

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 23<sup>rd</sup> February, 2017

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

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

### PRAYER

**The Speaker** (Hon. Ethuro): Hon. Senators, I am aware that some Papers are to be tabled but I do not see any request before me.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Speaker, Sir, I would like to lay on the Table of the Senate---

**The Speaker** (Hon. Ethuro): Order, Senator! I have just seen you walk in. You have not requested. The request has not been granted. I do not know what you are about to do.

What is it, Sen. Leshore?

**Sen. Leshore**: On a point of order, Mr. Speaker, Sir. I beg your guidance on Order No.1. We took oath when we came to the Senate. I propose that we take oath every year. That way, we will renew that oath because some of us have forgotten. Why do we not change the Standing Order?

*(Laughter)*

**The Speaker** (Hon. Ethuro): I will definitely put that request to the Procedures Committee.

Sen. (Prof.) Anyang'-Nyong'o, laying of papers is done from the Dispatch Box. I hope Sen. Leshore was not making reference to you.

### PAPER LAID

#### REPORT OF CPAIC ON FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY 2013/2014

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday, 23<sup>rd</sup> February 2017.

Report of the Sessional Committee on County Public Accounts and Investments (CPAIC) on the inquiry into the financial operations of Kiambu, Busia, Tana River, Trans

Nzoia, Nyandarua, Migori, Kwale, Kisumu, Samburu and Kericho County executives for the Financial Year 2013/2014.

*(Sen. (Prof.) Anyang'-Nyong'olaid the document on the Table)*

With your permission, May I beg to give notice to the following Motion.

**The Speaker** (Hon. Ethuro): Order, Senator! Permission denied. You will get that opportunity later.

Next Order!

### NOTICES OF MOTION

#### ADOPTION OF REPORT OF CPAIC ON FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY 2013/2014

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to give Notice of the following Motion;-

THAT, the Senate adopts the report of the Sessional Committee on County Public Accounts and Investments (CPAIC) on the inquiry into the financial operations of Kiambu, Busia, Tana River, Trans Nzoia, Nyandarua, Migori, Kwale, Kisumu, Samburu and Kericho County executives for the Financial Year 2013/2014 laid on the Table of the House today, Thursday, 23<sup>rd</sup> February, 2017.

#### APPROVAL OF SENATORS TO SERVE IN THE SESSIONAL COMMITTEE ON CPAIC

**Sen. Sang:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, Pursuant to the Standing Orders No.177, 179 and 210, the Senate approves the following Senators nominated by the Senate Business Committee to serve in the Sessional Committee on CPAIC:-

1. Sen. Wamatangi Kimani
2. Sen. Stephen Ole Ntutu
3. Sen. (Eng.) Muriuki Karue
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Martha Wangari
6. Sen. Chelule Liza
7. Sen. Njoroge Paul Ben
8. Sen. (Dr.) Boni Khalwale
9. Sen. Omar Hassan
10. Sen. Sitswila Wako Amos
11. Sen. (Prof.) Nyong'o Anyang' Peter
12. Sen. Ndiema Henry Tiolo

Thank you, Mr. Speaker Sir.

## ADOPTION OF REPORT OF THE STUDY VISIT TO RUSSIA

**Sen. Adan:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia laid on the Table of the House on Tuesday, 15th March, 2016.

## STATEMENTS

TRACKING OF DEVELOPMENT EXPENDITURE IN  
COUNTY GOVERNMENTS THROUGH IFMIS

**Sen. Sang:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45(2) (b) to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on tracking of development expenditure in county governments through the Integrated Financial Management Information System (IFMIS). In the Statement, the Chairperson should:-

(a) State whether all county governments are IFMIS compliant in terms of making all procurement process through IFMIS;

(b) Table approved budgets for county governments for the 2015/2016 and 2016/2017 Financial Years.

(c) Confirm whether all county budgets are programme based and adhere to the 30 per cent development fund allocation as per the Public Finance Management Act;

(d) Table a print-out of the IFMIS statements for all county governments for 2015/2016 and 2016/2017 Financial Years showing pay outs related to development expenditure;

(e) Confirm that some of the expenditures in county governments are not budgeted for and not in line with the approved budgets;

(f) State whether he is aware that some of the county governments are paying contractors for projects not undertaken and suppliers for goods and services not rendered.

(g) Explain the measures that have been undertaken to ensure that county government resources are not misused during this electioneering period.

**The Speaker** (hon. Ethuro): The Vice Chairperson, Committee on Finance, Commerce and Budget.

**Sen. Mositet:** Mr. Speaker, Sir, the details required by the Senator are many. We may require maybe a month or so. However, I believe that it is very important so that we are able to see what has been happening. I, therefore, plead with the Chairperson that you give us one month.

**The Speaker** (hon. Ethuro): What is it Sen. Karaba?

**Sen. Karaba:** Mr. Speaker, Sir, the question is very important considering that the nominations to various parties will be next month. If we are going by what the Chairperson, Committee on Finance, Commerce and Budget is suggesting, these members or the governors might take a lift and we find ourselves in problems. So we wanted to investigate this thing before nominations are done, because they are going to misuse or use the money for campaign.

**Sen. Sang:** Mr. Speaker, Sir, I am shocked by that request because this is a very urgent issue and what I am requesting are documents available in printout in the Integrated Financial Management and Information System(IFMIS). We are not talking about an investigation. We just need to look at where the approved budgets are. A printout from the IFMIS does not take more than a week.

If the Vice-Chair appreciates the urgency and importance of this matter, this is something that should be done within a week. The request appeared long but the long and short of it is just a printout of the IFMIS statement and the provision of the approved budgets. These are things that are available within the Controller of Budget's Office and Treasury. One week really would be sufficient.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, allow me to ride on that very important statement requested by Sen. Sang from Nandi.

I remember that there is a Bill that has been on our Order Paper proposed by Sen. Wamatangi of Kiambu regarding the assumption of office in the counties which is very much related to the Statement that the Senator is requesting.

Could I request the Senate Business Committee (SBC), because of the importance of this Assumption of Office Bill and the importance that that Statement requires, that we fast-track this Bill as much as possible so that we can dispose of this in the Senate and it can go to the National Assembly and see daylight before it is too late?

I beg to support.

**The Speaker** (Hon. Ethuro): Sen. Mositet.

**Sen. Mositet:** Mr. Speaker, Sir, when I was requesting for one month I never really meant that all through we will not be looking for the response to the Statement. We may even get it within two weeks or one and we will bring it the moment we get it.

**The Speaker** (Hon. Ethuro): You are introducing a strange procedure to the House.

**Sen. Madzayo:** Kwa hoja ya nidhamu Bw. Spika.

**The Speaker** (Hon. Ethuro): What is it Sen. Madzayo?

**Sen. Madzayo:** Bw. Spika, swali lako kwa Sen. Mositet lilikuwa ni muda gani anaohitaji na akasema ni muda wa mwezi mmoja, yaani siku thelathini. Hivi sasa wamuuliza Mositet na anasema vile unavyoona tu. Kama siku saba ama siku nne. Lazima awe na ukamilifu wa siku vile ulivyomuuliza.

Hivi sasa tunataka kujua ni muda gani atachukua kuweza kuleta majibu hayo.

**The Speaker** (Hon. Ethuro): What is it Sen. Lesuuda?

**Sen. Lesuuda:** Mr. Speaker, Sir, just riding on what Sen. Madzayo has said, the procedure, normally, is that you give the exact time and then if you are not ready you can request for more time.

Having said that, I think this issue is very important and needs to be fast-tracked as it was mentioned. I know we are getting into the campaign period and it is important that we get information early---

**The Speaker** (Hon. Ethuro): Order, Sen. Lesuuda. I will help the Vice-Chair of the Committee on Finance, Commerce and Budget. Bring your response in two weeks' time.

Sen. Karaba!

## THE KMTC CAMPUSES IN THE COUNTRY

**Sen. Karaba:** Mr. Speaker, Sir, I rise pursuant to Standing Order 45(2) b to seek a Statement from the Chairperson of the Standing Committee on Health regarding the Kenya Medical Training College(KMTC) campuses in the country. In the statement the Chairperson should:

- (1) Table a list of all Kenya Medical Training College campuses in the country and the respective counties where they are located.
- (2) Explain why there is no KMTC campus in Kirinyaga County and indicate when the Government intends to establish one.

**The Speaker** (Hon. Ethuro): The Chairperson, Standing Committee on Health.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, one week will be enough for that.

**BILL***First reading*THE COUNTY PENSION SCHEME BILL  
(SENATE BILL NO.20 OF 2016)

*(Order for First Reading read - Read the First  
Time and ordered to be referred to the Committee on  
Labour and Social Welfare)*

**The Speaker** (Hon. Ethuro): Order, Members, from there we will move to the Supplementary Order Paper.

**MOTION**APPROVAL OF SENATORS TO SERVE IN THE  
SESSIONAL COMMITTEE ON CPAIC

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

THAT, pursuant to Standing Order Nos. 177, 179 and 210, the Senate approves the following Senators nominated by the Senate Business Committee to serve in the Sessional Committee on County Public Accounts and Investments-

1. Sen. Wamatangi Kimani
2. Sen. Stephen Ole Ntutu
3. Sen. (Eng.) Muriuki Karue
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Martha Wangari
6. Sen. Chelule Liza
7. Sen. Njoroge Paul Ben
8. Sen. (Dr.) Boni Khalwale

9. Sen. Omar Hassan
10. Sen. Sitswila Wako Amos
11. Sen. (Prof.) Nyong'o Anyang' Peter
12. Sen. Ndiema Henry Tirole

Mr. Speaker, Sir, this is a Motion to constitute this Sessional Committee on County Public Accounts and Investments (CPAIC). It is a procedural Motion. This is the start of the Session. As we all know, this Senate has three key mandates; legislation, representation of our county interest and more importantly, the aspect of oversight. This House has carried out oversight through the various Committees. This one is a very important Committee of this House that looks into the accounts of our counties.

Devolution has suffered challenges in this country. One of the important challenges that we need to deal with decisively is the aspect of accountability in our counties. The Senate, working collectively with county assemblies is the institution given this mandate.

Mr. Speaker, Sir, because of the challenges that we have seen in our counties relating to the capacity of our counties, independence and autonomy of our county assemblies to carry out oversight in the counties, the Senate Sessional on CPAIC has stepped in and done a commendable job in dealing with accountability issues in our counties. However, we also appreciate that the Committee has been overwhelmed by the work. We are aware that as we speak, the Committee has not concluded dealing with the last two financial years.

It is important that this House approves this Motion today so that this Committee can get started with their job. We have only one and a half months or so to go and the work this Committee has is enormous. However, I am confident that the men and women; the distinguished Senators who are the proposed membership of this Committee will carry out their mandate and help this House to carry out that aspect of accountability.

Mr. Speaker, Sir, all of us need to pay particular interest to this. However, because of the amount of work that the Committee has had to deal with, it is possible that as we get into the elections, you will have two or so financial years that this House will not have undertaken in considering the accounts of the counties for the last three or two financial years. It is important because we are witnessing massive corruption in our counties.

Even as we get towards the elections, we are witnessing a lot of misuse of public resources that are being diverted into elections. We have witnessed governors in our counties doing so. I will give an example of my county where in the last one or so months, the governor is roaming around purporting to launch projects that are not within the approved budget; projects that were supposed to have been done three years ago are now being launched yet our counties operate on financial years. Therefore, how come that a project that should have been launched, completed or undertaken in the Financial Year 2014/2015, is being launched in the Financial Year 2016/2017?

I believe that this CPAIC has its job cut out. Sen. (Prof.) Anyang'-Nyong'o and his team have a huge responsibility of ensuring that in their small or big way, they curtail the wanton mismanagement of public resources in our counties.

I, therefore, call upon the Senators in this Committee, that whereas, we appreciate that Sen. (Prof.) Anyang'-Nyong'o, you will be busy with your campaigns to become the next governor for Kisumu and the same applies to the other Senators, I call upon the

Senators in this Committee to spare some time and ensure that they do justice to this country in ensuring that we deal with the situation in our counties.

Mr. Speaker, Sir, I beg to move and ask my very good neighbour, Sen. Khaniri to second.

**Sen. Khaniri:** Mr. Speaker, Sir, I rise to second the Motion. In doing so, let me start by saying that looking at the list of the Members that have been put on this Committee, you will realise that the terms of everybody who sat on this Committee in the previous session have been renewed except me. I am the only one who has been dropped from this Committee.

I would like to state that I do not think I was dropped because of non-performance but I think it is because of other political considerations. My Chairman will bear me witness. I accept the decision of the Jubilee Party because I was nominated to that Committee by it because at that time I was a Member of the United Democratic Forum (UDF) which was working with Jubilee. So, I accept the decision but it must be on record that I have been dropped, not because of nonperformance but because of other political considerations.

Mr. Speaker, Sir, this is a very important Committee of this House. The key mandate of this House as stipulated in the Constitution is legislation, representation and oversight. The CPAIC is vested with that responsibility of oversight over counties. Therefore, it is a very important Committee. I sat in it in the last four sessions. I can guarantee you that this Committee is like a full time job. It is so much time-consuming. I urge the Senators who have been put in the Committee as requested by the Mover, to try and spare time because we were lagging behind. We were still looking at the accounts of 2014/2015. We have not even started looking at 2015/2016.

With the rampant corruption that we witness in our counties, it is absolutely important that this Committee is supported and given all that is required to ensure that they provide checks and balances to what is happening in the counties.

Mr. Speaker, Sir, I, therefore, wish them well. I beg to second.

**The Speaker** (Hon. Ethuro): What is it, Sen. Obure?

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. Sen. Khaniri has been very gracious in seconding the Motion but he has raised some fundamental issues in the process. I am aware that he has been a very prominent and active Member of this Committee. However, I am surprised that his name is not included on the nomination list. Could we know if there were other considerations at play in excluding the name of a very able and active Member of the Committee?

