raised by Sen. Ndiema, the statement being issued by the Leader of Majority was specific to the post-

election violence IDPs. I think it is important to understand that it is the reason why it is a restricted statement to only the issues that were raised. If you want to go far back, I cannot say anything about it from where I am sitting. That is why the two leaders may want to consider the proposal made by Sen. Wetangula and decide on how to craft whatever they want to bring before us.

Sen. (Dr.) Khalwale, you are on both lists. So, like I said, I will not allow points of order because people are rising on point of order when in essence, they are contributing. So, I will give you a chance. Let Sen. (Prof.) Lonyangapuo contribute first.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I want the Leader of Majority to further get thorough clarification: IDPs are IDPs in Kenya. These people were displaced in Kenya by Kenyans themselves. During the 2007/2008 post-election violence, in Molo, for example, people lost their herds of cows and sheep. Their livestock was stolen and their houses were burnt later on and people were moved. At the same time, the same behavior exhibited itself in Mandera, Wajir, West Pokot and Turkana and at the same time, we decided to kill that behaviour which is cattle rustling. This bad habit is by Kenyans against other Kenyans. So, people were displaced from their homes.

Mr. Deputy Speaker, Sir, could the Leader of Majority in getting fine details of the same, tell us where these people who were affected in Laikipia, Turkana and West Pokot are because of cattle rustling? Nobody is talking about them.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, like I said, you are not going to find that answer in this statement because this statement was sought specific to the post-election violence IDPs. So, you will not find issues about cattle rustling in this statement unless you bring it as a substantive question or issue that you want to be explained. You will not find it there, however, you look at it. It is not there.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, fortunately, this answer does not talk about post election violence. It talks about Internally Displaced Persons (IDPs), who include cattle rustling victims.

**The Deputy Speaker** (Sen. Kembi-Gitura): If you look at the body of that Statement, you will realise that he is talking about post-election violence, starting from page one.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, as we correct what Sen. Wetangula said, maybe we should form a select Committee to work on it.

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

Sen. (Dr.) Khalwale, is your point of order still live?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. It was not against Sen. (Prof.) Lonyangapuo, but Sen. Ndiema. Is the Senator in order to try and sneak through the Floor of the House a lie that has been the reason why people, especially from my community, who live in Trans-Nzoia, have been attacked during every general election, by claiming that they were settled on pieces of land by the colonialists? I congratulate you for stopping him from going that way. If we allow that kind of talk to be part of the HANSARD, we will give credibility to the lie that has caused our people to suffer. Could the Senator for Trans-Nzoia withdraw those words, so that they are not part of the record of the House? It was not the Senator for West Pokot; it was the Senator for Trans-Nzoia.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Haji, what is your point of order? All of you must realise that we are taking too much time on this issue.

**Sen. Haji:** Mr. Deputy Speaker, Sir, is the hon. Senator for Kakamega in order to pick on the Statement made by the Senator for Trans-Nzoia, when we know that during the colonial times, the Maasais were displaced from their land? It is not only the people of Trans-Nzoia who were displaced, but also the Maasais. He was talking in general terms.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! This issue will disintegrate in such a way that we shall not recognize what we are discussing in the first instance. I will not allow that to happen. The Senate Majority Leader will confirm to me two issues. One---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, I will not go back to the issue raised by Sen. (Dr.) Khalwale. I will not allow you to go on that line. If I wanted you to withdraw or order that the words be expunged, I would have done it.

*(Sen. Ndiema spoke off record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): You are not on microphone and so, you are not on the HANSARD. Give him the microphone.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, is the Senator for Kakamega in order to impute improper motives on me, when I did not mention any Kenyan community as having displaced other communities in the historical times? I mention - which is a fact - that the British colonialists displaced some communities. I also mentioned that there are squatters in Trans-Nzoia who were displaced, including the Luhyas and other people who are not necessarily from one community. I am speaking for them. Is it in order for Sen. (Dr.) Khalwale to introduce the element of community?

*(Loud Consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Ndiema! Please, sit down.

*(Loud Consultations)*

Sen. Ndiema and Sen. (Dr.) Khalwale, you are only aggravating the situation unnecessarily. Like I said, I would have a ruling on Sen. (Dr.) Khalwale's point of order, but I did not because I was listening and following the proceedings.

Sen. Ndiema, next time when I ask you to sit down, please, do so. I do not want to appear like I am in a contestation with a colleague Senator.

Sen. (prof.) Kindiki, we need to get a way forward on this issue. I had proposed that we deal with this issue on Tuesday and there is a proposal that we have a Motion. Sen. Khaniri had come up with a Motion, but it was deferred pending this Statement. Let me know what you think about this. Do you want us to continue with the matter on Tuesday or call the Cabinet Secretary? Will calling the Cabinet Secretary help the situation or will the route proposed by Sen. Wetangula be more beneficial to the House? I would like to hear, in two minutes, what your take is on all those issues, so that we can proceed with the other business of the House.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, on a point of information.

**The Deputy Speaker** (Sen. Kembi-Gitura): Whom do you want to inform?

**Sen. (Dr.) Machage:** I want to inform Sen. (Dr.) Khalwale.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, it is too late; he is not on the Floor.

*(Loud Consultations)*

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, I beg that you add me one more minute, so that I can be conclusive.

**The Deputy Speaker** (Sen. Kembi-Gitura): You have already taken more than a minute begging.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, it is because my colleagues were interrupting me.

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

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, this issue is so emotive and polyvalent, as you have seen, even among parties; this is not a party issue. Even within Coalition for Reforms and Democracy (CORD) and Jubilee, we have contesting views. This issue can even split and disintegrate the country if it is not handled well. For us in Jubilee, we believe that the future of this country lies in resolving some of the long standing issues including the IDPs problems once and for all.

We have used the Organisation of African Unity (OAU) Convention of 1969 to define IDPs. Someone has to be away from home and has the fear of returning. Therefore, when you return, you are no longer displaced. The reasons for being away must be serious events that disturb public order or conflict. The definition in our Act is a generous.

Mr. Deputy Speaker, Sir, before I give the way forward, as the Senator for Tharaka -Nithi County, I am not satisfied with the information that is available to Government at the moment. I know that there are over 3,000 people who were displaced in Tharaka North in 1997 and until now, 19 years later, they are still displaced. The example given by the Senator for Migori was about Mr. Gitonga, from Chuka in Tharaka-Nithi County, who used to own the Grand Kimwa Hotel in Kisumu; he has almost lost his mind; he has never recovered from that loss. It is serious and it affects all of us, including the Senate Majority Leader.

Having said that, I suggest that we proceed in both ways. One, it would be important, given the complexity and the unending nature of this matter, that the Cabinet Secretary appears before either a Committee of this House or a Committee of the Whole in an informal session. I also want to confirm and support what---

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, do you want to be informed by Sen. Musila?

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, I have no problem. He is my neighbour and senior; he can inform me.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I want to inform my good friend, the Senate Majority Leader, that immediately after the violence, a Committee was formed under the chairmanship of the former Permanent Secretary for Planning, Prof. Sambili. I



was a Member of that Committee. A compilation was made of the IDPs.

What appears to have happened is that the list that Senate Majority Leader may wish to have access to has continued to be amended and added fraudulently. Therefore, I want to inform my friend that a list exists but perhaps that has already been compensated, and I think this is a new list. If we are not careful, we will end up adding people who are not Internally Displaced Persons (IDPs).

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you for that information.

In light of that information from Sen. Musila, I suggest that the Cabinet Secretary should appear and give whatever information he has. I also support what my brother the Leader of Minority has said; this Senate will do a great deal of good to this country if we can have an *ad hoc* committee specifically to deal with this issue. If possible, that committee, to show seriousness, can even be co-led by myself and Sen. Wetangula to remove any indication that any Senator from the Jubilee or CORD side wants to take advantage of the issue. That way, this Senate can give this country a long lasting solution on a matter that has divided our country for a long period of time.

**The Deputy Speaker** (Sen. Kembi-Gitura): Very well. My understanding of the way forward is to find out how soon the Cabinet Secretary can come to the Committee of the Whole so that everybody has a chance to interrogate this matter. Tuesday is not possible because it is too soon.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Tuesday is too soon but I know the Cabinet Secretary (CS) is very co-operative. We can get him within a week.

**The Deputy Speaker** (Sen. Kembi-Gitura): Tuesday or Thursday next week? Does that pre-empt the ruling I had made on Tuesday?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): If you still want to hear me, it is fine but it would be the same thing. I would rather I pass these concerns to the CS today so that as he prepares, he can come and deal with everything, including these issues.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then I propose that we do it on Thursday next week.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I will follow up on the issue.

**The Deputy Speaker** (Sen. Kembi-Gitura): I cannot direct on the issue of the Motion. That is a decision that you, people, can make.

Sen. (Prof.) Lesan, what is your point of order.

**Sen. (Prof.) Lesan:** This is a very complicated matter and I think we might consider asking the Cabinet Secretary for Lands and Urban Development and also the Cabinet Secretary for Interior and National Coordination so we do not have to call them again and again.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is a very important point.

**Sen. Okong'o:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): It better be a point of order, Sen. Okong'o.

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, before you arrange the time the Cabinet Secretaries will be coming here, I have seen here that the list of the integrated IDPs in Nyamira would be profiled shortly. I do not know whether the profile from Nyamira would be available or we just interrogate the same answers?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Okong’o, you have a good chance of interrogating the Cabinet Secretary why the profiling has not been done. I am directing that the Leader of Majority invites the Cabinet Secretary to come for a meeting with the relevant committee of the Senate at which all Senators will be invited so that all matters pertaining to this issue can be interrogated to completion, pending the other matters proposed by both leaders of the House; Leader of Majority and Leader of Minority. This will take place Thursday next week.

The point made by Sen. (Prof.) Lesan is very important. You may want to consider inviting the Cabinet Secretary for Lands and Urban Development and any other Cabinet Secretary. We want to deal with these issues once and for all. That would be my direction.

That Statement has taken a very long time but I think it was very important. I can see Sen. Billow is not here to issue the next Statement. Anybody from the Committee on Finance, Commerce and Budget to issue Statement (b)? Sen. Billow, are you ready to issue the Statement?

**Sen. Billow:** I am ready, Mr. Deputy Speaker, Sir. Let me start with the one for Central Bank of Kenya.

**The Deputy Speaker** (Sen. Kembi-Gitura): We are going in sequence so it is Statement (b).

#### MISAPPROPRIATION OF PUBLIC FUNDS BY NATIONAL BANK OF KENYA

**Sen. Billow:** Mr. Deputy Speaker, Sir, the request for a statement on the misappropriation of public funds by the National Bank of Kenya (NBK) was made by Sen. Wetangula on 30<sup>th</sup> March, 2016. In the Statement, he sought a number of clarifications. The first one is whether the Cabinet Secretary in charge of National Treasury is aware that NBK is in a financial crisis and has reported a loss of Kshs120 billion. That is what was on the HANSARD.

The NBK is not in a financial crisis and it reported a total loss of Kshs1.2 billion and not Kshs120 billion.

The second question was whether the Cabinet Secretary is aware that the said unaccounted for funds were secured by the bank’s top managers. The Cabinet Secretary is not aware of any accounted for funds secured by the bank’s top managers. The Cabinet Secretary is however aware that the Central Bank of Kenya (CBK) has commissioned a special audit of the bank and expects that the audit will reveal any irregularities.

