

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 26th February, 2015

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

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

PRAYERS

PAPERS LAID

REPORT ON SUITABILITY OF NOMINEES TO THE COMMISSION OF INQUIRY INTO THE PETITION TO DISSOLVE THE MAKUENI COUNTY GOVERNMENT

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 26th February, 2015:-

The Report of the Sessional Committee on Devolved Government on the Suitability of Nominees to the Position of Commissioner in the Commission of Inquiry into the Petition to Dissolve the Makueni County Government.

(Sen. Murkomen laid the document on the Table)

REPORT ON THE 2014 WORLD LIBRARY AND INFORMATION CONGRESS HELD IN LEONE, FRANCE FROM 16TH TO 22ND AUGUST 2014

Sen. Lesuuda: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 26th February, 2015:-

Report of the Joint Committee on Parliamentary Broadcasting and Library Delegation to the 2014 World Library and Information Congress held in Leone, France from 16th to 22nd August 2014.

(Sen. Lesuuda laid the document on the Table)

REPORT ON THE 20TH INTERNATIONAL AIDS CONFERENCE,
HELD IN MELBOURNE AUSTRALIA FROM 20TH – 25TH JULY 2014

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday 26th February, 2015:-

The Report of the Standing Committee on Health, on the 20th International AIDS Conference, held in Melbourne Australia from 20th – 25th July 2014.

Thank you.

(Sen. (Dr.) Kuti laid the document on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON THE 2014 WORLD
LIBRARY AND INFORMATION CONGRESS HELD IN
LEONE, FRANCE, FROM 16TH TO 22ND AUGUST 2014

Sen. Lesuuda: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts The Report of the Joint Committee on Parliamentary Broadcasting and Library Delegation to the 2014 World Library and Information Congress, held in Leone, France from 16th to 22nd August 2014, laid on the Table of the House today, Thursday, 26th February, 2015.

ADOPTION OF REPORT ON SUITABILITY OF
NOMINEES TO THE COMMISSION OF INQUIRY
INTO THE PETITION TO DISSOLVE THE
MAKUENI COUNTY GOVERNMENT

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts The Report of the Sessional Committee on Devolved Government on the Suitability of Nominees to the Position of Commissioners in the commission of Inquiry into the Petition to Dissolve the Makueni County Government, laid on the Table of this House today, 26th February, 2015.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, do you have something else to do?

Sen. (Dr.) Kuti: Yeah, I want to give a notice of Motion.

The Deputy Speaker (Sen. Kembi-Gitura): You have the Floor.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Did you notice that when you asked the distinguished Senator if he had anything to put on the Table he said: “Yeah?” In this House, we say: “Yes, Mr. Deputy Speaker, Sir.”

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti I am sure you have noted that. Have you?

Sen. (Dr.) Kuti: Noted with apology, Mr. Deputy Speaker, Sir. It is because I pressed this button twice, but you did not notice me. First was for the laying of a Paper on the Table and again, for the Notice of Motion, I got a little bit ---

The Deputy Speaker (Sen. Kembi-Gitura): That does not give you a licence to use unparliamentary language.

Sen. (Dr.) Kuti: For sure, yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I assume that is why you have apologised.

ADOPTION OF REPORT ON THE 20TH INTERNATIONAL AIDS CONFERENCE,
HELD IN MELBOURNE, AUSTRALIA, FROM 20TH – 25TH JULY 2014

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, The Senate notes and adopts The Report of the Standing Committee on Health, on the 20th International AIDS Conference, in Melbourne Australia, which was held from 20th – 25th July 2014.

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, we will take the Statements that are there to be sought and given. I would like us to take a short time on that.

I would like to draw your attention to Orders Nos. 8, 9 and 10, which must be finalized today. I am making a special request to all of you that you please bear that in mind, even as we sit this afternoon. Those are three areas that we must conclude this afternoon.

Sen. Wangari!