**The Speaker** (Hon. Ethuro): Order, Sen. Obure. First, that is a point of argument and seeking information. It is not a point of order at this time.

Secondly, Sen. Khaniri did not raise any issue. He clarified why he is the only one who is not in the Committee. He said he has accepted the decision. Why does it pain you?

*(Loud consultations)*

Order, hon. Senators!

I, therefore, propose the question.

*(Question proposed)*

*(Sen. Ndiema walked around the Chamber while the Speaker was on his feet)*

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Did you notice that while you were on your feet, Senator No. 12 on the list stood from his seat and walked majestically to his current GPRS location? That is completely against the Standing Orders. Even as he looks at me, he appears undisturbed.

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

**Sen. Ndiema:** Mr. Speaker, Sir, my apologies.

**The Speaker** (Hon. Ethuro): What are you apologizing for?

**Sen. Ndiema:** Mr. Speaker, Sir, I thought that I had already moved before you stood. I, therefore, apologize in the event that you were on your feet.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Apologies accepted, but in addition to the suggestion by Sen. Leshore, maybe, every year we should be swearing in Members again. We might need a few reminders every year on how to proceed within the House. Let us proceed with contributions to the Motion.

Sen. (Prof.) Anyang-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I stand to support the Motion that has been moved very ably by my dear friend, Sen. Sang, and seconded by Sen. Khaniri, the indomitable Senator for Vihiga.

First, I would like to thank the House for giving us the honour to once more serve in this very demanding Committee. I would also like to thank the Members of the Committee with whom I have served in the Committee and who bestowed the honour on me to Chair it. We have worked very well and I will find time, when we debate the Papers that I have laid on the Table today, to go deeper into that. I would not like to go ahead of that debate. But in the meantime, let me inform my dear friend, Sen. Khaniri, that he is not alone in the execution on removal. I think Sen. Kennedy Mong'are Okong'o has also left us and has been replaced by Sen. Chelule Liza, if my record is correct.

I would like to sincerely thank my two friends, Sen. George Khaniri from Vihiga and Sen. Okong'o from Nyamira for the distinguished service they have given to the Committee, in a committed and dedicated manner. They have always been punctilious about details and punctual in attending Committee meetings. What Sen. Khaniri has done today reminds me of a song that we used to sing in High School from redemption songs. There was usually a song that went as follows:

“Once to every man and nation comes a moment to decide, then it is the brave man chooses while the cowards stand aside.”

Sen. Khaniri has stood up as a brave man and accepted decisions in this House, which obviously were not in his interest. A coward would have stood aside and grumbled, but knowing Sen. Khaniri and his principled stand on many things, he accepted that decision graciously. I am sure that he will serve in another Committee of this House in an equally responsible manner.



Whilst saluting Sen. Khaniri, I would to also thank Sen. Okong'o of Nyamira for using his legal background ably in the Committee to guide whenever needed. So, their service is recognized by the Committee and the House. I hope that they will move to other Committees where they will serve equally in a distinguished manner.

Mr. Speaker, Sir, I beg to support the Motion.

**Sen. (Eng.) Muriuki:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. I had the opportunity to serve in this Committee under the Chairmanship of Sen. (Prof.) Anyang-Nyong'o and Sen. (Dr.) Khalwale. The teams which have been in this Committee have worked very hard against all odds. They started with enormous amounts of work which had to be covered within a short period.

Sen. Khaniri and Sen. Mong'are who have left this Committee made a wonderful contribution during the work of the Committee. Sen. Mong'are is a lawyer and Sen. Khaniri is a longstanding legislator. He would quote various experiences and pieces of law.

However, this Committee faced frustrations in discharging its duties. One of the frustrations, which has nothing to do with this House, is the Office of the Auditor-General. I do not think that the Auditor General is the person occupying the office per se. You will notice that until now we are dealing with the accounts of the first substantial year 2013/2014. The accounts of 2014/2015 came late last year and the Committee has not even tackled them.

The work of this Committee is cardinal to the mandate of this House under Article 96 of the Constitution. We are now coming to the end of the fourth year, yet we have looked at the accounts of only the first year and a little bit on the second year. Kenyans will wonder what happened to the remainder of the years. Since this House is mandated to oversight the funds going to the counties, it will appear as if we are not able to do our work.

At one time we were in a conference where the Auditor-General was represented by his deputy. They indicated that the budget they had asked for that year was Kshs12 billion. They were eventually given only Kshs3 billion; a quarter of what they asked for. Eventually, after a lot of negotiations through the normal process, the figure rose to Kshs5 billion. At the end of the year only Kshs4 billion was disbursed. That means that the frustration that this House is facing, through this Committee, with regard to allocation of funds---. In future this House and the National Assembly have to ensure that the Office of the Auditor General is given enough funds to do their work.

The other aspect of frustration is that we have noticed that in the County Public Accounts and Investments Committee that the people who are doing the audit seem to selectively pick items of what the Governor and their governments are doing. They seem to select soft spots. So, you find whereas Senators who are representatives of various counties are aware of big embezzlement, what eventually reaches the Senate Committee through the audit are in most cases peanuts. You will notice in the last year or so, there are a lot of whistle blowers around the counties; whistle blowing on what they are seeing and they do not understand why the Senator has not tackled them. The reason is that the audit staff are leaving out the elephants and picking only the rabbits in the activities in the counties.

Therefore, this brings me back to the Sang Bill which had proposed the establishment of a County Development Board. The leadership in the county would go

through the activities of the county governments before the audits are done. I would urge that it is about time the Sang Bill is revisited by this House. I believe looking at the mood in this House, the National Assembly and the public at large, the County Development Board will have more support from everyone. This will enable us to look at these issues and facilitate the Senator who would be the eye of the Senate in the county. The reason is because by the time the issues come before the Committee, we would dutifully invite the Senator for that county and he would give an insight as to what happened on the ground.

Mr. Speaker, Sir, last but not least, when funds are being allocated for recruiting more staff and facilitation of the various committees, the County Public Accounts and Investments Committee should be given enough consideration. The secretariat we have is far inadequate considering the amount of work they have to do. Therefore, they should be given special consideration.

With those few words I beg to support.

**The Speaker** (Hon. Ethuro): Hon. Senators, this is above the Committee. Let us not discuss too much about the work of the Committee. So, make very brief interventions.

**Sen. Bule:** Bw. Spika, nashukuru kwa kunipa hii fursa. Nina pinga Hoja hii kwa sababu uteuzi wa wanachama wa Kamati hii ulifinywa kwa kuzingatia mrengo wa vyama viwili vikuu katika nchi hii. Sikubuliani kamwe na orodha hii ya wanachama wa Kamati hii. Kwa mfano, Sen. Khaniri ametolewa kwa sababu alikuwa anafanya kazi na Jubilee na hawajaona ya kwamba amekuwa mtu muhimu ambaye amewafanyia kazi Wakenya.

Mambo yote yale tunapinga au tunafanya, hawa huenda ikawa watasaidia hao magavana wote ambao wamepora pesa ya Wakenya. Kwa hivyo, mimi nasema kama Sen. Bule ambaye pengine hatoki kwa muungano wowote wa vyama vikuu, apewe fursa ya kufanya kazi muhimu ya Wakenya. Kwa hivyo, wale watu wataunga vyama vyao au watahughulikia maslahi ya vyama vyao kwasababu zaidi ya magavana ambao wamepora mali ya umma wana toka katika hivi vyama vikubwa. Mimi kama Sen. Bule napinga kabisa Kamati hii, haija fanya ukweli nasi ya sawa.

Asante, Bw. Spika.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I rise to support the Committee. I hear Sen. Bule and may not agree with him on several issues. All of us are Senators and people are nominated actually through their parties and so that is not anything new. The only point I would want to make here is that, like I have stood on the Floor of this Senate and said, in my view, this maybe the most important Committee that this House has because it is what falls squarely under Article 96 of our Constitution which is the core mandate of the Senate. I have watched the Committee work and I do appreciate a lot of time it works under very difficult circumstances and with a very difficult mandate also. Many counties have now been before the Committee.

It is exactly two months to nominations and another two or four months to elections. What makes me sad is that although the Committee has worked so hard, we have not had a lot of reports tabled in this House. Today some reports were tabled by the Committee and I want to congratulate it and appreciate that. It is only that a report for Murang'a County, for which I have a lot of interest and which has been the subject of a lot of discussion in that Committee, has still not been tabled.

Murang'a people are anxious because they also saw the Chairman, a man for whom I have the greatest respect, Sen. (Prof.) Anyang'-Nyong'o, table in this House the interim report of the behaviour of the Governor of Murang'a County in front of that Committee. We do not know what has become of that specific report on the behaviour of the Governor when he was declared a hostile witness. The people in the county - I say this openly and without fear of contradiction - are still pursuing and want to know exactly what it means when somebody is declared a hostile witness. Further, when the report is made to the Senate, what is expected of that and maybe the Chairman of that Committee would like to elucidate and let the public of this Kenya know exactly what that means and what is to be expected.

Mr. Speaker, Sir, for myself, I would say that devolution is, in my view, the most important thing that has happened in this country. This Committee is doing a lot of work to make devolution work and to give the people of Kenya hope. When devolution does not seem to work, the indictment should not be on devolution but on the institutions that were entrusted with devolution. Those mainly are ourselves and the County Assemblies and the Governors. The Senate has continuously done its best.

The question is, "what is going to happen to the reports that we have tabled, noting that even when this Committee makes reports to the Senate, we still do not have in the law, for instance, a lifestyle audit against governors who embezzle public funds, a traceability system where assets that have been founded on corrupt practices can be traced and the wealth returned to the people?"

These are issues maybe that this Committee should explore to see how best it can deal with them. It cannot be just a function of making certain findings and then the people have hope that there would be restitution because this money belongs to the people. At the end of the day, it appears that nothing happened about it.

So, I will challenge the Committee, even as I appreciate the very good work it is doing, to broaden its net so that certain recommendations have to do with restitution so that what the public has lost can be restituted to them because we cannot just be voting monies to the counties. We are going to deal with the Division of Revenue Bill very shortly and then the County Allocation of Revenue Bill and a lot of money will be going to the counties again. Is it going to be seen on the ground? If not, what is this Committee going to do to help us to ensure that devolution works?

Having said that, I want to congratulate the Committee under the leadership of Sen. (Prof.) Anyang-Nyong'o and those that were before him; Sen. (Dr.) Khalwale who was the first Chairman of this Committee. I hope that it is going to bring hope to this nation on matters of devolution.

I support.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, thank you for the opportunity. I support the nomination of these Senators to this Committee which is of much relevance to devolution. It is important to realize that most of the issues tackled by this Committee are more or less of "prosecutionable" nature. It is a pity that they just go down the drain as a report to the House because the relevant Government departments never implement them. Instead they tend to duplicate by starting other long tedious winding ways of trying to confirm issues that Parliament has already confirmed.

I beseech them to be a straightforward Committee that will not be seen to witch-hunt. It should be a Committee whose report will be respected by all Kenyans. It is true

that some names of Members that we thought were very active and knowledgeable have been dropped. It is important to change membership of a Committee so that the whole House has an opportunity to participate and serve in this pivotal Committee of this House. It is nothing peculiar to find that one Member has been dropped and replaced. It is okay so long as that replacement knows that it is a challenge that the predecessor had in that Committee.

I support.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir, for this chance. Because of my previous life in this Committee, allow me to acknowledge two people. First, I want to acknowledge you, partly because of the good work that you did in this Committee. You recommended me for State commendation. I want to thank the President for giving me that commendation albeit in absentia.

Allow me to also acknowledge the Deputy Speaker who is also the Senator for Murang'a County. If you listen to him addressing matters of devolution, you wonder how such a great mind ended up being in the Jubilee Government. He is supposed to be in the Opposition for us to protect public funds that keep on being misappropriated by the Jubilee Government. Anyway, that is an irony in the history of this Senate.

I, therefore, want to confirm that I am strongly opposing this Motion---

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

**The Speaker** (Hon. Ethuro): What is it, Sen. Sang?

**Sen. Sang:** Mr. Speaker, Sir, looking at the Motion on the Floor, the Committee that we are seeking to establish is a Committee that deals with issues of misuse of resources in our counties. That includes Sen. (Dr.) Khalwale's County, where it is in public domain that there is wanton destruction and misuse of public resources. Is he in order yet we know that his county is a---

**The Speaker** (Hon. Ethuro): Order! What is your point of order?

**Sen. Sang:** Mr. Speaker, Sir, is he in order to attribute corruption to Jubilee only when we know that some of the CORD governors are corrupt, including his own Governor?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, is Sen. (Dr.) Khalwale in order to say that I should be in Opposition just because I talk against corruption? Is he in order to suggest that corruption is a function of any side of this House when our duty as a Senate is to fight corruption and fairness as best as we can in the protection of devolution? Is he in order when all of us are here to support our counties under Article 96 and to fight corruption and misuse of public funds?

He should withdraw and apologise to me.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, allow me in both points of order to withdraw my comments and apologise although the country has heard. This is not a laughing matter.

I, therefore, rise to oppose---

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

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

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, you have heard Sen. (Dr.) Khalwale take this House for a ride. He has apologized and withdrawn, but says the country has heard. Would I be in order to rule that information that he has so pronounced to the country be expunged from the records of this House?

*(Loud consultation)*

**The Speaker** (Hon. Ethuro): Order, Members! What is the issue, Sen. (Dr.) Machage? The two Members asked Sen. (Dr.) Khalwale to withdraw and apologise, which he did. The only thing that Sen. (Dr.) Khalwale added was that the country has heard and we had all heard. He just made an observation. Sen. Sang and Sen. Kembi-Gitura heard him and that is why they challenged him.

Proceed, Sen. (Dr.) Khalwale.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** What is wrong today?