The third question was: “What steps have been taken, if any, by the Treasury, to secure public funds lost that belong to, among others, the National Social Security Fund (NSSF), the National Hospital Insurance Fund (NHIF), the Retirement Benefits Authority (RBA) and other public institutions that have a stake; not to mention that the bank is wholly Government and *quasi*-government owned.

The Cabinet Secretary is not aware of the funds belonging to NSSF, NHIF, RBA or any other public institution that have been lost in the bank. The Governor of CBK has assured the Cabinet Secretary that the funds deposited with the bank are safe and the Cabinet Secretary, on that basis, has assured the public on the safety of their funds in the bank.

Regarding the action taken to investigate and establish individuals responsible for the loss and punish those found culpable, the following actions have been taken: The Board of Directors has sent six of the top managers including the Chief Executive Officer (CEO) on compulsory leave to allow for special audit commissioned by the CBK to establish if there are any irregularities. The affected managers have also reported to the CID and recorded statements. If any of the managers and or any other person in the bank is found to have breached any regulations, appropriate action will be taken against them according to the law.

The Senator also wanted to know the role of CBK as a regulator and banker of the Government through the Bank Inspection Department to ensure that the public funds deposited in the bank cannot be misused or misappropriated. The Banking Act, Cap. 488 empowers the CBK to regulate the business of banking in Kenya. Specifically, the Act empowers the bank as follows---- They are all listed and the Senator has the copy. It includes inspection of any banking institution and its agencies including the books of accounts and records. It also includes vetting of officials by carrying out an assessment of the professional and moral suitability of persons managing or controlling such banks. It also includes examination and control of groups by requiring legal and management structure of the banking group. Section 33 involves advising and making recommendations to the institution with regard to the conduct of the business, generally.

The sixth question the Senator sought is the role of the National Treasury as the custodian of public funds to ensure that the funds are not misused or misappropriated. Treasury is responsible for the formulation of policy in the banking sector, except monetary policy, which is specifically provided for in the CBK Act, under Article 231 of the Constitution of Kenya.

Lastly, the reasons why NBK did not alert National Treasury to avert this astronomical loss are: NBK is a listed company regulated under the Capital Markets Act and as a bank, it is regulated by the CBK under the Banking Act. Section 33(b), (c) and (d) of the Capital Markets Act requires that any sensitive information of a listed company be disclosed only in such a manner that it is accessed or available to those likely to deal in securities, the public or all shareholders. At the same time, the release to some of the shareholders at the exclusion of all the others would contravene the Act as that may be deemed as inside information.

Therefore, Mr. Deputy Speaker, Sir, it is important to note that the loss of Kshs1.2 billion was brought to the attention of the Board of the Bank on which the National Treasury itself is represented.

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

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this is an embarrassingly inadequate answer. The Chairman of the Committee that I sit in has given an answer that is contradictory, inadequate and intended to cover up what is going on at NBK. You cannot say that you are not aware that funds belonging to NSSF, NHIF, RBA and other public institutions have been lost when at the same breath you are saying that money has been lost. It is true that NSSF has 48 per cent of ownership of

NBK. These are public funds. I know that the law says you cannot own more than 25 per cent but NSSF has 48 per cent of the money in NBK. Immediately after I asked this question, the Board of NBK was sent on leave and reported to the CID. Eventually, they have sacked six top managers for occasioning a huge loss to the bank.

Could the Chairman tell us, and table the accounts of the bank to show that in fact, the loss is Kshs1.2 billion and not Kshs20 billion because information available to me is that the bank embarked on reckless lending of money to borrowers without proper security and in certain instances, a borrower applied for a loan like today, the loan was approved the following day and on the third day the borrower withdrew from the account US\$1,000,000 and a week later the loan was declared a bad loan and the account closed? This is fraud and theft. Could the Chairman bring a detailed Statement---

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. The bank is an entity that holds deposits of tens of thousands of Kenyans. Therefore, to make an allegation in the manner that he made, he needs to table evidence that the bank approved a loan for someone within one day and so on. That is a serious allegation and the Member has to table evidence that the irregularity took place or withdraw.

**The Temporary Speaker** (Sen. (Dr.) Machage): In other words, you are asking for substantiation?

**Sen. Billow:** Yes, Mr. Temporary Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I was very clear on the information available to me. The bank has demonstrated itself to the public. No bank can send away six top managers if they are not---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! Whatever you have said is in the HANSARD. However, you have made some important statements as far as I am concerned. I thought that this would have been an opportunity to jump on the Standing Order raised by Sen. Billow and table the information available to you. Otherwise, you have to withdraw and apologize according to Standing Order No.90.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I will neither withdraw nor apologize. The Standing Orders require that the documentation that I may table to substantiate, can be tabled on the next sitting day which is Tuesday next week. I will bring the documents and show the Chairman how reckless lending has been going on in that bank. That is not Chase Bank or Imperial Bank---

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

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. This statement was to be answered last week, but Sen. Wetangula sought permission for it to be delayed until this week so that he could be allowed to table the same information he is talking about. He said that he had information that could shake---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Billow! To the best of my knowledge, the Chair has ordered that this information and documents be tabled on Tuesday, next week.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, in the last question that I sought from the Chairman, I asked about the competence and capability of Central Bank of Kenya (CBK) to superintend over banks.

Could the Chairperson confirm that given the events that led to the collapse of Dubai, Imperial and Chase banks and considering the shaky situation of National Bank of

Kenya (NBK), the leadership at the CBK and their ability to superintend over our banks and manage our monetary policy and stability is wanting and needs to be addressed urgently. We do not want to have situations where we fall back in the 1990s where within a spell of one year, more than 20 banks went under as the CBK watched.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I would like to get a clarification from the Chairperson touching on something that he said. It is very important that as we ask and respond to the questions regarding the NBK, to be very careful not to put it in a situation where customers can begin to make a run for their money. That would be adding insult to injury in our current financial situation.

I would like the Chairman to give this House an assurance that in spite of the problems that might be at NBK, it is stable, clear and nowhere near having a problem that can cause a run on the bank.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, could the Chairman table in this House the loans given to members of staff and directors of the NBK as well as a list of all the people owing that bank huge loans of Kshs10 million and above? When he tables that list, could he indicate the ones that are non-performing loans?

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. I respect my brother, Sen. (Dr.) Khalwale very much. However, is it in order for the honourable Senator to request for information from a bank that touches on the relationship between a bank and its clients? That is confidential information.

**The Temporary Speaker** (Sen. (Dr.) Machage): I will respond to that concern later.

Please, proceed, Chair.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I would like to advise the Senator for Bungoma County that in any business, be it a bank, one does business with an aim to make profit. However, when doing business, one can also make a loss. National Social Security Fund (NSSF) is an investor in the NBK which can make a loss like any other bank. Therefore, the Kshs1.2 billion is a loss on the operations of the bank. It is not a loss of the deposits. Therefore, all the other entities that have deposits there are not at risk because it is not a loss of deposits, but on business. I would like to inform him that ---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Before the Chairman purports to advise me, is he in order to say that NSSF is a depositor at the NBK when, in fact, it is a *bona fide* shareholder.

**The Temporary Speaker** (Sen. (Dr.) Machage): Those are just differences in semantics. You may be a shareholder and a depositor. It is just common sense. I may not have studied economics or commerce, but that is common English language.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I said that NSSF is an investor. That means a shareholder in the English language. There are many private banks that reported losses. The NBK is not the only bank. The NBK has been reporting losses for many years from the time of the former managing director. Therefore, reporting losses does not mean the bank's deposits are affected. People should not confuse those two things.

Secondly, Sen. Wetangula asked a question on the status of the accounts of the NBK. The accounts of any company quoted on the Nairobi Stock Exchange are public documents and are available on the website of the NSE or that of the NBK. It is not privileged information. It is public information and he can access it anywhere.

Mr. Temporary Speaker, Sir, Sen. Wetangula also asked about the lending.

Lending in any bank is guided by prudential guidelines which are international standards adopted by all the banks in the world as well as the guidelines provided for in the Banking Act.

It would be wrong to say that the lending at the NBK is characterized by irregularities that he has mentioned unless he tables evidence. Therefore, I will respond to that question when he tables his evidence. They remain mere allegations until and unless he tables evidence.

On the last point, I agree with Sen. Kagwe that we need to be very cautious on the statements we make. When we say that a bank is being run like a kiosk, we will create panic amongst the depositors. I would also like to advise the Senator for Kakamega that the confidentiality rules that bar anyone from getting information relating to the accounts of the account holders in that bank are the same ones that have been used by the Central Bank of Kenya (CBK) in denying his party leaders access to information relating to Eurobond.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. Let me make the ruling first.

I said that I will make a ruling on Sen. Kagwe's point of order after a few minutes. I refer you to Standing Order No.92. This House is guided by Standing Orders. So, everybody should look at Standing Order No.92.

Standing Order No.92 (5) states as follows:-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”

Paragraph (1) states:-

“Subject to paragraph (5), no Senator shall refer to any particular matter which is *sub judice* or which, by the operation of any written law is secret.”

However, this House has powers also to listen to secret matters in camera. So, subject to the information that will be tabled on the Floor of this House on Tuesday, a decision will be made whether, henceforth, the matter will be listened to in camera. It is so ordered.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Thank you for remaining hawk-eyed and seeing the right Standing Order.

*(Sen. Billow consulted loudly)*

Mr. Temporary Speaker, Sir, assist me to get the attention of the Chairperson. Equally important, I would like the Chairperson to prevail upon the Chairman. The fact that he is a financial expert does not mean that the rest of us who might be laymen in that field are ignorant. Information which he is withholding from me is now---

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Kagwe has an intervention.

*(Sen. Kagwe spoke off record)*

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am on a point of order.

**The Temporary Speaker** (Sen. (Dr.) Machage): Okay, you are right.

Sen. Kagwe, hold your guns.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, the information that he is

trying to shield me from accessing is in possession of the Government. The supreme law which is the Constitution says in Article 34 that every citizen has the right of access to any information held by the State. Therefore, you are now advancing the same lie that was used by the Governor of the CBK in denying the---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Senators do not lie. They may say untruths but they do not lie.

**Sen. (Dr.) Khalwale:** Yes, Mr. Temporary Speaker, Sir. He is advancing the same misguided strategy that was used by the Governor of the CBK who wants to shield corruption that was perpetuated through Eurobond in the same way that we want to reject corruption that is being perpetuated---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. I request that you desist from that matter until Sen. Wetangula tables the information that he has on Tuesday. Please hold your guns.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I said all these things because I wanted to persuade you to direct that he must bring that information and table all the documents that I have asked for. They are critical. They include insider trading and non-performing loans. It is the evidence we want in this Senate of the Republic of Kenya for Kenyans to see.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, when you read the Standing Orders, you rightly indicated that it is subject to several things, including the fact that it can be heard in camera. However, I do not recall - and I could be wrong somebody can correct me - in the history of this country where the loan book was asked for in Parliament. I have never heard of that. We are creating a very dangerous situation. It is possible that today, those people with loan books, those transacting at the National Bank of Kenya (NBK) and those who want to apply for loans in the NBK can start getting worried that their names will be splashed around here in the Senate.