**The Speaker** (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, in the days we used to practice law in courts and we said something for the gallery and the public to hear. But when we withdrew it, it was expunged from the record so that it could not form part of the record in the future. To me, that apology is not sufficient because he went ahead to say the country has heard what he said. What did the country hear? That he should be on your side because he fights corruption? With a lot of respect, I think Sen. (Dr.) Machage has a valid point; that some things should be expunged from the record because we are a House of record. After all, I hear that being said here every day.

**The Speaker** (Hon. Ethuro): Order, Members! I am absolutely clear on this one. Let me make it clear again. Two points of order were for Sen. (Dr.) Khalwale to withdraw and apologise, which he did. It has nothing to do with expunging and there is nothing to expunge. Sen. (Dr.) Khalwale gave an opinion; that he is wondering, why a good man like the Deputy Speaker is in the Jubilee side. It was his preference and his wish that you be in Opposition side. You clarified that even in Jubilee there are still good men who fight corruption.

*(Laughter)*

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. May you be Mr. Speaker forever.

I, therefore, want to confirm that on a very serious note, I am standing to oppose this Motion. I beg this House that when we vote, we should defeat this Motion so that we send back the leadership of the House and reconstitute this Committee afresh. With less than four months to 16<sup>th</sup> June, 2017, when we will be adjourning *Sine Die*, basically what we are doing as a Committee is that we are writing reports.

To write those reports, we rely on what Members heard, what the HANSARD recorded and the interventions of the Members. Sen. Okong'o and Sen. Khaniri are the Members of this Committee who have been consistent in attendance. We need them to be reinstated for them to help us in write these reports. I am not saying that Sen. Chelule and, indeed, Sen. Njoroge are not up to it. They are up to it, but they do not have the memory that we have had over the last four years.

If we allow this to go on, we are confirming to the leadership of this country that the bad heydays when Moi used to use the outdated principle of carrot and stick is back.

That they are holding a stick on the head of Sen. Khaniri because he has been voting with the opposition consistently. They are probably holding a stick on the head of Sen. Okong'o because he has challenged President Uhuru for State House? Is that the kind of democracy we want to grow? We want President Uhuru to be tolerant to Opposition even when---

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

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

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, it is very sad that in this House some Members would think themselves to be more superior than others in terms of memory and reference.

Is Sen. Khalwale in order to impute improper motives on the status of memory and ability to read and make reference to all records in this House on Senator Chelule and Sen. Njoroge?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, it was Sen. (Dr.) Mukhisa Kituyi who once quipped, upon hearing a leader speak, about confirmation of his worst fears. What Sen. (Dr.) Machage has just said is confirmation of the worst fears of Kenyans that this is not a leader meant for this House. He is meant for the National Assembly where, thankfully, he is headed back to.

*(Laughter)*

I want to encourage the presidential hopeful, Sen. Okong'o---

**Sen. (Dr. Machage):** On a point of Order!

**The Speaker** (Hon. Ethuro): What is it Sen. Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, is Sen. (Dr.) Khalwale, who, indeed, is my junior in profession and having served as my Assistant Minister, in order to make such a ridiculous allegation of my ability in this House? Kenyans have ears and they know that apart from some malpractices that he is known for, I am better in this House. Is he in order?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am very sorry; I apologize to Sen. (Dr.) Machage who is my senior.

**Sen. Sang:** Mr. Speaker, Sir, Is Sen. (Dr.) Khalwale in order to use a demeanor that gives a false impression that he has said something negative about Sen.(Dr.) Machage yet it was actually a compliment? Is Sen. (Dr.) Machage in order to reject a compliment when we know that in the life of the next Parliament, he will actually be where Sen. (Dr.) Khalwale mentioned?

**The Speaker** (Hon. Ethuro): Order! You do not challenge each and every word.

**Sen.(Dr.) Khalwale:** Mr. Speaker, Sir, again, I am very sorry to my senior, Sen.(Dr.) Machage). However, may I confirm to this House that, yes, indeed, I was his Assistant Minister but he is a man of many colours. He found me there as an Assistant Minister and no sooner had he reached there than after two weeks we were both sacked. This guy is a man of many colors.

I want to urge my younger brother, Kennedy Mong'are; Go! Go! Go! Go ! Go! Go! Do not be intimidated by President Uhuru for the fact that you have challenged him and they are now removing you from a Committee.

I would like to confirm that it looks like it is not only Sen. Mong'are---

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Khalwale. Yes, we need to be factual. In fact, your opening submission to the debate was to thank some two people and one such person was president Uhuru himself for honoring you with a State commendation. I think you are even admitting that under other circumstances, maybe you should not have been awarded.

Secondly, Sen. Okong'o has not passed the initial stages of his ambition. So, maybe he should be more worried about the Senate Minority Leader than President Uhuru for now.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am so guided. I think there are dark forces around President Uhuru. The dark forces are the reason the bad old days of "carrot and stick" are now coming back to this country.

May the spirit of the Holy Ghost cleanse all those dark forces around President Uhuru because he does not want dark forces around him since he is going into early retirement on the 8<sup>th</sup> of August, 2017. He needs to live in a clean life there in Gatundu.

I would like to confirm that Sen. Khaniri is now leaving the Eleventh Parliament with a scar which seems to be a scar on our community. I was the first to be thrown out of a Committee and Sen. Khaniri is now the last. I want to tell the voters of this country that leadership that is so intolerant like what we are seeing in small things like Committees, should not be voted back into State House. We need a change at the Office of the President so that we have tolerance in this country; a leadership that can support men and women who are fighting corruption. As if this is not enough, right now, the Auditor General is also being persecuted because they want to weaken the institutional memory of fighting corruption.

We will fight corruption whether some people like it or not. We will catch up with Josephine Kabura, Ann Waiguru, the Personal Assistant of the Deputy President and even some hon. Members here, in the fullness of time.

I swear to the people who have run away with the money of Standard Gauge Railway and the Eurobond, when "*Baba*", Hon. Mudavadi, Hon. Kalonzo, Hon. Wetangula or Sen. Mong'are is the president, we will deal---

**The Speaker** (Hon. Ethuro): Order!

**Sen. Sang:** Mr. Speaker, Sir, Is Sen. (Dr.) Khalwale in order to selectively give a list of scandals in this country and leave others? We know of the Tokyo scandal where in the history of this country a whole embassy disappeared. We know what happened in Mumias, the cemetery scandal and many others that are associated with Members of Sen. (Dr.) Khalwale's political persuasion.

If he wants to give a list of the scandals, give all of them irrespective of who perpetrated or allegedly did so.

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Khalwale, your time is up.

**Sen. (Prof.) Anyang'- Nyong'o:** On a point of order, Mr. Speaker, Sir. Is Sen. Sang in order to bring to the attention of the House issues which have been investigated, heard in court and disposed off as if they are still pending before the legal and proper institutions in this country? Is he really in order to ignore the history of this country and turn a blind eye to what has happened in court and what has happened in investigations and concluded?

**The Speaker** (Hon. Ethuro): Order. Sen. Sang is in order to challenge the obviously biased partisan argument by giving the other alternative. However, Sen. Sang

is also wrong to challenge the partisan nature of the contribution because you contribute to these things according to where you sit.

Let us proceed. What is it, Sen. Omondi?

**Sen. Omondi:** Mr. Speaker, Sir, Is Sen. Sang in order to mislead this country when he knows very well that the Jubilee Government has failed Kenyans in dealing with corruption cases? Is he in order? Whether corruption is in the opposition or in the ruling party----

**The Speaker** (Hon. Ethuro): Order, Sen. Omondi. You are introducing a different argument. In fact, it is Sen. (Dr.) Khalwale who is now taking it to that level. Sen. Sang only asked why he was citing cases associated with a particular position which would reflect the parties in the House. Sen. Sang has nothing to do with the one you are bringing.

Hon. Members, we need to make progress.

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

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

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. You ruled earlier that the debate should be restricted to the Motion but Sen. (Dr.) Khalwale and others have diverted it to other issues that are totally irrelevant and against Standing Order No.109.

Would I be in order to request you to look at Standing Order No.109 and rule all of them out of order?

**The Speaker** (Hon. Ethuro): Order, hon. Senators!

Standing Order No.109 states:-

“Irrelevance or repetition

The Speaker or the Chairperson of Committees, after having called attention to the conduct of a Senator who persists in irrelevance or tedious repetition either of the Senator’s own arguments or the arguments used by other Senators in debate may, after having first warned him or her, direct that the Senator discontinue his or her speech.”

So, that Standing Order does not apply. First, it is supposed to be during the debate and having warned him first. None of that happened.

Secondly, my understanding is that the issues that Sen. (Dr.) Khalwale has raised are relevant to the debate. He talked about the composition before and after; and entry and exit. He also talked about the position of the auditor. The Constitution provides that the Auditor- General brings the reports to this Committee. So, how could that be irrelevant? Except for the small bit which was his interpretation of the cumulative effect of all those things in terms of the next General Election.

Hon. Members, we need to conclude.

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, this is a very important Committee. I support its composition and the way it has steered the business of this House. We need to understand whether this Committee is mandated to prosecute governors who have negated its process and procedure. Many times, some governors have abused their offices and continue to do so as they wait for more money.

So, we need to be told by this Committee whether the moment they present reports to this House, this is final or if we will only know about what happens in the county governments through reports. Many things happen before and even after the



presentation of this report. As soon as a governor is found guilty of having misused public funds, he should be named and prohibited from doing certain other things.

Another issue is that, as we continue to give money to counties, even after the Committee has discussed it, some governors do well. They should be congratulated. They should act as role models to those who are not doing well. The governors who should have been impeached by this House continue enjoying the benefits of getting money from the exchequer. They continue using it the way they want, including, hiring goons so that their seats are well protected. They continue doing so without any consideration of the role of the Senate or the Senator of that county.

My worry is that much as we talk about these reports ---

**The Speaker** (Hon. Ethuro): What is it, Sen. Madzayo?

**Sen. Madzayo:** On a point of order, Mr. Speaker, Sir. While we were listening to the ongoing debate, there is a small *Kamukunji* taking place somewhere in the Senate. I do not know whether you could be in a position to stop that kind of *Kamukunji*. In fact, it is right in front of me. I cannot hear what my brother is contributing.

**An hon. Senator:** Consultations are allowed.

**The Speaker** (Hon. Ethuro): Order! Consultations are allowed but not to the extent of interfering with other Members' listening capacity. So, consult in low tones and, preferably, away from that Member.

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, thank you. At one time I had to shout so that I could be heard across the Floor. I shouted beyond my level of shouting.

We continue presenting reports, noting their contents, and the Committee will continue to sit even until we come to the end of the session but how many governors will be found guilty of an offence? They are moving left and right, misusing public funds. They are not even collecting the revenue they are supposed to collect from markets over licences *et cetera*. They have appointed emissaries. They have their people in the field. They have even employed people hailing from their ethnic areas or supporters for campaign; neglecting even the obvious, that logic must prevail. So, we have governors who have gone ahead and made the county governments their empires. They have misused, abused and continue to abuse ---

**The Speaker** (Hon. Ethuro): What is it, Sen. Sijeny?

**Sen. Sijeny:** On a point of order, Mr. Speaker, Sir. I have noticed that the contributions to this Motion are repetitive. Would I be in order to ask the Mover to reply?

**The Speaker** (Hon. Ethuro): Order, hon. Senators. I, therefore, wish to put the question that the Mover be called upon to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**Sen. Sang:** Mr. Speaker, Sir, I beg to reply. I have noted with a lot of concern the comments and issues raised. I must admit that from the word go; I did not notice those serious changes that had taken place. However, listening to the immediate former Chairperson and the possible Chairperson of this Committee; and appreciating that some consultations have gone into this list – I have been informed of a number of other agreements and discussions that have taken place, and therefore, the concerns that were

raised will be addressed. Sen. Khaniri and the presidential aspirant, Sen. Mong'are are immensely qualified people. Going by the ambitions of Sen. Mong'are you can definitely tell that maybe he had outgrown the kind of business that he was to undertake in this Committee.

With regard to Sen. George Khaniri, I am sure that in the fullness of time, within this House, you will be seeing him taking up more serious responsibilities. A few of us in this House may not understand that he could have been stood down from this Committee in preparation for bigger assignments. Therefore, there were consultations to that extent.

We wish this Committee well---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I rise to request that the Mover substantiates his assertion that Sen. Khaniri has been stepped down because he is being prepared for a greater responsibility, so as to convince me to vote for the Motion.

**Sen. Sang:** Mr. Speaker, Sir, Sen. (Dr.) Khalwale is an interesting Member of this House. There was a *Kamukunji* that discussed a number of issues. I would want to request that he should not push me to divulge, because that would be anticipating debate. But I mean what I say.

I, therefore, wish this Committee well. Once this Motion is approved, I hope that Sen. (Prof.) Anyang'-Nyong'o will take charge of the Committee and move to conclude the business that is before it.

Mr. Speaker, Sir, with those remarks, I beg to reply.

*(Question put and agreed to)*

## COMMUNICATIONS FROM THE CHAIR

### DATE FOR CONDUCT OF ELECTIONS FOR SESSIONAL COMMITTEES

**The Speaker** (Hon. Ethuro): Order, Senators. Before we proceed to the next Order, I have a small Communication to make.

Following the constitution of Sessional Committees; the Committee on Devolved Governments, the County Public Accounts and Investments Committee, the Committee on Implementation and the Committee on Delegated Legislation, pursuant to Standing Order No.183 on conduct of elections, this is to inform you that the Clerk of the Senate has appointed Tuesday, 28<sup>th</sup> February, 2017 as the date for the conduct of elections for all the Sessional Committees.