Mr. Temporary Speaker, Sir, we need to be sensitive to some of these things and realise that we are dealing with sensitive business where confidence is everything. When it comes to banks, confidence is everything. Whereas we want to punish those who have misused their positions in the banks, it is important that we do not do so and punish depositors and good citizens of this country.

*(Several Senators stood up in their places)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, I am on my feet.

**An hon. Senator:** Two of them!

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, two of them.

If you followed the chronology of our discussions, an allegation was raised by Sen. Wetangula and substantiation demanded by Sen. Billow. Sen. Mutahi Kagwe raised an issue of protection of matters of banking to citizens of this country an issue that made me call your attention to our Standing Order with a clause.

On subsequent discussions or contributions, Sen. (Dr.) Khalwale has demanded that you lay on the Table of this House certain information that you think is very privileged. I will make a ruling on that on Tuesday. It is so ordered.

*(Several Senators stood up in their places)*

If it is on what I have already ruled on, no.  
Proceed, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the Chairman did not respond to one of my requests: The management of the CBK and its ability to superintend over banks is wanting given the situation that we have witnessed of late. He completely avoided to answer that.

**The Temporary Speaker** (Sen. (Dr.) Machage): I have not yet called him to respond. It is part of your request.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, he appears to have finished and sat down.

**The Temporary Speaker** (Sen. (Dr.) Machage): No, that is my prerogative.  
Proceed, Sen. Billow.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I just want to bring to the attention of the---

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, finish answering the other questions that were raised.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I have answered him. I do not know what he wants me to answer. However, I have answered all the questions raised by the hon. Senator unless he did not listen to me. He asked four questions and I answered all of them.

**The Temporary Speaker** (Sen. (Dr.) Machage): You are forgetting one thing; what is going on with the NBK, Chase Bank and Imperial Bank is public knowledge. It is in the public domain.

So, we cannot pretend to conceal what is already in the public. All he wanted was an assurance from you that all is well with the National Bank. Can you do it or say all is not well?

**Sen. Billow:** Mr. Temporary Speaker, Sir, he has it in writing and I have read it. That is the assurance from the Cabinet Secretary of the National Treasury; that as far as he is concerned, there is absolutely no problem and the public and other monies in the National Bank are safe. May I read it once more?

**The Temporary Speaker** (Sen. (Dr.) Machage): You do not have to because you have answered. Kindly have a sit.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, listening to the tone of the Chairperson and that of Sen. Kagwe and their demeanour, it should strike the Chair that what they are doing is over and above giving us information which we want. Since when was the Chairman given power to defend information which is not his? He is a conveyer. Can the Chair direct that it is not his responsibility to defend the ills that are ongoing at the National Bank? He should give us that information and we shall live with it. We are protecting the depositors.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order Sen. Billow. Kindly remain cool and listen to this. How do you know I will not give you the Floor? Everybody must be heard. When I think an answer has to come from the Floor, I will



give out the opportunity. I think I am being fair on this.

Now, our HANSARD does not give any information on the tone or appearance of a Member's contribution to this House. In any case, an assessment of a tone and appearance is a subjective issue. It depends on whether you think the facial expression of a fellow Senator fits into your culture and definition of anger and other expressions. Therefore, it is neither here nor there.

**Sen. Billow:** On a point of Order, Mr. Temporary Speaker, Sir. An allegation was made and the Chair directed that he will make a ruling on it next week. The Member said he will table the evidence next week and he was given the chance. It would be improper for the Chair to allow a Member to continuously say that there is theft and looting - those are the words he used - in the National Bank. He also said we are defending the Bank.

The Chair should not allow the Senator to get away with that kind of statement. Unless he tables evidence to show that, he should not be allowed to repeat it by stating that we are defending looting. We cannot allow baseless allegations to be made in the House. There must be decorum and respect in the House. The Chair should not allow Members to say there is looting going on.

*(Several Senators rose in their places)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I have to rule on Sen. Billow's point of order. Therefore, listen for once.

It is out of order for a Member to allege that another Member is defending a bank unless you have information that you may want to table or be called upon to substantiate. That was out of order. Let it rest there.

Sen. Billow, that is my position. Please relax!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am the one who asked for this Statement. The Senator for Mandera County and Sen. Kagwe must understand and appreciate that it is not every day that a bank of the status of the National Bank wakes up and dismisses six top managers and hurls them to the CID to record statements on impropriety, fraud and theft. This is public information. What we are seeking is not to frighten anybody who is banking with the National Bank.

My law firm has been acting for the National Bank. I do not know if it is still acting on their behalf. What we want is an assurance that what has happened at the National Bank is not a figment of the imagination. We want the bank that is 100 per cent owned by Government and Government institutions to be safe and that public funds are safe. That is what we are asking for. In so doing, I do not understand how Sen. Billow and what looks like a Lieutenant behind him---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Senator!  
Withdraw and apologise.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): I withdraw and encourage my colleagues---

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Can you withdraw and apologise?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Senator for Nyeri County is my friend and I apologise to him. However, I encourage my colleagues to learn the art of debate.

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! It is exciting indeed.

*(Laughter)*

I have made two rulings over the issue. One, the Senate Minority Leader will table his allegations on Tuesday.

Secondly, I will make a ruling on whether the information sought by Sen. (Dr.) Khalwale will be against the Banking Act and any known law of protection of customers of the banking institutions. That is fair. Let us now move on.

*(Applause)*

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I do not know whether I am in order to request the Senate Minority Leader; my leader, to tell us his interests since he told us that his law firm used to act for the National Bank. I am worried there can be conflict of interest because he might get the information from the law firm.

**The Temporary Speaker** (Sen. (Dr.) Machage): That is legitimate. I get you well. The Senate Minority Leader, you have been challenged to declare your interest.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I have no interest to declare in matters of National Bank. May I advise my sister Sen. Elachi to desist from calling me “my leader from western Kenya” I am a national leader. I am not a leader of western Kenya.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Let us give him time to declare the interest.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, may I remind my colleague, the tycoon for Nyeri County, Sen. Kagwe, that when he starts exhibiting short fuss in debate, we might start wondering---

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The Senate Minority Leader, I will advise on that because I am the Chair and a little older than you. Sometimes it is good to answer a question and leave it at that. I know you are very knowledgeable or, maybe, very intelligent. However, sometimes the information you

have is not useful to this House. Let me advise you on that. If you want to be a statesman as you have declared, you must be disciplined.

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to assure my colleague that, in fact, I have absolutely no problem with any form of debate? Indeed, I have a very short fuse on matters that he has raised. My only concern was the accusation that I defend anything that might be corrupt or engage in corrupt practices.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I ruled over that.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, my final issue is that whereas I would be happy to be the chairman's lieutenant at any time---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. Kagwe! I ruled on that and an apology was made.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, the statement was not withdrawn and I have not finished. A withdrawal was made but no apology was made by my friend who is also a lieutenant of the Hon. Raila Odinga in the Coalition for Reforms and Democracy (CORD) Administration.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The law applies on both sides and it cuts across. The knowledge this Chair has is that apart from being the Chairman of FORD-Kenya, Sen. Wetangula is one of the principals of the CORD. That is the information this Chair has.

*(Sen. Kagwe spoke off record)*

Hold on. Whether he has ceased and, therefore, become a lieutenant is not privy to this Chair. In the same way, Sen. Wetangula withdrew and apologised for having made the same allegation against you, Sen. Kagwe, it is just appropriate that you reciprocate; absolutely apologise and withdraw.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, by lieutenant, I meant---

**The Temporary Speaker** (Sen. (Dr.) Machage): I have asked you do to---

**Sen. Kagwe:** But Mr. Temporary Speaker, Sir, there must be some natural justice. I must explain because he wants to move from being a lieutenant to being a president.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. Kagwe! Let us have some decorum.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, if Sen. Wetangula is not a lieutenant of hon. Raila, I totally withdraw and apologise.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very good! That is enough. Let us move on because we have had enough of entertainment. Let us deal with business.

The Chairperson of the Committee on Finance, Commerce and Budget, you have another statement to issue. Would you like to execute Statement (c)?

**Sen. Billow:** Yes.

FAILURE BY COUNTY GOVERNMENTS TO PAY SUPPLIERS  
AND CONTRACTORS

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

Order, Sen. Wetangula! Were you not the questioner?

**The Senate Minority Leader** (Sen. Wetangula): No.

**The Temporary Speaker** (Sen. (Dr.) Machage): If you disown the Statement, I can appropriately order---

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir. I did not request for the Statement.

**Sen. Billow:** Mr. Temporary Speaker, Sir, it was requested by Sen. (Prof.) Lonyangapuo.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I am sorry.

**Sen. Billow:** Mr. Temporary Speaker, Sir, Sen. (Prof.) Lonyangapuo requested for a statement on failure by county governments to pay for goods supplied and services rendered to them by suppliers and contractors. This is a very important Statement for Senators because the problem of lack of payment to suppliers of goods and services---

*(Sen. (Dr.) Khalwale consulted Sen. Kagwe loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale! Could you converse a lower tones because we, and especially Sen. (Prof.) Lonyangapuo, want to listen?

**Sen. Billow:** Mr. Temporary Speaker, Sir, this is a very important statement for the Senator because it is about the pending bills. Sen. (Prof.) Lonyangapuo wanted the Treasury to explain the issue surrounding failure by county governments to pay for goods and services supplied by suppliers and contractors. The response from the Treasury is that they have reflected on the above and would like to advise as follows:-

(1) That, according to Section 94(a)(i) of the Public Finance Management (PFM) Act, 2012, any county government that fails to make any payment as and when due is in serious material breach of the law.

(2) That such serious material breach of law warrants intervention by the Cabinet Secretary (CS) to the national Treasury in the manner contemplated under Article 225 of the Constitution which talks about stoppage of funds to county governments.

(3) It should, however, be noted that the Treasury has not received any formal complaints by suppliers that county governments have failed to honour payments due to them.

(4) Furthermore, in light of the fact that:-

(a) The PFM Act, 2012, and the Integrated Financial Management Information System (IFMIS) design does not allow county governments to enter into commitments for which there are no approved budgets---. That is the law as far as the PFM Act and the IFMIS are concerned.

(b) County governments have received all transfers due to them under the County Allocation of Revenue Act for years 2013/2014 and 2014/2015. So, there should actually be no payments outstanding to suppliers in respect to those years.

(c) County governments have also received all the disbursements due to them as at the end of January, 2016, under the County Allocation of Revenue Act, 2015/2016, as well as part of the transfers due in February and March, 2016.

(d) County governments have on average been collectively holding bank balances amounting to over Kshs30 billion at the Central Bank of Kenya (CBK) throughout the

2014/2015 Financial Year up to date.

(e) The national Treasury has been prioritising disbursement to county governments with least fund balances at the CBK. So, for counties that have not drawn down their balances at the CBK, their transfers could be in August. All the others are up to date. It is, therefore, not clear why county governments fail to pay suppliers and contractors.

The national Treasury, therefore, proposes that these questions, in respect to the individual counties, be put to the concerned county governments. The national Treasury also urges that suppliers whose claims are due and have not been paid should be advised to bring this to the attention of the CS to the National Treasury to facilitate investigation by the Controller of Budget so that further necessary action is taken in accordance with the law. This includes triggering the provisions of Article 225 of the Constitution.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I thank my Chairman, Sen. Billow, for the detailed response regarding what is happening in our counties. However, he has just presented his answer like one could give information and it has not solved what I asked for. I wanted to know clearly whether there are Kenyans who entered into contracts with the 47 county governments and assemblies to carry out projects and supply goods. In the middle of their business, some have ended up not being paid at all.