Further information as to the venue and time shall be communicated directly to the Members of the said Committees in the usual manner. I, therefore, wish to take this opportunity to urge all hon. Senators, who are Members of the Sessional Committees, to ensure that they attend these critical meetings, so as to ensure that the Committees can commence the discharge of their responsibilities immediately.

Other Committees with pending reports for approval, especially affecting petitions, which have been a great concern, are also directed to liaise with the Office of the Clerk to ensure that they also meet on the same Tuesday, probably an hour after the Sessional Committees have held their meetings. They need to meet to approve the reports that have already considered. That will enhance the amount of work before the House.

I thank you.

VISITING DELEGATION OF PUPILS FROM NZUUNI  
PRIMARY SCHOOL, MAKUENI COUNTY

Hon. Senators, I have one more Communication. I would like to acknowledge the presence, in the Public Gallery, this afternoon of visiting pupils from Nzuuni Primary School, Kisau, Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate, and my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

Next Order!

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

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

**BILLS**

*Second Reading*

THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILL NO.2 OF 2017)

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I take this opportunity to move the Bill. This is a very special Bill. As we know, one of the responsibilities bestowed on the Senate is to make sure that we have funds going to the counties.

Mr. Deputy Speaker, Sir, under Article 218 of the Constitution, the Senate is supposed to pass the Division of Revenue Bill, so that resources are shared between the national Government and county governments. The Committee on Finance, Commerce and Budget was able to go through the Bill and we noticed that, at least, there has been growth in revenue.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Mositet! You did not move the Bill. Do the correct thing.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I beg to move:-

THAT, The Division of Revenue Bill (National Assembly Bill No.2 of 2017) be now read a Second Time.

As a Committee, we have gone through the Bill and noticed that the revenues have risen. The National Treasury set the equitable share to be Kshs299 billion and the National Assembly slashed the amount to Kshs291 billion. That was not good at all. We have the conditional grants, amounting to Kshs30 billion, which have been given to the counties.

Before the equitable share is passed by the National Assembly or the Senate, there are institutions which make recommendations as per the Constitution. The Commission on Revenue Allocation (CRA) is supposed to make recommendations to both Houses. The CRA recommended the figure of Kshs322 billion and the National Treasury set the equitable share as Kshs299 billion. However, the National Assembly went on to slash that figure to Kshs291 billion. I can see already that, as Senators, we may not be comfortable and our counties are going to suffer if we allow the additional of about Kshs8 billion.

Mr. Speaker Sir, I may also want to bring to your attention that people would be wondering why we are talking about the Division of Revenue Bill this time while we know very well that our country is preparing for the elections. We are doing this now so as to ensure the country continues with the services and not to stagnate. Therefore, briefly we have the equitable share as per this Bill as Kshs291 billion.

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN  
THE NATIONAL AND COUNTY GOVERNMENTS FOR THE  
FINANCIAL YEAR 2017/2018**

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2013/14 audited and approved Revenue i.e. Kshs. 935,653 Million
<b>Total Shareable Revenue ( Bill+C+D)</b>	<b>1,549,412,000,000</b>	
<b>National Government</b>	<b>1,238,343,840,000</b>	
<b>Equalization Fund</b>	<b>7,727,000,000</b>	
<b>County Government (1+2)</b>	<b>303,341,160,000</b>	<b>32.42%</b>
County Equitable Share	291,136,160,000	
Conditional Allocations	12,205,000,000	
2.1 Leasing Medical Equipment	4,500,000,000	
Compensation for User Forgone	900,000,000	
Level 5 hospitals	4,200,000,000	
Construction of county headquarters (Isiolo, Tana River, Tharaka-Nithi, Nyandarua and Lamu)		
Rehabilitation of Youth Polytechnics	2,000,000,000	
Additional County Conditional Allocations (not part of sharable revenue)	20,416,400,000	
Allocation from fuel level (15%)	7,875,000,000	
Conditional Allocations	7,875,000,000	

(loans and grants)		
<b>Total County Allocations (D+E)</b>	<b>323,757,560,000</b>	<b>34.60%</b>

Mr. Speaker Sir, I believe as a Senate we will not go as per the figure of Kshs291 billion which was passed by the National Assembly. So, I look upon this House to amend and we make sure that we give counties more resources for the development we have been looking upon.

Even though our governors have not really been doing very well, the Senators will fight for more funds to go to the counties. Therefore, I will be asking this House to pass the amendment that we are going to come up with. There is some urgency in this Bill. I believe that by next week, God willing, we should be able to amend and pass it.

With those few remarks, I call upon Sen. (Prof.) Anyang'-Nyong'o to second.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to second this very important Motion and to thank my very able Vice-chairman, Sen. Mositet of Kajiado County, for ably moving it.

I stand here a very sad man and a very sad Senator because this is the fifth year of devolution and we had hoped that the learning curve would have improved performance in the budget and the repatriation of revenues between the county government and the national Government. When the Speaker was making a presentation today, he reminded us of Article 96 of the Constitution. I would like to read it for the record because sometimes as it is said in the Bible, "Even if they know, you should keep on reminding them." I am glad Sen. Kagwe has come to the House because these matters have been his concern which was very consistent through the life of this Senate, and I am very proud of this from a teacher.

Article 96 says: "The Senate represents the Counties." Articles 1 and 2 of the Constitution first make the people sovereign and say that, that sovereignty can be expressed in two ways – either directly or through their representatives. So, when we say that the Senate represents the counties, we are speaking on behalf of the sovereign people living in the 47 counties of this nation and serves to protect the interest of the counties and their governments. That is 96 (1) which is often quoted.

However, I would like to quote Article 96 (1) in full:-

"The Senate participates in the law making function of Parliament by considering, debating and approving Bills concerning counties as provided in Article 109 and 213."

That is what we are going to do today.

Article 96 (3):-

"The Senate determines the allocation of National Revenue among counties as provided in Article 217 and exercises oversight over national revenue allocated to the county governments."

Again, this has been the preoccupation of this Senate this afternoon.

Finally, Article 96 (4):-

"The Senate participates in oversight of state officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145."

Mr. Speaker Sir, we have done this with governors and other officers but unfortunately, we have not come as far regarding the President or the Deputy President, even when the matter had been occasioned but I will not delve into that.

Apart from that article, I want to go to the Fourth Schedule of the Constitution which is extremely important. It is important that we remind this nation of the fact that this House is here to defend and promote the Constitution as passed by the people of Kenya.

The Fourth Schedule talks about distribution of functions between the national Government and the county governments. We, in this Senate have said, and quite rightly so, that these functions must be fulfilled with regard to resources put before counties to fulfill these functions. That is in line with Article 203 (1)(d) of the Constitution on equitable share and other financial laws.

Article 203 (1)(d) says:-

“(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county governments enacted in terms of this chapter-

(d) The need to ensure that county governments are able to perform the function allocated to them.”

Those functions allocated in Schedule 4.”

Mr. Speaker Sir, one of the functions allocated to counties is agriculture. It is very clear that agriculture is a function of county government. The only function of the national Government is agricultural policy in Article 29 of the Fourth Schedule

With regard to agriculture, the Fourth Schedule, Part 2, of the Constitution is very clear. In fact, agriculture is the first function of County Governments. It says:-

“The functions and powers of the county are-

1. Agriculture, including-
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;
  - (c) county abattoirs;
  - (d) plant and animal disease control; and
  - (e) fisheries”

If you look at the budget of this nation since devolution, how much resources have been given to counties to perform this very important function? You will be surprised. I want to remind this House because we are a House of records. The Sessional Committee, Committee on Devolved Government, chaired by my very able friend Sen. (Prof.) Lesan, the Senator for Bomet County, tabled in this House a very important report on the 18<sup>th</sup> October, 2016. The report is entitled: “A Report on the Appeals for Transfer of Functions by Various County Governments.” If you read that report carefully, you will find that county after county appealed to this Senate that the agricultural function should be properly transferred to them and that the function should be followed by resources as stipulated in Article 203 (d) of our Constitution.

I would like to remind the House, Elgeyo-Marakwet, Embu, Kiambu, Lamu, Migori, Nyamira, Murang’a, Tharaka-Nithi and Siaya counties made that appeal. Even those not listed here must have made that appeal. This is a good sample that Sen. (Prof.) Lesan put here. Sen. (Prof.) Lesan, these are just samples that you used. It is a good sample showing that many counties were complaining about agriculture.

Agriculture is where the rubber hits the ground in terms of development in this country. We are a subsistence economy, struggling to be a middle income country in the year 2030. We cannot do so without a major revolution in agriculture. I remind you of the green revolution in India which turned India around. I might also say that Malawi, under President Mutharika, at one point exported maize to Kenya because of the policy of that late President which was unfortunately not followed by his successors. There are many other examples.

When I look at the allocation to agriculture in this budget after four years of devolution, I weep for this nation. Farmers have been crying about the late supply of fertilisers. Sen. (Prof.) Lonyangapuo was speaking in this House the other day, asking about fertilizers. Many other Senators have asked for the same.

In my own county, the hyacinth menace has been there for so many years. We have something called the Lake Basin Development Authority and the Integrated Lake Basin Management (ILBM). These two parastatals are poorly funded, depending entirely on donor funds. You cannot entrust the basic means of production in your nation and economy to donors.

I am making this appeal because when you look at the Fourth Schedule, the functions performed by the counties are not according to the Constitution and the allocation of resources to agriculture are not adequate. Security is an entirely national Government function. Agriculture is an entirely county function, except for policy. Health too is an entirely county function, except for policy. What is the Cabinet Secretary (CS) for Health doing purchasing commodities for counties and then presenting them as a *fait accompli* to counties and then saying *ex cathedra* that these are conditional grants?

We were sitting here yesterday with the Chairperson of the Committee on Finance, Commerce and Budget, the CS Finance and the National Treasury, the Commissioner for Revenue Allocation and the Council of Governors and this issue was raised. I raised this issue with the CS for Finance and National Treasury, but I did not get any good answer.

As we retreat to Naivasha today, I hope we shall be there in good numbers. I hope that we shall talk about this Division of Revenue Bill and come out, as the Vice-Chairperson said very competently, with certain amendments to this Bill which will satisfy the interest of our counties. I am saying this with a very good heart and as somebody who has been a Minister for Planning and National Development and who has been a champion of devolution ever since we started the struggle for the second liberation. Now that devolution is here, my appeal is that we should implement it properly by making sure that resources follow functions.

Another example which may not be important, but it is an example which is important nonetheless and we should not take it lightly. After talking of health, agriculture and water, though I did not dwell on it, there is a certain function which we usually forget. That is the function of culture. Our cultural heritage and cultural traditions is a very important aspect of our Constitution. Culture has been given to counties as a function. I do not think that we ever think very seriously about giving resources to culture. It is again one of those functions which we outsource to donor agencies and other bodies.

I would like to appeal that when we comb through this Bill and the allocation of funds, we should think very clearly of those functions allocated to counties and ensure

that we have enough resources to support them. This is a constitutional requirement. It is a requirement that calls upon the Treasury to be filial to the Constitution and go an extra mile to make sure that they do their work properly.

Finally, I have another appeal to Treasury. If I was a CS in charge of Finance, I would request a study by my people in the Finance Department and, perhaps, by certain experts, so that we develop very clear criteria of respecting Article 203 of the Constitution. What are some of the indices that we shall use to make sure that these requirements of allocating money in terms of equitable share to the counties are actually observed? From Article 203(1)(a) to (k), there must be a measure of the extent to which you take into consideration national interest when you are budgeting. There must be a measure of the extent to which you take into account any provision that must be made in respect of the public debt and other national obligations, now that the public debt is a very big issue.

You cannot just tell the county *ex cathedra* that one of the reasons why we are reducing this budget to the counties is because we have a big public debt. What index are you using? What weight are you giving to public debt in allocating resources or reducing them? You must say the needs of the National Government determined by objective criteria. What are those objective criteria? They should come as a policy document or a sessional paper given to this House to approve.

You must determine the fiscal capacity and efficiency of a county government. Have we assessed the fiscal capacity and efficiency of county governments and produced reports that can help us know why we are varying allocation of budget to counties this way or that way? Must developmental and other needs be much more important than the need to ensure that the county governments are able to perform the functions allocated to them?

That is very easy. Go to Fourth Schedule, find out how much money is allocated to every function, both for the national government and counties, come out with the indices, publish them together with the rationale before you pass any budget and let us debate and reason about them.

One cannot come here and tell us that they did this budget, but there are no figures or indices. This Government prides itself on being digital. Let us see how digital chemistry is used in actual budgeting.

I beg to support.

*(Question proposed)*

**Sen. Sang:** Mr. Deputy Speaker, Sir, I rise to support this Bill. This is a very important piece of legislation. As ably mentioned by my colleagues earlier, in support of this and many other Bills, the primary responsibility of the Senate is to look into the interests of the counties, make legislation and oversight. One such legislation that gives us the opportunity to ensure that our counties have the necessary resources is the Division of Revenue Bill.

This is a Bill that seeks to divide the revenue between the two levels of Government; the national Government and the county governments. I am a proud Senator in this Senate, looking at the amount of resources that we have managed to send to the counties. That amount has increased every financial year. We started with a very small



figure when we came in. I will specifically talk about Nandi County, which is my county. In the first allocation through the Division of Revenue Bill in 2013, Nandi County got a share of Kshs3.4 billion. This amount has increased through the efforts of this House.

Mr. Deputy Speaker, Sir, it is important for Kenyans to know that this Senate has sacrificed a lot to ensure that we safeguard our role with regard to the passage of Division of Revenue Bill. In 2013, we had to go to court and in the second year, it cost the Senate funds for oversight when we disagreed with the Members of the National Assembly by increasing the resources going to counties. That is an ultimate price that this House has paid. We agreed to lose the Kshs1 billion; an allocation that we had negotiated and secured for the Senate to carry out oversight, in order to allow the county governments get an extra over Kshs7 billion that we were negotiating for.