This could either be as a result of a governor or whoever is in charge changing the agreement. Some of them have suddenly ended up being bankrupt. They took loans from banks and they have sold their property to repay them. I know one of them who collapsed and died in Kitale because of huge debts.

Mr. Temporary Speaker, Sir, in my county, a Mr. Said has had to sell all his lorries and yet these projects were given to him and they did not pay him. I particularly want more clarification on when the law has been breached. What does the National Treasury and national Government want us to do? When you say that the law has been breached and we have brought your attention to it, what do you want the Senate to do? I told you that it is now the Treasury to quickly call the relevant arm of Government to deal with---

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Lonyangapuo, a practice is developing in this House where questions or clarifications become contributions on the Floor of the House. The tradition that has been in this House - for us who have been in the House a bit longer - is to focus on one or a maximum of two questions and execute them so that we save on time. If you could save us the stories, just go to the question and the Chairperson will connect the story behind it.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, this one is even worse than the National Bank of Kenya (NBK) that we are talking about. It is touching on so many Kenyans and it is so serious.

**The Temporary Speaker** (Sen. (Dr.) Machage): Just go to the question.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I am going there. The Principal Secretary (PS), through the Chairman has acknowledged that the Public Finance Management (PFM) Act and the Integrated Financial Management Information System (IFMIS) do not allow county governments to enter into commitments without the necessary budgetary provisions. Now that you know that they have gone into commitments, what steps will you take because they are already in those commitments?

Another clarification that I am seeking is; you have said that their Kshs30 billion is lying at the Central Bank of Kenya (CBK), where you suspect that this could be the money that should be paid to suppliers. What penalty is the National Treasury meting out on this people who are lazy counties? If there are such counties which do not exhaust their money, could it be a reason where the Senate should dig deeper? We may be giving counties money that they cannot spend.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You are sliding to where I have told you not to. The Chair is not a computer to begin analyzing and synthesizing your speech and begin to look for where the question is. You have already asked two questions and if there is a third one, go to it. I can give you that latitude and save us from the other lyrics.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, thank you. Lastly, the National Treasury has said that suppliers are urged to report such cases to the National Treasury. What is the procedure for each of them to raise this problem so that they can be paid? Do you want these debts to be categorized per county, and who do they send it to? Is it directly to the National Treasury or is there a stopover where they have to send it through?

**Sen. Hassan:** Mr. Temporary Speaker, Sir, thank you for this opportunity. Let me seek further clarity because these days it has become a pre-occupation. Whenever anybody asks me for my number, the next thing they will do is call me and ask me to help them push for payment in the county government.

I would like to clarify further ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Do you want to clarify or you want the Chairperson to clarify?

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I would like to seek further clarification from the Chairperson. I know there are especially small scale business persons who trade with Kshs1million or Kshs2 million, who have incurred massive losses as a result of non-payment by counties.

Could the Chairperson clarify whether there will be mechanisms for reparations for those massive losses that have been incurred? In addition to that, he should clarify whether his Committee might be in a position to assist in that investigation that the Ministry is proposing so that we can recommend various actions, including possible prosecution.

The last one is, I know in Government expenditure, you only spend what there is. In other words, I cannot purport to procure for a service or goods when there is no money in that budget line. In that inventory, can it be demonstrated that there was money before certain services were procured and why that money was not there, ultimately. I remember President Kibaki said, when people are in ---

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

**Sen. Hassan:** Mr. Temporary Speaker, Sir, thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): If you had been in the House a little bit earlier, you may not have raised your third question. Anyway, the Chairperson will decide how to handle it.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I might have missed that when I was alighting from my car. I was listening to the debate as I was coming.

**The Temporary Speaker** (Sen. (Dr.) Machage): This House starts business at

2.30 p.m.

**Sen. Hassan:** Yes, Mr. Temporary Speaker, Sir. We can follow on radio.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, thank you. I would like the Chairperson to clarify the usage of a document called Authority to Incur Expenditure (AIE). This document has been issued by my county, for example, in the pretext of paying for services that have been rendered to the county. Recipients of these documents have gone from bank to bank with an AIE which was issued to them in the pretext that this is payment for services or money for projects.

I would like the Chairperson to clarify whether this document can be used to pay for services or goods that have been supplied to counties or even projects. It is because this has and continues to be done in some counties, particularly, by the County of Bomet.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I thank the Chairperson for that very good answer. Through you, could you alert the National Treasury that business people did not know that they are supposed to report to them that they are being owed money. Therefore, you cannot wait for those reports before you take action.

Could you confirm that the Treasury will act on the strength of the following reports:-

1. The Report of the Controller of Budget - which you know and have read - which has confirmed that these pending bills are there.

2. The Reports of the Kakamega County Public Accounts and Investments Committee which was adopted by the County Assembly that spoke to these pending bills

3. The Reports of the Vihiga County Assembly which, beyond just making the resolution, have also brought here a Petition about these pending bills.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, there are some unique circumstances which, perhaps, have contributed to these pending bills. One of them is that in the process of transiting from local to county governments in 2013, there were some bills that were incurred without proper procedures taking place. For example, in Nyeri County, there are some murram road contractors who went to work on the roads in similar fashion to what they had been doing before.

Therefore, they went on to complete their so called contracts without proper documentation. Those people are suffering seriously. Is there any way that the Chairperson can assist so that instead of those people going bankrupt, something is done as long as there was verification that the jobs were completed? Is there a way that we can assist those contractors?

Secondly, the Government is one of the biggest consumers of services. Under normal circumstances in civilized nations, people who have a Government contract can walk into a financial institution and get advance funding for financing any Government contract because it will be paid back.

Therefore, that allows even our youth and people without substantial quantities of money to take on Government contracts. The problem is what we are seeing here today that, county and national Government are such bad payers that, in fact, normal contractors are avoiding them. The clarification ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Correct! I want the clarification.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, is there a way, through the Chair and our Committee which we see sit on, that we can put a time limit when a county debt must be paid if certification has been given.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well! Chairman, in your endeavor to answer, I will request Members to note that Statement Time as per your Standing Orders is only one hour. I have used my own discretion as the Chair to give more time especially due to issues on finance. So, I hope there will be less intervention. Let us hear the Chair so that we can go to the main business of the House today.

**Sen. Billow:** Thank you Mr. Temporary Speaker, Sir. I want to thank the Members for those valid interventions. I sympathize with the situation of the Senator for West Pokot for he has people becoming bankrupt and it is the same thing in Mandera County or any other county because of the delay.

What Treasury is suggesting is that we can take two actions. One is a situation where the Senate can, by resolution, direct Treasury to investigate and take appropriate action in view of the material breach of the financial regulations. There was a time we did that and I think that is one way we can attach the reports that the Senator for Kakamega County has mentioned; the Controller of Budgets pending Bills and the Auditor-General's Report. That is one way of doing it.

Mr. Temporary Speaker, Sir, the other one is where the Senator for West Pokot can forward these reports himself, as a Senator, to Treasury. He can forward the list of people who have not been paid and have completed the jobs that they have been contracted to do, or supplied services or goods but have not been paid. Based on that, on the basis of the response by the Treasury, they can take action because it is in breach of the Constitution. Treasury can now ask the Controller of Budget to investigate whether those payments are outstanding. Once they confirm, they can go ahead and stop funds being transferred to the county under Article 225 of the Constitution. I think that is long overdue and we need to do it.

Mr. Temporary Speaker, Sir, the point the Senator asked again with regard to 4 (a) and (b) is that, as far as the law is concerned, there is no county that can contract for goods or services if the money has not been approved in the budget and if there are no funds that have been committed.

The funds are released to county governments by the Controller of Budget on the basis of requisitions that have been submitted. Those requisitions identify for what activities they want the money. So, the money will have been released to them and it is committed when it is in their operations accounts.

Mr. Temporary Speaker, Sir, therefore, it is clear that what is happening in counties is that when money has been released to them, based on requisition for a particular activity, they divert that money to some other unplanned for activity which may not have been budgeted for and for which requisition has not been made.

Consequently, when those other projects for which the funds were released are completed, there will be no money to pay them. I think that is what has happened and it is an illegality as per the Public Finance Management Act. That is why Treasury says you forward that list of debts to them so that they can take action.

Mr. Temporary Speaker, Sir, regarding Sen. Hassan's point on reparation for losses, I think that can come through a legal action by the individual suppliers or contractors. In fact, in common law, you can sue for losses arising from a contract that has not been honoured or paid. I think that is important.

Mr. Temporary Speaker, Sir, Sen. Lesan's document called Authority to Incur Expenditure (AIE) is not a valid payment document. It is not evidence at all to show that



there is payment that has been made and is not valid, including people who give you “I Owe You” (IOU) or any of those documents. I think they are not valid and it is a crafty way by some of the counties to try and hoodwink or mislead the public that they have settled. That is not payment. The payment is made against valid invoices, contracts and Local Purchase Orders (LPOs) that are submitted after the works have been certified as having been completed.

Mr. Temporary Speaker, Sir, I have responded to what the Senator for Kakamega had asked. I think to trigger the Treasury’s action, we need to either go through a resolution of the House or directly as the Senator, write to Treasury.

Lastly, regarding past debts as asked by Sen. Kagwe, if the debt has been contracted by a Ministry whose function has been transferred to a county government, then that Ministry still has the responsibility to clear that particular debt. However, for local governments or other institutions of the local authorities, these are subject to an audit that is pending which had been requested by Transition Authority (TA) so that the assets and liabilities of those authorities can be audited.

Unless a liability has been audited and approved, then it becomes difficult for county governments. That is why county governments have not taken over those liabilities. Again, it depends. Some county governments have paid those kind of liabilities where they find the services of those particular institutions are necessary. For example, if you have pending bills relating to Kenya Power from a local authority, there was no way they would allow you to continue as the county government until you clear the previous bills. So, it depends on the individual type of authority.

Mr. Temporary Speaker, Sir, there is no time limit on payment. Immediately a service has been delivered and the certificates have been approved for payments, or goods have been delivered and you have certified as having been received, then your payment is due. It also depends on the terms in the case of contracts. So, as long as the terms of contract have been met, your payment is due and you should be paid. If not, then, those other actions I have mentioned should be triggered.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Sen. (Prof.) Lonyangapuo, are you satisfied?

**Sen. (Prof.) Lonyangapuo**: Yes Mr. Temporary Speaker, Sir.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. If you allow me, I still have the Business of the week in Statement No. (e). I have been patiently waiting for it to be called out.

**The Temporary Speaker** (Sen. (Dr.) Machage): Proceed then.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 26<sup>TH</sup>, FEBRUARY, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. Hon. Senators, this is the Business for the week starting Tuesday 26<sup>th</sup> April, 2016 as follows:-

On Tuesday at 12.00 p.m., there will be a meeting of the Rules and Business Committee (RBC) to schedule the Business of the week and, subject to the resolutions and decisions of that meeting, the following Bills will be considered.