Mr. Deputy Speaker, Sir, when we made the resolution to increase the resources going to counties in that particular year, we told the governors that we had lost Kshs1 billion for oversight, but gained over Kshs3.7 billion for Level 4 hospitals. We then urged them that since we had lost Kshs1 billion for oversight, to use the resources given to them in an accountable and transparent manner. However, it is very sad that progressively, massive corruption in the counties has hit the roof. We have had situations where our county governments and governors have had discussions insinuating that the role of the Senate with regard to safeguarding the interest of the counties and sending resources to counties is an obvious function.

Some governors say that the monies would still flow whether or not certain Senators were in the Senate. The reason we are seated here today debating the Division of Revenue Bill is because it is important. Counties cannot have the resources they require if this House does not pass this Bill. I urge leaders in the counties to appreciate the role of each institution in ensuring that all of us contribute, in our own small or big way, in ensuring that devolution works.

I will narrow myself to one issue. We have the Fourth Schedule of our Constitution. It clearly demarcates the roles of the various levels of government. It is very sad to note that the Constitution, under the Fourth Schedule, has allocated 14 functions to counties and yet, the county governments are expending the little resources sent to them to undertake national Government functions, when they have not concluded undertaking their own functions. We have seen county governments expend their resources in building universities, allocating resources to national roads and yet, small feeder roads and agriculture have not been adequately financed.

Mr. Deputy Speaker, Sir, in Nandi County, where we engage in dairy farming, our farmers have not received adequate artificial insemination (AI) services, yet our county government expends resources on security matters. Whereas security and education are important, it is important for our county governments to expend these resources to carry out the devolved functions. We have not seen the national Government pumping its resources into devolved functions. You will find a situation where one function is overfunded by both levels of Government, yet an exclusive function of the county governments is not being funded.

As we move towards the elections, we are seeing many county governments employing many staff at the tail-end of the term. Why does it become necessary now, a few months to the elections, for a county government to employ 600 members of staff in the name of village administrators and community organizers? They are spending a lot of

resources in creating structures. These people being employed are the same ones who will be used as agents and to cause chaos and rig elections, if such an opportunity avails itself. The Governors and county governments should put in place structures for posterity and not just because they want to win an election.

I plead with our residents in various counties that whereas the responsibility of oversight is given to specific institutions in the Senate and the county assemblies, they have a responsibility of oversight. They should never be hoodwinked by governors who have been hoarding resources, unable to implement per financial year, only to emerge in the last three or four months to the elections and launch projects left, right and center. I come from a county where bursary allocations have been done for the last three years, but no disbursements have been made. It is only the other day that we saw the county governments putting in place bursary structures in the counties and even releasing the bursary for only the current financial year. This is clearly aimed at hoodwinking the members of the public, so that the politicians can be reelected.

The good news is that we are in a society that is now informed. Even in the most remote part of this country, members of the public are informed and will hold governors and county governments to account. Even as we get into the heat of the elections, county governments need to appreciate that within the design of the Constitution these are institutions for posterity. We should delink politics from the running of county governments. We do not want situation where the normal execution of duties of county governments are used for political expediency.

Mr. Deputy Speaker, Sir, even in the apparent face of defeat, as it is in most counties, governors need to obey the Constitution and ensure that nothing comes between them and the execution of their duties. They need to pull behind a bit and allow county governments to run unaffected by the politics of the day. They should ensure that if they are doing politics it should be on the sides.

Contractors who are given contracts in the past financial years are pushing very hard to retain these regimes that have perpetuated corruption in our counties. As Members of the County Assemblies run around campaigning for their reelection, we ask them to do their job to the last bit.

Most Members in this Senate will be in the counties campaigning. However, we still have to do our job of ensuring that counties have the resources. As we pass this Bill, we ask our county assemblies and governors to ensure they play their respective roles. We do not want a crisis in our counties, where three months to elections, nobody goes to the office and nothing moves. In such a situation, we will have new county governments coming in and finding a totally collapsed system.

Finally, governors should not over-commit our counties into a lot of debts. I feel for a number of new governors who will be coming in. They will inherit county governments heavily burdened by debts. County executives and county assemblies should bite what they can chew. As we move to the elections, let us be prudent and carry out our responsibilities diligently. I am happy as a Senator to continue to execute our mandate. I ask every other institution in the counties to carry out their responsibilities to the last day.

Residents of various counties should elect leaders on the basis of integrity and track record, so that we get leaders who can move our counties to the next level. I am very optimistic that in the next county governments, we will have more prudent use of

public resources, public participation and proper prioritization of projects so that the fruit of devolution is felt across the 47 counties.

I ask all Members of this House to commit themselves to executing their responsibilities to the last day so that we leave this House comfortable that we did our job.

I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Sang. Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale):** Mr. Speaker, Sir, I rise to strongly support this most important Bill and do so with a sense of nostalgia because apparently this will be the last such Bill that I will be speaking to in my political career as a legislator.

I draw the attention of this House to the mischief of Government. We have been told---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale you said that this will be the last time you are doing what?

**Sen. (Dr.) Khalwale):** Mr. Speaker, Sir, this marks the last time I am speaking to this kind of Bill in my tenure as a legislator in the Republic of Kenya.

This is the last Division of Revenue Bill in this Senate and because I will be gracefully exiting the Senate, I do not think I will have another opportunity because at that time I will not be a Member of the Twelfth Parliament and the Second Senate of the Republic of Kenya.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is the part I did not know and I it is what I wanted to get.

**Sen. (Dr.) Khalwale):** Mr. Speaker, Sir, I will be running for the governor of Kakamega County.

I would like to draw attention with the usual spirit of bipartisanship that has been championed by many among others, specifically the Deputy Speaker, Sen. Kembi-Gitura. Look at this mischief. There is a public relations office (PR) on the Schedule where the Government is telling us that they are rolling out 34.6 per cent of the Ksh.2.6 trillion budget for devolution. That is true.

However, practically, what is on paper is that in this Financial Year, the Budget of the Government is Ksh.2.6 trillion. If you take the Kshs323 billion that is meant for devolution, it represents a mere 12.4 per cent. The Government should stop playing PR and accept that devolution is not a priority to it.

Secondly, under this Bill, the Government thankfully wants to maintain the spirit of conditional grants to make specific functions run smoothly. Under this, the government has set aside Kshs 4.5 billion to go towards servicing of the specialized medical equipment that was purchased for the 47 times two hospitals in this country.

This is how corruption is perpetuated because when the Government was spending Kshs 38 billion to buy those specialized equipment for our hospitals, the governors were not there.

Here you are, after making procurement opaque, you now want to involve governors in paying for that debt so that when we go for the procurement officer, the Accounting Officer who is responsible for the procurement of Kshs38 billion worth of medical equipment, the whole wave of confusion will start because the payment is being done by a third party.

I want to put the second Senate on notice that this matter of medical equipment must be pursued to its logical conclusion by this House together with the National Assembly.

Thirdly, on conditional grants, the Government has thankfully set aside Kshs 4.5 billion for the Level Five hospitals in this country. We cannot just sit and watch. Today is the fourth year. Where is the over Kshs1 billion that has been given to the County Government of Kakamega over successive years to be used as conditional grants? On what has this money been spent in Kakamega? Until we answer this we are not playing our oversight role.

Still on the conditional grants, I have a fourth point which is that the Government, thankfully has set aside Kshs2 billion to be spent on youth polytechnics, previously called village polytechnics. It is commendable, but how can you have a county having its priority on spending billions supporting university colleges and ignore spending money on youth polytechnics and Early Childhood Education Centers (ECDE). Where is the money needed?

How does a county prioritize the creation, for example, in Turkana of a university college at the expense of village polytechnics for Turkana and Pokot youth who, because of this lack, resort to cattle rustling? That is the last investment an intelligent governor is supposed to do in those areas. They are supposed to invest in ECDEs, primary schools and village polytechnics because the constituent colleges that you put here are for purposes of serving Kenya. The students who come there, probably, 90 per cent of them will be from Turkana.

These grandiose projects by our governors should be the reason majority of the first generation of governors should go *kabisa*. If I had a vote, there are two governors I would vote for. I know I have fought many battles with them but when I look at the governor of Meru, that young man, Governor Munya has grown revenue collection from a paltry Kshs1 billion per year to Kshs5.6 billion at source. The young man is working.

Governor Kabogo has grown his revenue targets from Ksh.1.5billion to Ksh.4.5billion. These are governors who appear to know what they are doing. They should be given an opportunity to also blaze the trail so that other governors including second generation governors like myself and governor in waiting my brother Stephen Sang---. We can learn from them. We have to give credit where it is due so that we do not look like we are just criticizing for the sake of it.

Speaking on the issue of village polytechnics, I asked the Governor of Kakamega the purpose of this conditional grant of Kshs2 billion, if among others is to equip village polytechnics. When I was a Member of Parliament I am one of the few members who has ensured that in every ward, I have two functional youth polytechnics. However, I do not know whether the Governor for Kakamega hates Ikolomani and Shinyalu because that is my home. He has refused to equip Shilolavakhali Polytechnic. I do not know whether he hates it because of its name.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale we have a HANSARD. Words must be mentioned in such a way that they can be recorded.

**Sen. (Dr.) Khalwale:** That is a village polytechnic in Shinyalu Constituency. It is called Shilolavakhali Polytechnic

(Laughter)

Mr. Speaker, Sir protect me from that laughter.

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. You have just heard the distinguished Senator for Kakamega County making a very profound contribution. However, there are some words that he has mentioned such as “Ooooh ha”. For the sake of the HANSARD, it is very difficult to tell what “Ooooh ha” is. Consequently, would it be possible for the Senator to spell that word so that we know the spelling of that word.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you realise I am not the only one who has a problem with your fast speaking.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I will slow down.

**The Deputy Speaker** (Sen. Kembi-Gitura): I stopped you because I think what you are saying is very important and I do not want it to be by passed and left out of the HANSARD. Always do a correction of the HANSARD draft when you get a copy.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, let me give the spelling of Shilolavakhali Village Polytechnic.

*(Sen. (Dr.) Khalwale spelt out the name of  
the village polytechnic)*

The governor has refused to equip the village polytechnic which I painstakingly built in Idakho South. He has refused to equip other Village Polytechnic which I built painstakingly using the Constituency Development Fund (CDF) in Idakho East. I want to sound it to the Governor of Kakamega County that it is wrong for him to target my clan in Shinyalu, Ikolomani and Lurambi simply because he feels that, he takes affirmative action---I do not know what he is looking for. I expected that he would give them more money so as to woo them away from me to him.

Mr. Deputy Speaker, Sir, I insist that all village polytechnics including the ones that were built by Hon.(Dr.) Enoch Kibunguchy in Likuyani, Hon. Cyrus Jirongo in Lugari, Hon. Soita Shitanda in Malaba, Dr. Newton Kulundu in Navakholo, Hon. Lyula Khamasi in Shilalu, Hon. Manyala Keya in Kakamega Township and by myself in Ikolomani be equipped by the billions. Looking at the Auditor-General’s report, the billions are only going to Butere. It cannot be right. If God granted me an opportunity to serve the people of Kakamega County as their Governor, I would serve all the 12 sub-counties.

There is a conditional grant that I want to request the National Assembly to consider in the next budget because it is now too late. We need to create a conditional grant for agriculture in the following counties; Bungoma, Kakamega, Busia, Kisumu and Homa Bay. This is because the national Government has decided that they are going to offload the sugar companies that have been difficult to privatize to county governments. I urge that this money be given to Kakamega County so that it can take over Mumias Sugar Company, Bungoma County can take over Nzoia Sugar Company, Busia County can take over Busia Sugar Company, Kisumu County can take over Miwani and Muhoroni Sugar companies, and Homa Bay County can take over South Nyanza (SONY) Sugar Company.

Mr. Deputy Speaker, Sir, I urge the Members of this House to support---

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. Is Sen. (Dr.) Khalwale in order to make a proposition that the sugar factories be taken up by those counties when he is well aware that there is a privatization Bill in this House that seeks to take care of sugar farmers even in a place like Chemelil and Miwani? Whereas the factories are found in Kisumu, 70 per cent of the raw materials come from Nandi County and it is therefore important to have an agreement as to who takes over what because our farmers are stakeholders.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I could not agree more with the Senator for Nandi County. In a case like Chemelil Sugar Company, when the conditional grant will be released, then the shareholding of Chemelil Company should be domiciled between the two county governments of Kisumu and Nandi unless Nandi County would wish to put up its own factory. I urge the Members of this House to support this just in the same spirit we supported a few counties to be given money for the construction of county headquarters.

Speaking to the issue of abuse of funds, I assure governors that we will continue to pursue them. The sad case of Bukhungu Stadium in Kakamega compares and contrasts with what obtains in Meru and Bomet counties. Gov. Isaac Rutto and Gov. Peter Munya have successfully spent Kshs350million and Kshs330million to renovate their stadiums and the stadia are in use. However, in Kakamega County, the guy is putting up a stadium for Kshs1.2billion and before the work is done halfway, the stadium has collapsed. We are in problems in Kakamega County.

Mr. Deputy Speaker, Sir, allow me to speak to the global allocations. We, the Members of the Senate, are being shortchanged by the National Assembly. How I wish the Constitution had been structured so that the Senate has a role in actually interrogating the entire budget as presented by the National Treasury. If you look at Table No.1, you will find that the National Government wants to set aside Kshs79,685,000,000 for national interest(security). If some of us were to interrogate the budget, we would refuse that this money should go elsewhere because inside this budget, there is a hidden whooping Kshs43 billion where the National Government wants to pay all the three communication companies of North Carolina in the United States of America (USA) for the purchase of armored aircrafts. The actual cost of that particular contract is only Kshs23 billion. The other Kshs20 billion is in doubt---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale!