1. The Universities Amendment Bill (Senate Bill No. 31 of 2014); which is at the Committee of the Whole;
2. The County Assembly Services Bill (Senate Bill No. 27 of 2014); which is at the Committee of the Whole;
3. The County Hall of Fame Bill (Senate Bill No. 33 of 2014); which is at the Committee of the Whole
4. The County Governments Disaster Management Bill (Senate Bill No. 40 2014); which is at the Committee of the Whole;
5. The County Governments Amendment Bill (Senate Bill No. 18 2014); which is at the Second Reading.

On Wednesday 27<sup>th</sup> April, 2016, the Senate is expected to continue with Business that will not be concluded during Tuesday's sitting including the various Bills that I have already cited.

On Thursday 28<sup>th</sup> April, 2016, the Senate will consider Bills, Motions and any other Business that may be scheduled by the RBC.

Allow me to take this opportunity to congratulate and thank my colleagues for a very fruitful week especially the work we did this morning. We cannot over-emphasize the importance of ensuring that our athletes participate in the Rio de Janeiro Olympics in August this year. That would not have been possible without the support of this House. I am happy and proud, being a Senator, because I know what we did this morning is an important national duty.

Mr. Temporary Speaker, Sir, I have been informed that His Excellency the President will assent to the Anti-Doping Bill tomorrow at 7.30 a.m. Therefore, I am a happy Kenyan and I am proud to have been part of this effort that has helped us pass this legislation.

Therefore, in the same spirit, I urge my colleague Senators to also keep in mind that we are running behind schedule on the Division of Revenue Bill. I know that it is on the next Order, but I hope that, again, in the same spirit, we should get it enacted, so that the important issue between sharing revenue between the national Government and county governments can be dispensed with.

Without much ado, I thank everyone and now lay this Statement on the Table of Senate.

*((Sen. (Prof) Kindiki laid the document on the Table))*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I want to thank the Senate Majority Leader and also seize this opportunity to urge him to consider the relationship between the Senate and the media during the next meeting of the Rules and Business Committee (RBC). Early in the week, we debated the issue of the funding of the Council of Governors (CoGs) and made far-reaching contributions that finally culminated in a directive that the Chairman of CoGs appears before the Committee of the Whole, including the National Treasury, but nothing was mentioned in the media.

In an off-the-cuff debate in the National Assembly over the same matter, when they were throwing tantrums about the meeting in Meru, it received extensive coverage in the media. Unless we address some of these things, in future, it will contribute to some misguided people thinking that the Senate is not up to the task or not worth existing. We

better take it seriously. We also want the country to know that we are working and they can only know that through the media.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I cannot over-emphasise that. The ability of the PR officer has been put in doubt by this House. It is, therefore, appropriate that this is discussed at that level. You should not have over-committed the President to tomorrow morning. We are aware that it shall be signed at 7.30, but if he signs at 10.00 a.m. what will we think? So, be careful.  
Next Order!

### MOTION

#### ADOPTION OF MEDIATION COMMITTEE REPORT ON THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO.1 OF 2014)

THAT, the Senate adopts the Report of the Mediation Committee on the Climate Change Bill (National Assembly Bill No.1 of 2014) laid on the Table of the House on Thursday, 14th April, 2016.

*(Sen. (Prof.) Kindiki on 21.4.2016 – Morning Sitting)*

*(Resumption of Debate interrupted on 21.4.2016 – Morning Sitting)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Debate is open, but I see no interest in further contributions. I, therefore, call upon the Mover to reply.

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

I humbly request that you defer the putting of the Question on this matter to the next sitting day, under Standing Order No. 54(3).

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

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

**The Temporary Speaker** (Sen. (Dr.) Machage): The Senate Majority Leader, I will call for Division on Order No.8 on Wednesday. So, make sure that your Whip works properly. For Order No.9, I call upon you to move.

Next Order!

### BILL

#### *Second Reading*

#### THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2016)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, as has been the tradition, I have requested the Chairperson of the Committee on Finance, Commerce and Budget to move this Bill on behalf of the Senate Majority Leader.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. That is quite in order.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, the Division of Revenue Bill (National Assembly Bill No.4 of 2016) be now read a Second Time.

This is a very important Bill that provides for the equitable division of revenue raised nationally between the national Government and the county governments in the 2016/2017 Financial Year.

The object of this Bill, as clearly set out in it, is about the equitable sharing of revenue, which is the main principle that underpins devolution in this country. It also provides for two things; the equitable division of revenue raised nationally between the national Government and the county governments and conditional allocations to county governments, in accordance with Articles 202 and 187 of the Constitution.

Mr. Temporary Speaker, Sir, the Bill originated in the National Assembly, where it has been passed without any amendments. The same Bill had been referred by this House to our Committee which went through the Bill and obtained views and comments from other stakeholders through public participation. We also held public hearings and met the CoG and other stakeholders.

I want to draw the attention of Members to page 8 of our Committee's Report on the Bill, which deals with observations and general recommendations that was tabled in this House last week. The total county allocations from the revenue raised nationally have been enhanced in this Bill from Kshs287 billion in 2015/2016 Financial Year to Kshs302 billion in the next Financial Year, 2016/2017. The proposed allocation translates to 32.3 per cent of the approved audited revenue of 2013/2014, which is the latest as required by Article 203 (2) of the Constitution.

After going through the Bill, we have a number of observations. I will quickly go through the observations that we have made. There have been various discussions and negotiations between the two levels of government on how much revenue should go to the county governments. This has been done at the level of Inter-governmental Budget and Economic Council (IBEC) and also the summit. The Committee has also looked at the explanatory notes in the memorandum which explains the allocations between the two levels of Government. I will come back to them later because they are critical.

Mr. Temporary Speaker, Sir, the Committee also noted that as a principle it is essential to increase the revenue that goes to county governments. That is why the total equitable share has increased from Kshs259 billion in this current year to Kshs280 billion in the next financial year. This increase is important if, for no other reason than to appreciate that the cost of providing services by the county government goes up every year. Therefore, there is need to review and increase the amount of equitable share that goes to the county governments.

The Committee also notes that it is equally important for the county governments to appreciate the importance of oversight in ensuring prudent management of financial resources that are sent to the counties. Concerns have been raised that there is need to refocus on the ability of counties to collect their own revenues to complement transfers from the national Government. We have also observed that there is an urgent need to bring clarity to the administration and reporting of conditional grants. This has been the main area of concern. The governors have expressed concern that conditional grants which are channeled through the line ministries to the county governments invariably delay or may have been diverted in some cases, and consequently, affected the operation

of the county governments.

Mr. Temporary Speaker, Sir, this matter has been discussed at various level of intergovernmental relations. The National Treasury has been mandated to come up with a framework dealing with the management of the conditional grants which may come from the national Government or donors. Therefore, it is important to have a framework for the disbursement of conditional grants to county governments that will ensure funds are disbursed immediately without delay for the purposes which they are meant.

The Committee also observed that the National Treasury seems to be experiencing challenges in the management of county issues in particular, with regard to the transfers and reporting. A short while ago, we heard discussions regarding counties that are in serious material breach of financial regulations. Therefore, our Committee recommends that it is prudent for the National Treasury to consider establishing a dedicated unit within its structures that will deal with fiscal matters and all other matters relating to the county governments to ensure intergovernmental administration of fiscal issues.

Mr. Temporary Speaker, Sir, we have also observed that questions have been raised regarding the basis on which the national interests under Article 203 has been determined because the national interests projects which are identified in the Bill only relate to the national Government projects. However, the Committee noted that national interests is not equivalent to the national Government's priorities and that national interests must be determined by the two levels of Government based on agreed priorities. Therefore, going forward, what is classified as national interest should be defined through an intergovernmental consultation at Intergovernmental Budget and Economic Council (IBEC) with the approval of Senate, so that by the time it comes here, it does not create a problem as it has done.

The key page in this Bill is the schedule on page No.5 which is the allocation of revenue between the two levels of Government for the next financial year. The figures provided are very clear because under the national Government allocation, the total amount of sharable revenue is Kshs1.38 trillion. Out of that, it is proposed that Kshs302 billion, which is an equivalent of 32.3 per cent, be given to the county governments while Kshs1.099 trillion be given to the national Government. Part of that Kshs1.099 trillion to remain at the national Government includes monies that will be transferred as conditional grants to the county governments to cater for free maternity, health care, leasing of medical equipments, Level 5 hospitals, compensation for user fees, allocation from the fuel levy fund and the equalization fund. All these things are part of the Kshs1.099 trillion allocated to the national Government.

Mr. Temporary Speaker, Sir, out of the Kshs302 billion to be forwarded to the counties, Kshs280 billion is the equitable share. The balance of Kshs21.8 billion is the conditional share which includes the free maternity, health care, leasing of medical equipments, Level 5 hospitals, compensation for user fees and others which are listed on page No.5. Those are the actual figures that are proposed in terms of divisions between the two levels of Government. To arrive at that, there are workings on the memorandum to show how these figures were arrived at. I would like to draw the Member's attention to the fact that the key item in determining how much money goes is the growth in revenue. The Committee noted that in arriving at the equitable share of revenue, the revenue growth factor of 7.8 per cent was used.

Mr. Temporary Speaker, Sir, we are aware that the average revenue growth factor coupled with the growth in Gross Domestic Product (GDP), on a three years' average was coming to 10.2 per cent. However, concern has been expressed that the general collection of revenue has been very poor this financial year. In fact, as at December this year, the collection of revenue by the Exchequer was Kshs65 billion below the target for this financial year. This coupled with the fact there are huge borrowings has made it necessary to adjust the revenue growth factor from 10.2 to 7.8 per cent, leading to an increase from Kshs259 billion to Kshs280 billion as the total amount of sharable revenue.

The Committee also noted that on the matter of roads maintenance levy, there was lack of clarity on county roads due to the ongoing contestation of the definition and assignment of roads falling under the mandate of the national Government and county governments. It is important that the proposed Bill clarifies some of these issues as a matter of priority so that we do not have any more questions. The point being raised by the county governments is that under Class D, there is a large number of roads that have been transferred to the county governments. However, the issue is the cost of building Classes A, B or C roads is much higher than those of Class D. Therefore, the allocation that is given under the fuel levy fund will only take care of such roads. What is important is for the Roads Bill to be finalized so that clarity is made, once and for all, with regards to the structure of funding in this sector.

Mr. Temporary Speaker, Sir, we also noted that when you look at the Bill on the Statutory Allocations to Constituency Development Fund (CDF), women affirmative action fund and other funds, the Committee noted that the funds have been deducted from the gross ordinary revenue instead of the national Government share of revenue. Therefore, we have advised the National Treasury on page No.12 of the memorandum although it does not form part of the Bill ultimately. Therefore, we are not going to propose amendments.

We have advised the National Treasury to adjust so that, in future, we do not have a situation, as indicated on page 12, on the evaluation of the Bill, funds like the Constituencies Development Fund (CDF) and Women Action Fund in item eight. They ought to be deducted. They need to come out of the national Government share.

Mr. Temporary Speaker, Sir, questions have been raised by the county governments over delays in the transfer of approved funds, including the conditional allocations. The National Treasury, even in a statement that I read earlier, has reiterated that the delays are, in fact, caused by delays in county governments submitting their requisitions or county governments not utilizing funds that have already been credited to their revenue fund accounts in the Central Bank of Kenya (CBK). This explains the point raised earlier by the National Treasury in a statement. On average, there is up to Kshs30 billion in the accounts of county governments. This is the reason.

We recommend that pursuant to Article 219 of the Constitution, the National Treasury should ensure that counties' share of revenue is transferred to them without undue delay and deduction whatsoever, particularly with regards to conditional grants. As I mentioned earlier, I reiterate that it is our determination that the National Treasury should develop a framework for conditional grants to ensure that there are no delays in transfers of those funds to the counties.

The Committee also observed that the National Treasury will provide more

resources to five counties. There is an agreed framework between the five counties and the National Treasury for construction of county headquarters. These five counties did not inherit offices to accommodate the county headquarters. They include Isiolo, Lamu, Nyandarua, Tana River and Tharaka-Nithi. After consultations, it was agreed that the construction of the headquarters be funded at a cost of Kshs518 million for the assembly and the executive. The national Government will contribute 70 per cent of this budget and the county government will contribute 30 per cent. Therefore, we support this agreement which will be done outside the Bill. However, we have urged the National Treasury to consider an allocation to other deserving counties in successive financial years. There are many other counties that do not have suitable offices even as I speak.

The Committee also acknowledged that there is a credit facility that the World Bank proposes to extend to support both the national and county governments on capacity building, in particular with regard to public financial management and civic education. However, the Committee has expressed concern because we feel that money, about Kshs1.4 billion, is a huge amount of money to be spent merely on capacity building. We find it important that the World Bank and other donors should be channeling funds in the counties towards development.

We have seen in a report discussed here yesterday, the United Nations Development Programme (UNDP) giving up to Kshs73 million to build capacity of the Council of Governors (CoG) yet the same institution is getting Kshs265 million for the same purpose from the National Treasury and also Kshs1 billion from the county governments. It is important that donors appreciate that any funding given to the county governments should as much as possible be channeled towards development projects. Concerns have been raised, legitimately so that these funds for capacity building are often spent in hotels and conferences yet these are credits that Kenyans ultimately have to pay.

Lastly, we also observed with a lot of concern, the prevailing condition of pending bills in counties arising out of poor fiscal management and budget implementation by the county governments. We are of the view that the county governments should ascertain and clear these pending bills as a matter of urgency to avoid financial crisis in subsequent years. We recommend that this be looked into within the Intergovernmental Fiscal Framework which includes the CoG, the Commission on Revenue Allocation (CRA), the National Treasury, the Intergovernmental Budget and Economic Council (IBEC), county assemblies, the Senate and other institutions.

Further to the statement that I read earlier on, it is important to state very clearly that county governments have no reason to incur debt beyond a particular financial year. Before the end of that financial year, they would have received all the monies which they have budgeted for. So, they should fund all their commitments from allocations. So, any county government in breach of that and creating outstanding or pending bills for two or three years---. Clearly, that is a serious breach of financial regulations and, therefore, the National Treasury can take action under Article 225 of the Constitution.

Therefore, our recommendation is as follows:-

“We propose that the county equitable share of Kshs280,300,000,000 and the conditional allocation of Kshs21,897,516,719 bringing the total county allocation for the Financial Year 2016/2017 to Kshs302,197,516,719 as contained in the Division of Revenue Bill (National Assembly No.4 of 2016) be adopted by this House.”

Mr. Temporary Speaker, Sir, we, as a Committee, recommend that we adopt this

Bill that has been tabled before this House without any proposed amendments.

In Section 5 of the Bill, if the actual revenue raised nationally in a fiscal year falls short of the expected revenue set out in the schedule, the shortfall shall be borne by the national Government to the extent of the threshold prescribed in regulations by the Cabinet Secretary. This year, for instance, already as at December, the shortfall is up to Kshs65 billion. The shortfall will go up to even Kshs100 billion by June this year. The national Government will have to bear that from their share of revenue. That cannot be passed on as per the provisions of this proposed Bill. It should not be passed on to the county governments.

Mr. Temporary Speaker, Sir, similarly in the unlikely event that the national Government raises more revenue than is proposed or anticipated in this Bill, the excess accrues to the national Government, but they have to use it specifically to reduce borrowing or paying debts of its share of revenues as part of its share of revenue raised nationally. Then, of course, Clause 6 as always is the case in this Division of Revenue Bill cautions against rushing if there is any dispute regarding any provision of this Act, division of revenue matter or allocation. Before approaching a court to resolve such dispute, every effort should be made to settle the dispute with the concerned State organ. The Intergovernmental Technical Committee provides for alternative mechanisms to resolve disputes. If they do not, then Clause 6(2) and (3) provide for penalties against those institutions. That is the main part of the Bill.

On page seven is the memorandum which explains allocations to the national Government and the county governments. It provides explanation on what those items mean. For instance, on the conditional grants on page nine, it explains what conditional grants in support of free maternity healthcare of Kshs4.1 billion mean. It means money to be transferred to the county governments on reimbursement basis through a respective county revenue fund upon confirmation that the county government has provided maternal healthcare service. That is an important point that people always miss, especially the counties. They have to provide the service then they get reimbursed. That is the concept.

There is the leasing of medical equipment. This is explained. It has been there before. We are giving Level 5 hospitals support because they serve a number of regions. Then, of course, we have compensation and also foregone user fees. All of them are explained. The one on development has been there before, but again, the amount has reduced. Last year, conditional allocations relating to the loans and grants received from development partners was Kshs10.7 billion. This year it is Kshs3.8 billion.

Mr. Temporary Speaker, Sir, some of the donor financed projects have been completed. They were included in the previous financial year and the current financial year, but have since been wound up. That is why the amount is low.

On page 11, there is the evaluation of the Bill against Article 203 which is a requirement. The Members can look at how the provisions of Article 203 have been complied with. This is especially in regard to the national interest. The national interest is explained clearly on page 13.

It must be critical to the achievement of the country's economic development and potentially have significant impact on the social interest of the citizens. They must be anchored in Vision 2030 and medium term plan and the resource investment. Therefore, those are the general details on the memorandum. The Members can look at them.



Mr. Temporary Speaker, Sir, on page 16, as required by law, the Bill must set out in the memorandum the variation between the amount proposed in the Bill and the recommendations of the Commission of Revenue Authority(CRA). I encourage the Members that we pass this Bill because it provides additional funding to the county governments. It is also important that we pass it because of the time. They need to do the county allocation of revenue in time so that the county governments can also budget on time.

I reiterate that it is important that the county governments appreciate that it is not about the Senate, but allocating money or resources to the county governments. Parliament has a duty through the Senate to ensure that there is oversight over the use of the resources. This is a major problem that every county is experiencing. The reports by the Controller of Budget and Auditor-General show misuse of resources. An example is the Council of Governors' Conference. The conference is supposed to be about devolution. The stakeholders in devolution include national Government, Parliament and all other institutions, but regrettably the way it has been designed is like devolution belongs to counties only. This is the reason Senators have not attended. Counties have also become dens of corruption. Over nine governors are under investigation by the Ethics and Anti-Corruption Commission (EACC).

Mr. Temporary Speaker, Sir, nearly 15 people have been transported from Mandera County to attend the conference in Meru. They have carried vegetables and fruits that have been purportedly grown in Mandera County. In the social media, there are pictures of the three watermelons that have been transported all the way from Mandera at a high cost. It was under exhibition that, that it is what is grown in Mandera County.

I do not think the people of Mandera and Meru counties need to see how watermelons look like. I do not also think that there is need to demonstrate to the rest of the country that Mandera County grows watermelons. The people of Mandera need to be convinced that their money is being spent well. That is what is more important than the exhibition. Therefore, we end up spending millions of shillings and a lot of time, among other resources, trying to demonstrate to the country that we are doing well. This is the point about devolution that our governors miss.

Mr. Temporary Speaker, Sir, it is about Public Relations (PR). They seem to be focusing on the PR aspect and going out of their way to showcase how they are the best. It is unfortunate. When Kenyans are lacking water and drugs in hospitals, the governors are spending millions in conferences to show people that devolution is working. What is important is to show the residents that the county government is delivering on devolution.

With those many remarks, I request the Senator for Kakamega County to second.

**The Temporary Speaker** (Sen. (Dr.) Machage): Before the Senator responds, one of the duties of the Chair is, not only to chair the Plenary, but also to guide the passing of Bills into law. It is one of the mandates of the Chair to guide the House. So, as you reply, I may request that you comment on the constitutionality of the CDF being deducted from the gross budget instead of the already separated budget.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I second this Bill which is in our circle of events in the Senate. I thank the Chairman of the Committee on Finance, Commerce and Budget for offering me the opportunity to second it.

First, may I share with Members what Mahatma Gandhi said. This is what he said:-

“The world has enough for the needs of all men and women, but not enough for the greed of a few men.”

Mr. Temporary Speaker, Sir, when I look at the increase in the amount of money that we are taking to the county governments - that is the conditional and sharable revenue totaling to Kshs302,197,516,719 - I can confidently tell the people of Kakamega County and other counties that this money is enough for the needs of the Kenyans. However, it is not enough for the greed of their governors.

During Mahatma Gandhi’s days, corruption was not a big problem in the world. Like all the great thinkers in the world, Mahtma Gandhi was thinking ahead of his time. Now, the time is here and the world is exploiting her resources better, but the few men of the world in the national and county governments are making it difficult for Kenyans to enjoy their basic needs.

Mr. Temporary Speaker, Sir, I thank and applaud the Kenya Revenue Authority (KRA) because without the KRA, the ordinary revenue-excluding the Appropriation-In-Aid (AIA) - would not have realised the increment in sharable revenue from Kshs1.2499 billion to Kshs1.38 billion. Therefore, we must applaud the KRA although they can do better.

I support this Bill wholeheartedly without any amendment because we should carry out oversight more. President Uhuru Kenyatta said that he is not going to start new projects. We should also say our business is not to ask for more money, but to exercise better oversight over the counties so that the projects that have stalled should also be completed.

Mr. Temporary Speaker, Sir, I want to laud this Bill because the free maternal healthcare has been catered for. It has been allocated a whopping Kshs4.1 billion. We have to be very cautious about the free maternal healthcare. We have heard the Chairman condemn the misuse of public funds for ferrying watermelons to the conference in Meru. There are such many cases that we need to condemn across the republic. You are a Doctor of Medicine. Free maternal healthcare in a general hospital should simply mean that there is water for every delivery so that delivery is done in a clean environment. There should be gloves and other cheap drugs that are used during delivery.

It, therefore, beats logic that governors are obsessed with organising investors’ conferences and installing street lights and forgetting that our maternity facilities must have water. Women had gone to deliver in a hospital because the President had announced that there is free maternal care. When they discovered that there was no water, they chose to go back and deliver at home.

Hon. Senators, we must push our governors to think in terms of appropriate technology. We do not want our governors to be misguided the way the national Government is misguided in prioritising laptops in a place like Turkana where there are no classrooms and pupils study under trees. We must think appropriately and apply appropriate technology that enables people to meet their basic needs.

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

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

Mr. Temporary Speaker, Sir, I laud this Bill because there is also a provision of

compensation for user fees foregone. This is very important and the country should know what it means, especially the people of Kakamega. Whereas Kakamega Provincial General Hospital, which is now a Level 5 Hospital, collects around Kshs18 million to Kshs30 million per month, the user fee that is foregone is supposed to be compensated from this money. Instead of the Governor of Kakamega taking advantage of this money, he is now starving the former Provincial General Hospital by giving them a mere Kshs10 million. Sen. (Prof.) Lesan understands these issues very well. In the process, the nurses do not know what to do. They cannot have gloves or spirit so as to wipe the buttocks of a child before they give an injection. These are simple things. We must have the second generation of governors. We need humble people who think about the poor, but not people who think big in terms of a desire to own aircrafts.