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. (Dr.) Khalwale to mislead Kenyans that a budget can be hidden? Can there be a hidden expenditure in a budget when all the expenditures are itemized? Secondly, is the Senator in order to discuss documents that he has not submitted to substantiate in this House?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I stand guided. That will be for another day. However, I have made my point.

There is an allocation of Kshs8.7 billion in this budget that is meant for irrigation (Galana Kulalu). When we took Kshs15 billion in Galana Kulalu, the Jubilee Government did not tell Kenyans how many bags of maize were harvested. This is robbery. If they had harvested any maize, Turkana in Turkana, Pokots and Tugens in Baringo and Pokots in West Pokot would not be dying because of hunger.

We must put the Government to account to ensure that not a single Kenyan dies because of lack of water and food when, in fact, in the Contingency Fund; they have got Kshs7.2 billion and Kshs2.2 billion in Strategic Grain Reserve. Why would Kenyans still be dying? Let us fight for the poor. Who is eating this money?

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to speak to this very important subject. From the onset, I support. I am aware that tomorrow, Senators are supposed to retreat to Naivasha to discuss this subject. As they debate it, it is very important for the Senators to be informed of the issues that have arisen from it, particularly the hidden issues as Sen. (Dr.) Khalwale would call them.

First is the growth expected or as proposed in the budget. The National Assembly has proposed some Kshs291 billion or thereabout which, if you compare to last year's allocation, it is a growth of about 3.2 per cent. Between the 2014/2015 and 2015/2016 financial years, the growth of revenue allocated to the counties was 7.9 per cent. This year, it is 3.2 per cent. This tells you that we have not even managed to cover for inflation. Estimating inflation between 3 and 5 per cent, if we allocate money to the tune of 3.2 per cent with a growth of 3.2 per cent effectively, we are allocating less money this year than we did last year. This is so because an allocation that does not cover for inflation is essentially diluted. That is the first thing to note.

Another aspect of it is that in the schedule that is proposed in the Bill, there is item No.4 called conditional allocations, loans and grants of about Kshs12 billion. That has been used to arrive at the Kshs323,757,000,000 which then grows the allocation to 34.6 per cent.

Mr. Speaker, Sir, it is important for us to appreciate that the Kshs12.5 billion is not money that is going to the counties at all as has been explained by the note here. It is money that is neither going to the counties nor even going to be managed by the counties. This is money purely managed by the national governments that deal with international commitments, loans and grants from foreign governments and institutions. There is no logical reason why that figure of Kshs12.5 billion should be anywhere in this table. On the contrary, it should have been allocated in item (b) which is national governments funding.

I would like to commend the Commission of Revenue Allocation (CRA). This year round they really thought about the recommendations. It appears to me that what we or the National Assembly should have done is simply accept the figure as presented by the CRA. Their arguments are so solid. The argument presented for the reduction of their amounts does not make sense.

So, the amounts proposed by the CRA; given the growth aspect in the country in terms of Government growth in revenue, expected inflation, allocation of responsibilities to the county governments, was something to the tune of Kshs331 billion as opposed to the Kshs291 billion. That amount would cater for, (a) inflation and (b) some real growth. If you look at the areas that the CRA had proposed, for instance, they had proposed a 25 per cent portion from the roads maintenance levy fund to be given to the counties. The Division of Revenue Bill as it stands today proposes 15 per cent allocation yet we are talking about a recorded 32,000 kilometres of roads transferred from the national to the county governments.

Therefore, there is very logical reason why the 25 per cent, equivalent to Kshs13.3 billion should be allocated to the county governments. It is very clear. It makes

sense. What does not make sense is the logic behind the reduction from the 25 per cent. This is money that is coming directly from a levy that is paid for by county drivers. Therefore, it is not an amount that we can say, strictly speaking, coming from the national Government, except for the fact that, obviously, all money that is taxed comes from the national Government. Therefore, the Roads Maintenance Levy should be maintained as per the recommendation of the CRA.

In the further provisions made by the CRA, there is Kshs200 million; special purpose conditional grant for medical purposes. This money was allocated for the purposes of two counties in Level Four hospitals specifically Lamu and Tana River, which is a very reasonable request, given the fact that many people who are involved in insecurity situations in that region are taken to those hospitals. Indeed, it is a short distance to take people to even if you are taking them from Kisumu or such nearby areas where our forces are in Somalia.

It makes sense to have those hospitals equipped; in fact, by a much larger margin than what we are talking about in these areas. When you think about that whole vast area from Garissa all the way to Lamu and Tana River County which is one of the biggest counties in this country and you look at the medical facilities that are in that region, you can appreciate that it would make a lot of sense to have at least one of those lagging behind, at least Lamu and Tana River being properly equipped.

Mr. Deputy Speaker, Sir, further, the CRA had recommended some Kshs5 billion to address the issue of regional centres for cancer. Any politician and all citizens of this country will appreciate the amount of money that we are spending sending people to the United Kingdom (UK), India or South Africa to deal with cancer. It has become a real killer in our country. The CRA had made perfect recommendations in saying that there are two hospitals that have capacity to grow into some regional centres for cancer, one of them being Kenyatta National Hospital (KNH) and the Nyeri Level Five Hospital.

To save my life, I cannot understand why anybody would say that this money should not be allocated to these hospitals given the background that we have, cancer patients and the amount of money we are spending for overseas treatment of patients in our country. I would therefore; recommend that as this discussion goes on in Naivasha, this House recommends that this amount as recommended by the CRA be reinstated.

Mr. Deputy Speaker, the amount of wastage in our counties, to a large extent has to do with the level of technology that is being used in those counties. The Senator for Kakamega has just given us two examples of counties that have increased their revenues; Meru and Kiambu. In both counties, we have all read about the use of technology in revenue collection. This is an area that counties should be allocating a percentage of the resources allocated to them. This is because technology cuts across all areas.

Mr. Deputy Speaker, Sir, you also heard the recommendation from the Commission on Revenue Allocation (CRA) about the health centers. As I speak, Kenyans are dying because doctors are on strike. If you look at the Fourth Schedule of our Constitution, health matters have already been devolved to the county governments. I do not know why Kenyans, including the national Government, have not grasped this issue. The employer of doctors is not the Ministry of Health. Doctors are not employed by the Principal Secretary (PS) in the Ministry of Health; they are employed by the county governments.



In view of the fact that it is now clear that the Collective Bargaining Agreement (CBA) that was signed by the previous governments was tainted with illegality, as it were, this matter should be clear. County governments should take responsibility; doctors must go back to their employer who is the county governments and negotiate at that point with the county governments. They can then address the issue with the Salaries and Remuneration Commission (SRC). That is where the responsibilities lie.

Mr. Deputy Speaker, Sir, even if we argue about this situation for another 90 days, it will come back to the same place. Their employer is the county governments, which follow advice by the SRC. There is no CBA because it was illegally executed. I sympathize with doctors because they do a very difficult job. In spite of my understanding of where they are coming from, we must appeal to them to also appreciate that they do not just do another regular job. They do a job that is as close to godliness as one can get; to deal with matters of death and life. When you deal with that kind of responsibility, it appears to me that you cannot also treat yourself as if you are going into an office and churning out paper. You go to an office to save lives. When that responsibility has been granted to you by the Almighty, you should take it with a certain extra level of responsibility.

Mr. Deputy Speaker, Sir, the National Assembly did better by allocating Kshs2 billion to village polytechnics instead of the Kshs1.5 billion recommended by the CRA. Whereas I agree that the Kshs2 billion should go to institutions called village polytechnics, I would like to recommend their renaming to county polytechnics because the people in the villages feel strongly that they do not want to attend a village polytechnic. This is because it connotes failure. Villages in Kenya do not have the same positive image as one would have, say, in Europe. In our country, they are colonial institutions that do not feel good to our youth. Therefore, let us call them county polytechnics and proceed to make them good.

Mr. Deputy Speaker, Sir, the only way to make those village polytechnics work is to structure the curriculum in each institution, so that they do not offer similar courses. For example, we should not have 10 polytechnics situated in the same area all offering courses in dressmaking. I like good dresses and seeing the likes of Sen. Elachi dressed as good as they are, but we cannot have everybody making dresses. Who will buy them if everybody is making a dress? Let us not have the polytechnics that are focused in one area.

Mr. Deputy Speaker, Sir, I had quite a bit to talk about the CRA, but because of time, I will stop there.

I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Kagwe.

Sen. Elachi.

**Sen. Elachi:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support the Bill. This will be my last Bill to talk about in the Senate. When I go to the National Assembly, I will look at it better. This Bill is about a budget that will take us to the end of our term. As we head towards campaigns we need to ask ourselves whether the Senate has performed its responsibility to guide and protect the counties.

Mr. Deputy Speaker, Sir, I want to thank the National Treasury for allocating the monies that we had requested for the four headquarters. Sen. (Eng.) Muriuki will appreciate that there is an allocation that will go towards building their headquarters.

Having said that, I wish to note that this money is coming late. I hope that the governor who is now campaigning will wait for the next governor to start the project.

Mr. Deputy Speaker, Sir, turning to the money for leasing medical equipment, I think it is important to have a schedule of the equipment that we are leasing. We should also know the exact number of vehicles leased in the different counties. This will enable counties to appreciate the figures that are presented.

Mr. Deputy Speaker, Sir, it is important for us to consider the health sector. It is sad to note that the Senate has failed us on the health issue. The Senate should have sorted out this mess by telling our doctors that health is devolved; it is under the counties and we need the governors to sit down and agree. The doctors in Bomet and Kiambu counties, for example, are not on strike. Those counties understand that health is their responsibility and, therefore, they must take care of their doctors. I do not understand why the other 45 cannot deal with the matter. Since the role of the Senate is to protect the counties, Kenyans are wondering what we are doing to resolve the problem in the Health Sector. It is time we dealt with the issue as an institution.

Mr. Deputy Speaker, Sir, looking at the Bill against Article 203 of the Constitution, you find that there are the national interests, where we have enhancement of security through police vehicles and helicopters. We have challenges facing the Pokot due to political interests. The problem is not cattle rustling. The national Government should request the Pokot to respect the counties that border them and the lives of their own people. It is sad that we allocate such amounts to Ministries and Kenyans continue to die because some people have refused to follow the law.

It is very sad for us to allocate this amount of money to Ministries and Kenyans continue dying because of lack of basic necessities like food and medicine. We have drought in this country and leaders are busy campaigning instead of assisting our people.

Mr. Speaker Sir, the National Irrigation Board should supply fertilizer to farmers at subsidized prices. Farmers are busy preparing their farms ready to plant in March. They must provide our people with good seeds. We also hope that they can also account for what happened last year because farmers did not get good fertilizer last year.

With regard to the youth empowerment, I hope the Government will allocate more resources them and enable them get more than 30 per cent of all the Government tenders. I hope the Treasury will pay all suppliers who supplied goods and rendered other services to both the national Government and county governments. It is a pity that they have not being paid. Most of them are now being auctioned by the banks. Their businesses are closing down. I urge both the National Assembly and the Senate to allocate more resources so that all suppliers are paid. As I speak today, there are a number of youth who supplied goods and service during the World Trade Organization (WTO) conference but they have never been paid.

Mr. Speaker, Sir, Parliament has not been paying its suppliers. Right now it not easy to get venues for committee meetings outside Parliament because service providers have not been paid. Therefore, I plead with Parliament to pay its suppliers. It is sad for Senators or Members of the National Assembly to be told they cannot get services because Parliament has failed to honour its debts. If it is the issue of procurement, let them be sorted out before Members gets embarrassed in hotels. It is wrong.

I want to look at the National Social Safety Net where we have elderly persons and orphans welfare and the presidential bursary. It has some good allocation. Kenyans must appreciate the work being done by the national Government. It has come up with good programmes to assist deserving cases. It is not difficult to know who have benefited from these programmes in all counties. For example, people from Kakamega, Nairobi, Nakuru and other counties have benefited from these programmes. All this is well documented by the Ministries in charge. It is a matter of common sense for us to approve the budget here because those people are taken care of.

With regard to the education sector, I do not think it is a good idea to devolve it. We passed a Bill here devolving functions of roads. However, I doubt whether in the next three months, this function will be fully devolved. I hope this money will not be misappropriated by governors during this campaigning period. That will be very unfair to our people. Many roads in counties are not completed. I urge governors to complete them. Roads in Nairobi County are in a pathetic state. For example, in Dagoretti North Constituency, there are few roads which are in bad shape. I urge all county governments that when they receive this money they complete them. Let them not start new ones before completing the ones that are already ongoing.

With regard to the fiscal capacity and efficiency of county governments, I can see they have analyzed clearly what will happen in the 2017/2018 Financial Year. I remember in this Senate we told the Cabinet Secretary, National Treasury that it is important for him to have the cost of the itemized services so that when interrogating we can know how money was spent. We had proposed 60 per cent for development and 40 per cent for recurrent expenditure.

As we go for campaigns I am sure many counties have a lot of debts that they have been unable to settle. First of all, there is no inventory. There are no records to show which projects have been completed and which ones are pending. I hope the governors are preparing such documents so that when we come in we will be able to know where to start. That is why today the Jubilee Government has followed the script of what former President Kibaki prepared. These are the first governors who are supposed to leave a foundation of the counties. I also hope the county assemblies will ensure there is a roadmap that will be followed by their successors.

Going forward, we will be requesting county governments to prepare budgets per their constituency. If we are giving a county Kshs10 billion or 15 billion, then we need to show how much is going to a particular constituency. For example, if county "A" gets Kshs10 billion then constituency "B" gets Kshs5 million. By so doing, we will not rely so much on the Constituencies Development Fund (CDF) because we know there is some amount allocated for developing a constituency. So, it is important that governors leave a good legacy showing what they have done and what is pending in their counties.