I know of a case of a governor in one of the Arid and Semi-Arid Lands (ASALs) counties, but I will not mention his name because I do not want to be challenged. The governor was supported by a Senator sitting in this House to vie on a Wiper ticket. He has recently paid in cash Kshs318 million and he now owns a chopper. Where is the EACC? Where is the Criminal Investigation Department (CID)? Where is the Government and especially the President of Kenya? He should stop being Mr. Nice.

Yesterday, the President told us that he will go after governors who steal public money. He is the most informed Kenyan. By the time the Bullfighter gets to know these things, the President is given an opportunity way ahead of time by the National Intelligence Service (NIS). He knows very early in the morning what goes on across the country. What is he waiting for? Let him act for governors to know that the President is a notch higher than them. At the moment, because he does not act, they think they are also presidents.

**Sen. Kagwe:** On a point of information, Mr. Temporary Speaker, Sir. I share the passion and condemnation that Sen. (Dr.) Khalwale is making and I agree with him. In this country, there are three arms of Government and power is divided to the Judiciary, the Executive and the Legislature. The President cannot and has no power to prosecute anybody. The President is trying as much as possible. Indeed, the kind of statements he makes is supposed to be a signal to those responsible in certain areas to act and know that he will support such action. He as an individual, as my brother knows very well, cannot arrest, accuse or take anybody to court. Thank you.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, allow me to accept that as a point of information. Since he is close to the President, he knows those things. I can only go by what the media tells us.

**The Temporary Speaker** (Sen. Mositet): Let me also remind you that you are a Member of the County Public Accounts and Investments Committee (CPAIC). Therefore, in that Committee, you can also summon a governor and do something.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. You know, fighting corruption is difficult. Kenya will be a wonderful world the moment a critical number of Kenyans who are in constitutional offices will make it their business to fight corruption and that is the way to go.

Mr. Temporary Speaker, Sir, I am concerned by what goes on in the 47 counties by virtue of having been the Chairperson of the CPAIC until recently. I really wonder when I see what is happening in the national Government. Could it be that Africans are not ready or fit to lead African governments? The Senator for Laikipia had an opportunity

to travel many times to Southern Rhodesia before it became Zimbabwe. He also had opportunities to travel many times to South Africa before Independence. The beauty, order and cleanliness that you saw in Blantyre, Johannesburg and Durban is gone simply because the Blackman is now in charge.

Mr. Temporary Speaker, Sir, before I was given a point of information, I was pursuing the issue of Level 5 hospitals. Two days ago, Kakamega became the shame of devolution. The media discovered that patients were sleeping on folded carton boxes yet there are beds in Kakamega Provincial General Hospital; a hospital that receives conditional allocations of more than Kshs400 million for Level 5 hospitals. Coming shortly after that, God forbid, a mother from Mabole Village in Butere where the Governor comes from died after a caesarean section. This is the question I ask myself; why did they accept the job? They either did not want to do the job or knew they could not do. Let us keep on pushing and I know we will succeed in the fullness of time.

Mr. Temporary Speaker, Sir, I want to make a few comments on how the balance of the money will be spent at the national Government. There are no angels up there either. If you look at Table 2, you will find that Kshs11.6 billion has been set aside for reengineering of the NYS. We do not know how much has been lost in the NYS because Ms. Anne Waiguru is still free, Ms. Kabura still insists on her affidavit and my brother and friend, Dr. Nelson Githinji, is facing problems. Did we really have to reserve Kshs11.6 billion to this opaque thing called the NYS? In fact, Members of the National Assembly are letting us down. You should have demanded that you be given a list of all the projects that this Kshs11.6 billion will be spent on the re-engineering of the NYS.

A whopping Kshs14.3 billion will be spent this year on the national safety net, a very good thing for our older members of society. However, we cannot allow it. May be because we are not pursuing these billions in the national social safety net programmes, we do not know whether another scandal is unfolding. We need to streamline the funds going into the national safety net programmes so that people do not use it as a cash cow.

I can see that a whopping Kshs17.58 billion will be spent on laptops. Yes, we want our children to be given laptops, but what happened to the same amount of money that was given for the same project last year, the year before and the year before that? Corruption!

My brother and my senior, Sen. Mutahi Kagwe from Nyeri County, and I, need to ask the President why he is looking for thieves amongst governors only. He should also go for the thieves in his Government. They are there. He should go for them, including some of them who even deputize for him.

Mr. Temporary Speaker, Sir, I notice that we will spend Kshs433.8 billion paying public debt. It is a good thing because we must pay our debts. However, hon. Senators, are we satisfied that we are spending all that money on public debt? Debt that comes and we do not know on what that money is spent. Yes, my brothers and sisters on the Government side, you can say: "Huuu," because the projects are there. Recently you saw the President went to Kiambu County and unveiled a road of Kshs1.4 billion and a new maternity wing in Gatundu hospital of Kshs800 million. Yes, that is where the public debt money goes. How about us? This is the House of equity. You help us, we do not feel nice. A road that was started by President Kibaki from Kisumu to Kakamega, Webuye and all the way to Kitale is not complete, seven years later. When the President comes to the place, he says in Swahili: "*Tumetenga pesa. Tutafanya.*" When he goes to his place,

he launches the new road. You then want me to come and cheer, be it in Afraha Stadium when they are misadvised to conduct blasphemy of the Holy Spirit---

**The Temporary Speaker** (Sen. Mositet): Order!

**Sen. (Dr.) Khalwale:** That, I come there and cheer and say, "Mr. President---"

**The Temporary Speaker** (Sen. Mositet): Order, Senator!

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, sorry I am orderly for now. One can laugh at me for these things, especially a member of the public who has never been in my part of the world. However, let me remind you, you who is laughing at me for saying that we are feeling pain for no projects being seen in our place; let me remind you of the story of Correta King who was the wife of Martin Luther King Jnr. During the famous Mississippi walk, a white friend who used to go to the same church with Correta King asked her: "Why are you people walking?" Correta King told them: "You need to be black to know why we are marching." In the same vein, those of you who are laughing – I do not have the mogul of Nyeri County in mind, I am just looking at him – you need to come from these areas where there are no projects to know why we feel this way.

I support.

*(Laughter)*

*(Question proposed)*

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I support the Bill whole heartedly. Secondly, let me assure the Kakamega Senator that, first, there are projects in every part for this country.

*(Sen. (Dr.) Khalwale laughed)*

Secondly, we are not laughing at him at all because he is only currently in the Opposition. However, as life and fate would have it, we might eventually be working together in Government. How we would love that!

Mr. Temporary Speaker, Sir, the first thing that we noticed in this Bill has to do with the deterioration of collection of money that the Chairperson spoke about. That is why when we, as a Committee, sat we supported the notion of not increasing the money because we realised that the Government is walking on a tight rope. We appreciate that. However, the desperation that the KRA is going through must not create the circumstance that its boss pronounced yesterday, where he even wants to go to people's homes and banks and so on. There is a limit to what we want to do. We should not interfere with privacy the way we want to do in order for us to collect money. Money has been collected before.

It is a question of two things. One, it has to do with the confidence that we should give Kenyans that when money is collected from them, it is used for the right purposes and people will pay taxes. The second one has to do with making sure that we collect the taxes that are there. We must also engage in better utilisation of the same funds. When the President spoke in Naivasha, he said that he wants the Government to finish the projects that it has started. There is nothing worse than hearing that projects are being started and then you drive around the same areas where new projects are being started,

and old projects are unfinished. I wish Sen. (Dr.) Khalwale was here because the hospital that he was talking about in Gatundu has been incomplete since Mzee Jomo Kenyatta was the President of this Republic. For President Uhuru to go and finish it was long overdue. In fact, he should have done it the first month that he became President. However, we are happy that he has completed that project.

Mr. Temporary Speaker, Sir, when you travel around the country, you will see many projects that are halfway done. If you go to Karatina as you go to Nyeri, you will notice a huge market that is only halfway finished and yet many other projects and other markets are being built elsewhere. I am happy to report that I got a message from the Cabinet Secretary (CS) concerned, that we will be relaunching the completion of the market in the next two weeks. However, there are several unfinished projects. Worse still, there are complete markets, hospitals and schools that are currently not being used. This is because for some odd reason, they have not been handed over to the users, county governments or other institutions that they have been built for.

It is not enough, therefore, that we allocate moneies and not ensure that they reach the end users. The fact that money was allocated in one year as given, for example, for the laptops, we must be careful about this issue of allocation. The budget, as we read it, is not in itself a transfer of money. It is important for us to understand if money is allocated to Parliament, it does not mean that that quantity of money has been transferred to the Parliament budget or Parliament account in the bank. Money is not transferred until it is effectively done so. So, when you allocate Kshs17 billion for laptops and you do not spend it, it simply means that the money was not spent. It does not mean that money was allocated and then taken elsewhere.

Mr. Temporary Speaker, Sir, I have said on the Floor of this House and I repeat, that we must start a method by which we can make use of private capital for development. If you look at some of the expenditures that counties and the National Government do incur, you will find that a lot of it is for buildings. There is no reason we should be spending money in construction of buildings. We have a lot of private people, who can put up those buildings and incur capital, and we can lease those buildings from them; whether it is a direct lease or Build, Operate and Transfer (BOT), we do not need ourselves as a Government to engage as if we are a construction company. That is something that can be done.

Mr. Temporary Speaker, Sir, if we dig into that bucket of money, it means we can spend money on services that we, as a country, need. That is how it should be. I honestly fail to understand, for example, why so far, even when I was in the Ninth Parliament, we were still discussing the possibility of private roads in Kenya. To date, 53 years later, not one private road has been done in Kenya. When you travel to Singapore, Thailand or any of the Asian Tigers, including China, you will find plenty of private roads that have been done thus saving the Government from spending that capital.

There are other countries that have given private organizations the management of roads. Once built, it is managed by private sector so that they can be kept in good state. We must leave the beaten track. If we walk on the same path every day, you can be 100 per cent certain that you will only reach the same destination. If we sit here every year, allocating the same funds with the same ideas, we can only arrive at exactly where we arrived last year. Last year, we did not arrive at a newly industrialised nation. Therefore, it is unlikely that this year, we are going to arrive there either. We need to infuse new

ideas so that our county governments and the national Government can begin to see a difference.

Mr. Temporary Speaker, Sir, for instance, regarding the management of Level 5 hospitals, if you look at the conditional grants in this Bill, you will see that five of the conditional grants have something to do with medicine. It may be maternal healthcare, Level 5 hospitals and so on, but they all have something to do with healthcare. Yet, year in, year out, we complain about how bad those hospitals are being managed, be it Nyeri General Hospital, Kakamega General Hospital, Embu General Hospital or the others. It is time for us to infuse new ideas.

The Nyeri County Government has advertised for a manager for professional management to start managing Nyeri General Hospital. We cannot continue doing the same thing. The kind of manager we are looking for is the sort of person who has managed a multi-national corporation like Shell, a huge company like Brookside or Unilever. These are the kind of people we need to manage the hospital.