Finally, I want to commend the Commission on Revenue Allocation (CRA) on the recommendations that they have given us. As we pass this Bill, I hope we will continue supporting our counties even if we will be going to an election. It is also important for us to safeguard the funds for the county governments so that the next governors will know where to start and move forward. With a good inventory, they will be able to know which suppliers to pay and so on.

I beg support.

*[The Temporary Chairperson (Sen. Sen. Kembi-Gitura) left the Chair]*

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

**Sen. Muthama:** Bw. Spika wa Muda, asante kwa kunipa nafasi hii. Hiki ni kipindi muhimu sana cha kuzungumuzia maswala ya pesa za umma. Kama Sen. Elachi ambaye ninamjua kwa siku nyingi, ninaunga mkono Hoja hii.

Kama kaunti zetu zingekuwa zinafanya kazi ningeishtumu Serikali Kuu sana. Lakini Serikali hii ina bahati kwa sababu katika kaunti nyingi swala la ufisadi ni kawaida. Magavana wengi wanaendeleza ufisadi na uporaji wa mali ya umma.

Kiwango hiki cha pesa za kaunti zetu ni cha chini sana. Ikiwa kaunti zingelikuwa zikitumia pesa vizuri tungependekeza kiwango hiki kiongezwe. Hata kama tungetaka waongezewe kwa kiasi cha Kshs1 milioni au Kshs1 billioni, swali muhimu hapa ni hili: Je, wananchi wetu wamepata huduma ambayo ililingana na pesa tulizowapa magavana? La. Hakuna chochote kilichofanyika mashinani.

Hakuna hata alama moja ya kuonyesha ya kwamba pesa tulizopitisha hapa zilifanyia wananchi kazi.

Serikali ya Jubilee haifuatili kwa makini na kuona kwamba wanaofuja pesa za umma wanachukuliwa hatua. Inawezakanaje kuwa gavana ambaye akichaguliwa alikuwa na gari moja na sasa na magari mengi? Boma yake ilikuwa na nyumba moja na sasa ana nyumba za kifahari nyingi zenye vyumba vingi. Mambo haya yote yamefanyika kwa muda wa miaka miwili. Isitoshe, anaweka ua ya stima, anaanza kujenga majengo ya biashara na kadhalika. Hata hivyo, Serikali ya Jubilee inakodolea mambo yote haya macho bila kuchukua hatuayoyote. Ni kama kuna mahali pesa zinachimbwa na kutumiwa ovyoovyo. Mtu akishapewa nafasi ya utumishi wa umma, anajitajirisha mwenyewe. Hili hutendeka hasa mtu anapokuwa msimamizi wa fedha za umma. Huwa anajifanya ni kama amepata mgodi wa kuchimba pesa na kuzitumia kama anavyotaka.

Hii si tabia za magavana peke yao. Tunaona hiyo tabia hata kwa viongozi wa juu katika Serikali ya Jubilee. Kwa mfano, haya yanafanyika na Naibu wa Rais na wengine. Majengo yameanza kujengwa katika kila pembe za nchi hii. Fedha za umma zikiwa zinatumiwa lakini hakuna mtu anauliza jinsi mtu ambaye mshahara wake ni Kshs100,000 anaweze kujenga nyumba za gorofa ishirini na zaidi. Haya mambo Sen. Muthama, Sen. (Prof.) Kindiki na wengine hatuwezi kufanya hivo.

Wengine walikuwa hawana hata ofisi ya kibinafsi kabla ya kuchaguliwa lakini sasa wanaanza kufanya mambo ya kiufalme bila aibu. Serikali ya Jubilee bali na kuwa na vitengo vya kuchunguza na kuangalia ni nani anahujumu uchumi wa nchi kwa kuharibu mali ya umma, inakaa tu ni kama hakuna chochote kinatokea.

Nchi ya Kenya inaweza kuongozwa na mtu yeyote. Inaweza kuongozwa na karani, watu wanaofanya kazi ya kufagia barabarani ama wahudumu wa hospitali. Kama kuna watu ambao ni watiifu na wanaweza kuvumilia shida, ni Wakenya. Ikiwa mtu anachaguliwa kuwa Katibu Mkuu wa Wizara na baada ya miaka miwili au mitatu anakuwa tajiri kuliko watu wa kaunti yote waliompa kura, basi hii ni nchi ya kiajabu. Mimi ninaiombea hii nchi na kuwaombea Wakenya. Naomba mwenyezi Mungu aitazame Kenya kwa sababu wanawe wanateswa sana.

Sen. Elachi na Sen. Kagwe wamesema watu hawapati matibabu katika hospitali za umma. Nikizungumuzia ugawaji wa pesa inayoenda kwa kaunti kwa mara ya mwisho

katika kikao ya mwisho ya Bunge hii, ilikuwa ni kosa kubwa sana kugatua mambo ya matibabu. Shida tulio nayo leo ni kwa sababu hawa magavana hawajui ya kwamba kuna Serikali ya Kuu na Serikali za Kaunti.

Hawajui ya kwamba Serikali za kaunti hazina uwezo wowote. Haiwezi kufanya kitu chochote bali kuwatumikia wananchi na kutoa huduma inayohitajika. Wao wamepewa kaunti, wameweka magari zao ving'ora, wameandika askari wa kuwalinda, wamenunua zulia nyekundu na kuweka katika magari yao. Utawapata hata wakibeba vyoo vyao kama Rais wa nchi. Wanafanya kila kitu ni kama wana mataifa yao inayojulikana kama kaunti. Wanasahau ya kwamba kuna Serikali Kuu ambayo ina Rais.

Magavana ni watumishi wa umma ambao wanastahili kutoa huduma peke yake na kufanya kazi kama punda. Lakini, hao wamekuwa ni watu wa kutembea kila pembe. Wake zao wanafurahi wakiitwa "Mama Kaunti" halafu wanapewa vyeo kama vya Rais. Hawa watu wamekosa. Wameshindwa na kazi yao na ninawashutumu kutoka sasa hadi dakika ya mwisho.

Ugatuzi usiwekwe katika mambo ya matibabu. Kama tunataka ugatuzi katika kaunti zetu, hawa magavana waambiwe wajenge zahanati peke yake. Wanaweza kujenga dispensari. Mambo ya kuleta daktari, madawa na mitambo ya kuhudumia wagonjwa iwe ni kazi ya Serikali Kuu. Madaktari na wahudumu wa hospitali wote wapige foleni kwa Serikali Kuu ili wapewe mishahara ya juu. Kazi ya magavana iwe ni kujenga zahanati pekee. Hii ni kwa sababu wasipojenga, wananchi hawatajua kama wanafanya kazi. Ni afadhali wapewe hiyo jukumu ndio wakiiba, waibe pesa hizo za ujenzi. Lakini wasipewe jukumu ya kununua madawa na vifaa vingi vya hospitali.

Mheshimiwa Uhuru Kenyatta anajificha pembeni kwa sababu mambo ya afya ni ya serikali za ugatuzi. Hawezi kuulizwa swali lolote kuhusiana na mambo ya afya. Ingelikuwa ni kazi ya Serikali Kuu, tungeenda mbele ya Mheshimiwa Rais na kumuuliza maswali mengi. Kwa mfano, je, inakuwaje madaktari wanagoma na wewe bado tunaona ukipiga muziki na kucheza na vijana kule Ikulu? Lakini kwa sababu si jukumu lake, Wakenya wanaendelea kuteseka. Majukumu haya yamepewa watu ambao hawawezi kuyatimiza. Ningependa huduma hizi zitolewe katika serikali za kaunti na ipewe Serikali Kuu na vile maswala ya elimu yalivyo.

Hawa magavana walikuwa wanapiga kelele wakitaka ugatuzi wa elimu. Walitaka maswala ya walimu yawe mikononi mwao. Hawa magavana wanaobeba pesa mchana kutwa, itakuwaje wapewe jukumu la kuwalipa na kuwaangalia walimu wanaowasomesha watoto wa maskini? Hiyo haifai. Inafaa kuwa jukumu la Serikali kuu. Swala la walimu na mishahara yao ishughulikiwe na Serikali kuu. Nao magavana na serikali za kaunti wajenge shule pekee; zile za chekechea, msingi na upili. Kama sio hivo, nchi hii itaumia.

Nakubaliana na Sen. Elachi vile alivyosema kuwa Rais Mstaafu Mwai Kibaki alijenga barabara katika taifa hili. Alifanya kazi inayoonekana. Lakini kazi ya Jubilee hailingani na kazi ya Rais mstaafu Mwai Kibaki. Kuna kasheshe inayotokea kwa sababu hakuna ajuaye kazi yake ni gani. Inakuwaje Serikali kuu inajenga barabara ya kutoka Machakos kwenda Kangundo?

Gavana wa Machakos amenunua kibao kikubwa na kuweka barabarani na kusema kuwa kazi ya barabara iliyojengwa ni yake ilhali Rais anakwenda kuizindua. Kuna barabara inayotoka Tala hadi barabara ya Kitui. Vile vile Gavana wa Kaunti ya Machakos ameenda na kukibandika kibao chake pale. Kazi ya barabara iwe ni kazi ya Serikali kuu. Na kama hao magavana wanataka kufanya kazi ya barabara, watolewe

katika barabara kuu zote na hata ile ya ndani isisemekane kuwa barabara ya kijiji inayojengwa na gavana.

Bw. Spika wa Muda, naomba kutumia neno linaloshangaza. Lami zingine zilizowekwa zinakaa kama mtu amepita akikojolea barabara na kuchukua rangi nyeusi na kuipaka juu na kuiita lami. Barabara gani ya lami isiyomaliza miezi matatu? Inastahili Serikali kuu ichukue mamlaka ya kujenga barabara. Hao magavana na wale wanaotaka kuwa gavana wajue kwamba hawastahili kamwe kujenga barabara.

Pia kuna Hospitali za Level Five. Kaunti wanapewa pesa nyingi. Wenzangu hapa ni mashahidi. Huwezi kwenda Kaunti za Machakos, Kitui, Makeni, Tharaka-Nithi au Kilifi na kuonyesha pesa ya hospitali hizi imefanya kazi gani. Wanapaka rangi na kuandika kwenye kibao mlangoni: "Rehabilitated hospital" ilhali pesa iliyooleanwa na ile iliyotumika hailingani.

Rais Kenyatta, isipokuwa ulisimama na kusema "wenzangu mnataka nifanye nini?" Rais, pesa inaibiwa halafu unasimama na kusema "nimefanya ninavyoweza, sasa nifanye nini?" Ikiwa kiongozi wa nchi analiuliza swali hili juu ya pesa ya Serikali – tunasikia fununu kwamba mishahara ya Wabunge, Maseneta, Mawaziri, Rais na Naibu wake inaongezwa. Ninatangaza leo kwamba tunajichimbia makaburi. Tunafikiri tunafanya vizuri na kula vizuri sana ---

*(Sen. Muthama's microphone went off)*

Bw. Spika wa Muda, sijui kama nimepewa dakika za kutosha lakini nifanye nini, ni sheria. Naomba uniongezee dakika mbili tu.

**The Temporary Speaker** (Sen. Sang): I add you one minute.

**Sen. Muthama:** Bw. Spika wa Muda, natoa mwito kwa Serikali iangalie mambo hayo na ichunge pesa za umma ziache kuibiwa. Washukiwa wanafaaa kufungwa.

Mwisho, naunga kwa masikitiko makubwa sana moyo wangu ukiwa mzito---

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, I thank you for giving me a chance to give my contribution. From the onset, I declare that I support this Bill. It is very important to this Senate and the work that we do as Senators who are elected to protect and promote the interests of counties here in the capital.

I have had an opportunity to read through the proposals. Yesterday, as a Member of the Committee on Finance, Commerce and Budget, I had a chance to listen to the Cabinet Secretary for the National Treasury as he made this presentation to us at the Committee level. We also had a chance to listen to the County Assemblies Forum (CAF) as well as the Council of Governors (CoG) where they agreed and disagreed with the Cabinet Secretary to certain extents.

As a legislator, somebody charged to promote the interest of the county that I represent, the beautiful County of Kericho, I support this Bill in its entirety. It is a well thought out policy document that will guide us as we head into this 2017/2018 Financial Year.

Mr. Temporary Speaker, Sir, it should not be lost on us how we got ourselves into this system of Government; the devolution era where after many years, almost 50 years, of centralization, managing all our resources centrally, it was the general wisdom and agreed vision of almost everybody in the entire country that we should move away from

the centre and give counties or devolved units a certain percentage of resources that we collect nationally so that can chart their destiny.

It was also agreed that upon the passage and promulgation of this Constitution that we shall elect men and women into office; people that we deem to be men and women of good character and vision to lead these counties in the positions of either Senators or governors, but it was generally agreed that the greatest responsibility of implementation or the use of these funds shall be left in the hands of the governors.

I would like to briefly refer you to Article 203 of our Constitution. These are some of the fundamental principles that are supposed to guide us as we discuss the issue of equitable share and distribution of the finances that we collect as a country. Have we lived up to the expectations of the drafters of our Constitution? Have we been good legislators? We are the ones who pass laws and determine the amount of monies that go to these county governments. What are some of the things that we keep on considering?

We should perhaps take keen interest in Sub-Article (d) that one of the things that we need to consider as we legislate is the need to ensure that county governments perform the functions that are allocated to them. We are aware. There is no contest or doubt anywhere as to the functions that counties are supposed to execute. The question, therefore, that follows is; are we properly funding our counties?

Furthermore, after we have sent and distributed the national resources to the counties, do we ensure that the people who are charged with the distribution of these resources at the county level, the governor and his executive team that come up with the county budget and the MCAs adopt and pass that fiscal document? Are we ensuring that each and every sector of the responsibilities and obligations that are left to the counties are properly funded?

Mr. Temporary Speaker, Sir, we do not live up to some of these aspirations. I will give a perfect example. We were earlier on given a list of counties that have done so well in their revenue collection.