Mr. Temporary Speaker, Sir, doctors will stay looking after patients. It makes no sense in our hospitals to have a surgeon manage a hospital. Instead of being busy saving lives, we force him to deal with the everyday issues of supply of paper and ink. Supply of paper and ink can be done by many other people, but very few people can save lives in surgery. So, it calls for new thinking and new ideas on how to do things. All Level 5 hospitals should be managed by professional managers who can manage, not only the patient issues, but also administrative issues as well as the change that must come where money collected in those hospitals should not be sent to the county governments first and returned back to the hospitals.

What usually happens is that the money collected in the hospitals, once sent to the county governments finds other uses and only a small percentage of it is sent back to the hospitals. Money collected in hospital should be managed at the hospital. So, we would like to see a change in the structure of the health management in our country.

Mr. Temporary Speaker, Sir, I would also urge, even though it is not here, that at least five per cent of money spent in our counties be in technology. If we want to increase the money that is generated from the counties, then we must make use of technology. Counties, for example, that have infused collection of money through technology are reporting higher uptakes of revenue within the county. In the long run, counties will not depend on what the Government can give them.

We foresee situations where counties such as Turkana, once the oil sector has been developed, may one day contribute money to the national Government instead of the other way round. The only way that can come to pass is if we infuse the use of technology in our counties, especially in revenue collection and fighting corruption. It is only technology that can save us. It is not a panacea of the war against corruption, but it is a good contributor to that process.

Mr. Temporary Speaker, Sir, I want to mention about the nursery schools which is a pet subject of this Senate. Originally in the Bill, we had some recommendation from the County Revenue Allocation (CRA) that money should be allocated from the national Government to manage polytechnics. Then we said that it is a function that has already been devolved to the county governments. Therefore, the county governments must allocate that money from their own funds. It must be a priority in the county governments. If you want to prove as a county government that you can take care and

manage your county, can you manage what has been allocated to the county in schedule four effectively that we wish that the county be given other responsibilities?

Mr. Temporary Speaker, Sir, this is the only way that we can be convinced that indeed, Level 5 hospitals and other institutions should have been allocated to the counties.

Finally, I want to congratulate the First Lady, Her Excellency Margaret Kenyatta, because of the effort that she continues to make day in, day out, running in marathons, calling on private people, calling on companies so that they can assist her in her project of ensuring that no mother dies at child birth. That is a commendable effort. If we had another few people doing exactly the same thing, we would ensure that our mothers are never committed to death because of the fact that they give birth to life. It is from birth that an individual in this country is safe, not only later when we are looking for police officers to guard them, but they should be safe from birth. Mothers are special people and we must make sure that we protect them.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, we want to dispose of this business today. We still have another three Senators willing to contribute.

**Sen. (Prof.) Lesan**: Mr. Temporary Speaker, Sir, I will take the shortest time that I can manage; not more than five minutes. I support the Division of Revenue Bill. The revenues that are being divided between the national Government and the county governments are generated within the country. It is important that we congratulate and urge Kenyans, particularly those who pay Value Added Tax (VAT). These are honest businessmen who work hard to pay their fees. With the introduction of the ETR machines, many Kenyans who are in business have taken up this little gadget, which has enabled this country to collect significant revenues. Therefore, I want to use this opportunity to encourage and congratulate Kenyans who have taken on this noble duty of paying taxes, particularly as they consume the goods that are available in terms of paying VAT.

I also wish to congratulate and urge the KRA, which is charged with the responsibility of collecting revenue to be shared between the national Government and the county governments. Every loophole should be sealed in order to make sure that all the revenue that is collected by KRA reaches the consolidated kitty. This is the money that will be shared throughout the country. According to the Acts which have been put in place, if there will be any short-fall, it is right and correct that the national Government takes the shortfall and county governments get the due amounts that is required for the usage.

Lastly, we discussed about the leasing of medical equipment. There is no reason for any governor to refuse to take this equipment because funds have been set aside for the payment and the leasing of that equipment. Therefore, I urge every governor to follow the inter-governmental agreements which were reached when this equipment was purchased so that it can be placed within the reach of the populace of this country in order for them to benefit from its usage within the hospitals.

We can have enough revenue to be shared, but if we do not tame the beast called corruption in both the national Government and the county governments, all these efforts of collecting and dividing revenue will be in vain. I urge county governments, particularly my county government, which has completely lost the discipline of financial



management in managing the funds, to manage the money that we take to the counties so that it can benefit those counties. My county government is in a self-destruction mode, going downhill. At the moment, the executive that is in place is almost unconstitutional and does not obey the one-third gender rule. The public service board is not functional because it has been starved of funds. Therefore, the management of the funds in the counties is of serious concern to this House. I cannot say it anymore than what has been shown.

As we discuss this afternoon, it is sad to hear that the county governments used millions of shillings to transport items to the conference in Meru. My county transported pumpkins. I am sure the cost of transporting the pumpkins is high. It was even wrong to transport that product; it should have transported the good tea which we need to market. It would have been a better product to take to the conference, even though it was wrong because the conference is not an exhibition; it should discuss issues.

Lastly, as we go into the end of the first five years of devolution, we should be absolutely careful and make sure that counties do not accumulate pending bills so that the next governments can continue to serve the county governments better.

Mr. Temporary Speaker, Sir, I support this Bill and I am sure my colleagues will do the same.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I will be brief. First, I want to support this Bill and thank the Committee for ensuring that for the first time, we did not go through a mediation process. The Chairman of the Commission on Revenue Allocation (CRA) said that the tax exemption of the Standard Gauge Railway (SGR) is one of the reasons we are not collecting enough revenue. It is important that we look at all the components of SGR. We have locomotives, scanners and facilities that are supposed to be imported. It is also important to look at their prices.

While the governors continue to build facilities, we need to know how we will deal with the human resource component because ethnicity is high in county governments. The nurses are being sent back to the national Government and their salaries held by the county governments. We, as the Senate, need to work on that and ensure cohesion in the counties.

Mr. Temporary Speaker, Sir, it is also important for us to question the revenue collection in the counties. We should ensure that local revenue is collected and used in a prudent manner. There are rich people who are not educated and, therefore, do not understand the Integrated Financial Management Information System (IFMIS). They have decided to hold on to their money. It is up to the Government to come up with a system that can be used even by those who do not understand the IFMIS, so that it can collect more revenue.

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

**The Temporary Speaker** (Sen. Mositet): You have done well.

Sen. (Prof.) Lonyangapuo, I hope you can be brief like Sen. Elachi.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I rise to support this Bill. This is the fourth time that we are dealing with the Division of Revenue Bill. It is notable that every year there is an increase of funds for both levels of Government; the national Government and county governments. The national Government has budgeted for the Committee on Implementation of the Constitution (CIC), whose term expired. We should not fund bodies that have wound up, like the Transition Authority (TA).

Mr. Temporary Speaker, Sir, I have prominently seen the women affirmative action fund and CDF, which I thought should have disappeared. They have emerged as expenditure to be used by the national Government; no wonder our colleagues have been fighting oversight.

It is interesting to note that my county is implementing projects even without passing the budget in the county assembly. They have started a tourist hotel costing over Kshs500 million. Is there any Government in this world that is in the business of building hotels? I wonder whether the National Treasury and Government budgeting procedures have been given to the county assemblies. Every county has started implementing their projects now and there is no line item.

Mr. Temporary Speaker, Sir, this is the last year that we are doing some real work; next year is a political year. We have to ensure that the money meant for development of counties is put on hold, so that we only allow recurrent funds rather than send money to people who are already thumbing their chests, as Sen. (Prof.) Lesan mentioned. The governors are using the funds meant for development in the pretence of development to acquire money for next year's politics. We have to think of a way of coming up with a clause in the Bill to stop the money by September this year.

I beg to support.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I support this Bill because the authors have tried their best to apportion the money accordingly. However, I would have been happier to see more allocation of funds to the free maternal health care because we know how the situation has been and there is still a lot to be done. I hope that we will see a lot of improvement next time because women are still suffering as their children die. We need to protect the future generation.

On the enhancement of the security operations such as the police vehicles, I wish that there would have been more attention on the welfare of the security officers so that they are more comfortable, confident and encouraged to go about their duties.

On the issue of affirmative action, I would have wished to see more activities planned for the adolescents who are also vulnerable people and need a lot of interventions such as vocational learning. I hope that the next Bill will tell us what they will do for the special group called adolescents.

Mr. Temporary Speaker, Sir, I see that they have also allocated money to the constitutional commissions. I hope that the Independent Electoral and Boundaries Commission (EIBC) will be given more funds because the mass registration of voters was not done adequately. They were shoddy because there were no enough personnel or registration kits to prepare us adequately for the next elections.

Finally, having attended a conference at the World Bank and at the International Monetary Fund (IMF) last week, I know that the world has taken judicial notice that Kenya has overburdened the tax coffers with the infrastructure expenses. It is too high and I hope that it can be looked into next time so that priority is given to what can help Kenyans.

I beg to support.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I thank you for this opportunity. I rise to support this Bill because it marks an important step in the journey that this country has travelled. For the third year, we are witnessing the sharing of revenue between the national Government and county

governments. The issue of devolution which is the centre piece of our Constitution is a testament of what Kenyans did in 2010 to radically shift and transform our mode of governance to one where as much as we seek a united and prosperous country, we also want an equal society.

For that reason, I feel honoured and privileged to be part of this historic exercise. Allow me to make two more points due to constraints of time. I thank my colleagues because they have cooperated. I do not want to be the one to go against what we have agreed.

Mr. Temporary Speaker, Sir, the issue of corruption has been highlighted. We must find a way of slaying the dragon of corruption that is denying the citizens of these country essential services. The excuse that we are getting from county governments that there is more corruption at the national Government level is not good. I can only urge the National Assembly that oversights the national Government to up their game and increase their vigilance on national government agencies. For us in the Senate, our mandate is on the counties and we are not going to spare anybody.

I have received numerous complaints from my own county about ghost projects, theft and plunder. I hope that now that the County Public Accounts and Investments Committee (CPAIC) has almost finished scrutinizing the reports of the Auditor-General of 2014/2015. I hope that going forward, we will see more action this year. If we send one, two, five or more governors to jail before 2017, for theft and plunder of public resources, it will be a lesson to the rest. It will be a lesson to the rest that when one is appointed to public office, it is not a ticket to loot. To underscore how important this matter is, in Nigeria, half of the first set of governors had to be jailed for their successors to learn that too much power must be accompanied with too much responsibility.

I beg to support this Bill.

**The Temporary Speaker** (Sen. Mositet): I now call upon the Mover to reply.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I take this opportunity to thank all the Members who have contributed to this Bill and those who have expressed their support. This is an important Bill that reflects that the Senate has consistently ensured that revenues to county governments have been enhanced, on yearly basis, to ensure that the counties have adequate resources to deliver services. I, therefore, thank all the Members for their contribution.

I beg to move and request the Chair to defer putting of the Question to a later date.

**The Temporary Speaker** (Sen. Mositet): I defer the putting of the Question to next week, Tuesday, 26<sup>th</sup> April 2016.

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

## ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now 6.30 p.m. It is time to adjourn the Senate. Therefore, the Senate stands adjourned until Tuesday, 26<sup>th</sup> April, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.