Mr. Temporary Speaker Sir, one of the things that they adopted is the use of technology in collection of revenue. It leaves one with so many questions as to why in the 21<sup>st</sup> Centenary when everybody knows that while there is leakage of revenue in all levels of government, use of technology is one of the ways to inhibit loss of revenue. Why do certain county governments still insist on manual collection of revenue? I would like to congratulate the counties that have gone 100 per cent technology based revenue collection. There is no doubt that there has been an increase in revenue collection in counties that have done that.

There are certain counties where people want to forge receipts and carry fake receipts that until to date have not adopted the system. That is why our counties still continue to struggle. We question whether it is just a general fear of technology and how the technological equipment operates that certain county governments have stayed away from the use of technology in almost every department.

I happen to serve in the Committee on Information, Communication and Technology (ICT) and one of the greatest concerns that we have always raised is how the ICT departments continue to be underfunded year in year out in almost all our counties without fail yet it is known that technology is the “in thing” in the 21<sup>st</sup> Centenary and it is one of the avenues that we can use to move away from some of the emerging challenges. When we think about things such as youth unemployment and emerging diseases, the use

of technology in developed countries is one of the ways that they have used to think about ways of emerging and becoming better.

Mr. Temporary Speaker Sir, in 2013 when so many of our governors were presenting their manifestos to the electorate for the very first time, I would like to read again this time as they go back to seek the mandate of the electorate in terms of ICT and use of technology; what they will tell the electorate. Why is it that they only use 1 or 2 per cent of the revenues that are allocated to them to finance that department in the county governments yet we know that if you were to have a county government that is creative in the use of funds and say that they would like to set up a call center.

We have multinationals that are trooping into this country almost each and every month and they need regional offices. Why is it that we have a multinational company that is housed in Kenya which also happens to be the regional office for Africa. However, when it comes to things such as call centres, they have to rely on countries such as India and Philippines yet we have proper graduates who can speak English well. I dare say better than some of those things that we hear when we make international calls to call centres of some of the multinational companies. Where is the creative use of resources that are allocated to counties? With very limited resources, you can set up a call centre and help some of the young people that continue to struggle.

Mr. Temporary Speaker Sir, I have seen agriculture as one of the agenda items in the Fourth Schedule. Agriculture continues to be underfunded in most of our counties. The premise of thinking as we were setting up the county governments is that it was generally believed and agreed upon that the way we had managed our resources in the previous 50 years was not the way to go. One of the reasons why our country continues to be underdeveloped is because of poor management of resources. It was the general hope and belief of everyone that when we go to the system of government where funds are devolved, that we would do things differently. However, it continues to bother me that as we sit here and discuss about how much money we are sending to the counties, it would be so wrong for us, as legislators, if we do not question how the resources are put to use.

It would be wrong of us to see the agenda items that are listed in the Fourth Schedule continue to be underfunded yet we know the reason why, the desire for things that can give you quick money and gains in term of votes and kickbacks. The reason why people want to do as many roads as possible and are allocating much money to certain projects is elections. Out of f a county allocation of Kshs4 billion, you can find Kshs1.2 billion going to the roads department; the reason for this is so obvious. We know that certain corrupt county officials are colluding with rogue contractors and after every kilometer that has been poorly done, they get kickbacks.

Mr. Temporary Speaker Sir, if we were to invest the same amount of money in agriculture and have good policy---Some of us represent agricultural counties and we continue to wonder why up to date, county governments are not bothered. I represent Kericho County where I know small scale farmers are contemplating uprooting tea bushes because it is no longer economically viable to run that business. What is the response from the county government and what are we doing about it? In the next few years, if we do not promote policies that promote viable agriculture to the small scale holders, we are shooting ourselves in the foot and going back to the problems that that we ran away from. I do not know what it is that we would fall back on this time because we have already moved away from the central system of government.



I would also like to point out that one of the policies that we need to consider is the fiscal capacity and efficiency of county governments as an agenda item. As we continue to push and devolve more funds to the counties, what is it that we are doing as a legislative House to question and say Kshs290billion or more that we are sending to the counties, how prudently is it being used?

We know very well that upon the setup of county governments, only 20 per cent of government employees were sent to our counties yet up to date, in terms of recurrent expenditure, salaries continue to gobble up almost 60 per cent of the funds that we are sending to counties because of the same problems that I spoke about earlier where people want to gain quick gains. Because we have an election coming up, one wants to go to the village and ask for all the unemployed youth. They end up taking 600 youths without realizing that there are no resources to pay them.

Mr. Temporary Speaker, Sir, if we get to a point where we realise that we are running our counties with about 60 per cent for salaries and other recurrent expenditures, then 40 per cent will be left for development purposes. That way, we can say that we are doing a good job. However, as long as we continue to send monies to counties to pay salaries, I dare say that we are walking the wrong path. That is a path that we have already taken and it will be a grave mistake if we continue.

The agenda item under Article 203 is the need for affirmative action in respect of the disadvantaged areas and groups while we continue to talk about equalization. Some of us represent very unique counties. Everybody imagines that Kericho is a green and beautiful place that receives rains throughout the year. That is true but there are certain quarters that we happen to share with you, that can easily pass for marginalized areas yet up to date, four years down the line, my county assembly has never seen the need to pass an Equalization Bill in the county assembly so that the parts of the country that are heavily marginalized can catch up with certain regions.

Mr. Temporary Speaker, Sir, when you talk about youth empowerment because they are also a marginalized group, one of the most difficult sets of groups to do business with are county governments. So many businesses have closed shop. Those were businesses that were being run by disadvantaged groups of youth, women and people with disabilities because they supply county governments yet they are known to be the worst payers and people to do business with.

Banks no longer finance Local Purchase Orders (LPOs) from county governments. Is that good fiscal management from our county governments and what can we do about it? We were given a statement here that shocked everyone. We are told that county governments pour billions of shillings yet a good reading of the Public Finance Management (PFM) Act will tell you that---

*(Sen. Cheruiyot's microphone went off)*

Mr. Temporary Speaker, Sir, I request for 30 seconds to conclude.

**The Temporary Speaker** (Sen. Sang): You have one minute.

**Sen. Cheruiyot:** A good reading of the PFM Act confirms to us that before a procuring entity or officer makes a purchase, it must be for a budgeted item. You wonder where delays in payment come up from.

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

**The Temporary Speaker** (Sen. Sang): Sen. Cheruiyot, did you say brief or many remarks?

**Sen. Cheruiyot:** What did you hear, Mr. Temporary Speaker, Sir?

**The Temporary Speaker** (Sen. Sang): You are completely out of order! Very well, whatever it is that you said. There being no other interest to contribute to this Motion, I ask the Senate Majority Leader to reply, now that the Mover of the Motion was moving on your behalf.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I thank my colleagues who have contributed to this very important Motion. I also thank my colleague who moved this Motion on my behalf. This Bill is very important. It will help us get monies allocated to our counties. This being the final year for this cycle of elections, we hope that this money will be used well. Of course, our hopes have been dashed for the last four years. We are only hoping against hope that this time round, our county governments will see it fit to use the monies they receive to help the people of Kenya who work so hard and pay taxes but they are getting very little in return.

Secondly, I fully associate with some of the remarks that have been made by my colleagues who have contributed to this Bill except one comment. I have followed the contributions earlier today by Sen. (Dr.) Khalwale and Sen. Cheruiyot. They are full of praises for counties which have used technology to collect more revenue. While that is an important and useful thing which should be applauded, my view is that beyond enhanced collection, we would want to see more efficient and prudent use of that revenue. You can collect revenue and steal it or use it for purposes which were not intended. I do not want to speak more to it. The earlier we dispose of this Bill, the better.

I hope our Committee will do a good job in interacting with the stakeholders during public participation. The governors have been arguing about the amounts. I hope through our Committee we will get some consensus around this matter so that we can move to the County Allocation of Revenue Bill in the shortest time possible.

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

On a point of order, with your permission, I request that you defer the putting of the question on this Bill to another date.

**The Temporary Speaker** (Sen. Sang): Very well. The request is so granted.

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

Next order.

Hon. Senators, we do not have quorum to transact any business under Division. Therefore, we defer order Nos 11, 12, 13, 14 and 15. Order No.16 is also deferred. We do not have quorum to transact a Committee of the Whole.

## BILL

### *Second Reading*

THE KENYA ROADS BILL  
(NATIONAL ASSEMBLY BILL NO. 26 OF 2015)

*(Bill deferred)*

**COMMITTEE OF THE WHOLE**

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

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL NO.15 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS BILL  
(SENATE BILL NO. 10 OF 2015)

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

THE BASIC EDUCATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

*(Committee of the Whole deferred)*

**The Temporary Speaker** (Sen. Sang): Next order.  
Order Nos. 17, 18 and 19 are also deferred.

**MOTIONS**

ADOPTION OF REPORT ON THE SECURITY  
SITUATION IN MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19th January and 5th February, 2015 and laid on the Table of the House on Wednesday, 29th July, 2015.

ADOPTION OF EALA REPORTS AND RESOLUTIONS

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to standing order 235 laid on the Table of the House on Tuesday, 19th April, 2016.

ESTABLISHMENT OF SPECIAL FUND FOR REMITTANCE OF  
NHIF CONTRIBUTIONS FOR PERSONS LIVING WITH DISABILITIES

AWARE that about 15% of the Kenyan population is persons living with disabilities;

APPRECIATING that the Government has taken several measures to avail certain privileges through the National Council for Persons with Disabilities to registered persons living with disabilities;

NOTING that the National Hospital Insurance Fund (NHIF) is a contributory health insurance cover and the remittance of contributions for persons living with disabilities by government for the cover, is not among the privileges extended to persons living with disabilities;

CONCERNED that most persons living with disabilities have difficulties engaging in gainful income generating activities that would enable them pay the contributions to NHIF, hence are without any medical cover;

FURTHER CONCERNED that many persons with disabilities are unable to access medical services leading to high mortality rate;

NOW THEREFORE, the Senate recommends to the National Government to put in place the following measures through the Ministries of Health and East African Community, Labour and Social Protection-

i) Undertake vetting of all persons living with disabilities in Kenya to ascertain those who are unable to afford payment of contributions to the NHIF; and

ii) Set aside a special fund for remittance of contributions to NHIF for those persons who are living with disabilities and cannot afford to pay the contributions.

*(Motions deferred)*

**STATEMENT**

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 28<sup>TH</sup> FEBRUARY, 2017

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I rise to give the statement on the business of the Senate for the week commencing Tuesday, 28<sup>th</sup> February, 2017, pursuant to Standing Order No.45.

Hon. Senators, we are running against time to complete the pending businesses. Therefore, for next week, we have a number of legislation and Motions that we need to dispense with.

Mr. Temporary Speaker, Sir, on Tuesday, the Senate Business Committee (SBC) will meet at 12.30p.m. That is the meeting that will schedule the business for next week which will include all the items in today's Order Paper that have not been exhausted. The same will apply on Wednesday 1<sup>st</sup> March, 2017 and Thursday, 2<sup>nd</sup> March, 2017.

Mr. Temporary Speaker, Sir, allow me to highlight some of the Bills that are expected to feature in next week's sittings. The first one is the Division of Revenue Bill (National Assembly No.2 of 2017) which debate on Second Reading has just been concluded. We hope we will do Division on the Division of Revenue Bill (National Assembly Bill No.2 of 2017). That is important. I hope we can also do Committee of the Whole for that Bill next week so that we get into the next important Bill which is the County Allocation of Revenue Bill.

We also have the Intergovernmental Relations (Amendment) Bill (Senate Bill No.36 of 2014) which has been before us for a while. It will be scheduled for Second Reading. The other Bills, all of which are in the Committee of the Whole Stage include the Physical Planning Bill (National Assembly Bill No.46 of 2015) which is one of the Bills that was supposed to be passed by 27<sup>th</sup> August, 2016 in accordance with the Constitution but has not been passed to date.

We shall also debate and vote at the Committee Stage on the Impeachment Procedure Bill (Senate Bill No.8 of 2016), the Assumption of Office of the Governor Bill (Senate Bill No.10 of 2016), the Parliamentary Powers and Privileges Bill (National Assembly Bill No.35 of 2014) and the County Governments (Amendment) (No.2) Bill (Senate Bill No.7 of 2016).Of course, any other business that will be scheduled by the SBC will also appear on the Order Paper.

Mr. Temporary Speaker, Sir, finally, this House yesterday passed the Calendar for this term. It relates to this Session running from 14<sup>th</sup> February, 2017 to 17<sup>th</sup> June, 2017. However, a close scrutiny of the Calendar that was passed by the House yesterday will reveal that we have very few sitting days. We are actually talking about ten or so days left to conclude our Sitting, because of recesses. For example, that Calendar as approved yesterday, proposes a three weeks recess from next Thursday. That means that we have three sitting days next week. After the three weeks recess we will come back for another two weeks and proceed on another long recess of about seven weeks.

Partly, the House in its wisdom saw that, that the period around April and May will be interfered with because of party primaries, nominations and all things that the Independent Electoral and Boundaries Commission (IEBC) has put under the law on all people aspiring to vie in the August General Elections.

After that break, we will come back for about one week in June. If you count, essentially it is like a maximum of three weeks of actual sitting. I am bringing this out just to remind my colleagues that we have very little time to do a lot of pending and important business. I hope that we will find time to multitask between our responsibilities in the counties, committees and come here in Plenary to discharge the very important agenda that is still pending before this House.

Mr. Temporary Speaker, I do not want to speak more than I have. I want to take this opportunity once more to wish individual Senators all the best for the remainder of our term here and success as we go through the party primaries next month and even in the General Elections in August, 2017.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to lay this Statement on the Table of the Senate.

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

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Sang): Thank you, Senate Majority Leader. Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourned until Tuesday 28<sup>th</sup> February, 2017, at 2.30 p.m.

The Senate rose at 6.13 p.m.