STATUS OF THE KWS COMMUNITY ENTERPRISE
DEVELOPMENT FUND

Sen. Wangari: Mr. Deputy Speaker, Sir, two weeks ago I had sought a Statement from the Standing Committee of Lands and Natural Resources on Kenya Wildlife Service (KWS) on how the enterprise fund has benefitted communities, especially the community around Lake Nakuru National Park. That Statement is due today and I am finding out the status.

The Deputy Speaker (Sen. Kembi-Gitura): Maybe you are being impatient. I am dealing with Senators who are seeking Statements. I want you to raise that issue when we come to Statements.

Sen. Obure

(Loud consultations)

Order! May I request that you consult in low tones so that Sen. Obure can be heard? Let us get some order in the House, please.

REBUILDING OF SCHOOLS DESTROYED BY FIRE,
WIND OR STORMS IN KISII COUNTY

Sen. Obure: Mr. Deputy Speaker, Sir, thank you for this opportunity.

I rise to seek a Statement from the Chairperson of the Senate Standing Committee on Education. In the Statement, the Chairperson should respond to the following specific issues:-

(i) Whether the Ministry of Education in the national Government is aware that a number of infrastructure facilities, including classrooms, administration blocks and dormitories in the following schools in Kisii have been destroyed by fire, wind or storm water in the last two years, thereby undermining the capacity of those institutions to offer learning for students. The schools are: St. Don Bosco Boarding School, Mosobeti Primary School, Rianyabaru Primary School, St. Andrews Mugumo Secondary School, Emenwa Primary, Kenyena Secondary, Sameta High School and Mochengo Secondary School.

(ii) What action has the Ministry taken to rebuild the facilities to allow learning to be restored and what measures do the institutions require to put in place to minimize exposure to this risk.

(iii) How much money has been spent, if at all, from the Ministry's infrastructure development and maintenance budget allocation towards improvement of facilities in schools in Kisii County in the Financial Years 2012/2013, 2013/2014 and 2014/2015. What percentage does this amount represents of the Ministry's total budget for schools infrastructure development and maintenance.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba.

(Sen. Karaba spoke off record)

Could you, please, use your microphone?

Sen. Karaba: I will respond in two week's time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Obure, is it okay.

Sen. Obure: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Those are the only Statements being sought.

Sen. Wangari, you were saying something.

STATUS OF THE KWS COMMUNITY ENTERPRISE
DEVELOPMENT FUND

Sen. Wangari: Mr. Deputy Speaker, Sir, two weeks ago I had sought a Statement from the Chair, Committee of Lands and Natural Resources on KWS Fund called Enterprise Fund, how it has benefitted communities and specifically, the community around Lake Nakuru National Park and also the constitution of the committees that are supposed to be done by KWS to deal with conflicts between humans and animals. I was checking the status of the Statement because it is due today.

Sen. Kivuti: Mr. Deputy Speaker, Sir, we wrote to the Cabinet Secretary for Water and Environment---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, are you on a point of order?

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. Sen. Wangari, who is seeking the Statement is a Member of the Committee that she is requesting it from. She is fully aware because she attended the last meeting where we were looking at the Statements that are due. She is fully aware that the Ministry has not responded to this issue despite the fact that we had made the request for the Minister to respond. Is she in order to spend the time of this House requesting for this Statement when she fully knows that the Statement is not ready?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wangari, what do you have to say to that?

Sen. Wangari: Mr. Deputy Speaker, Sir, I am very aware that I am a Member of that Committee. However, I did not seek this Statement from the Committee sitting. I sought it from this House and it was given a timeline. Since the last meeting, the Statement could have come anyway without my knowledge. We know that this is a House of records. Therefore, I am in order to request for the Statement.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. Last week on Thursday, I rose on a point of order to seek a Statement from the Chairperson---

The Deputy Speaker (Sen. Kembi-Gitura): Let us finish the one for Sen. Wangari.

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. I want to agree with Sen. Wangari that for the Statement she is seeking the voice should come through the Chairman of the Committee. Once a Statement is sought, it becomes a property of the House and not of the Committee. She should be given the Statement by the Cabinet Secretary concerned and let it be debated. We will also have an opportunity to participate in that debate.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, thank you for raising that issue. Whether or not, a Statement is issued at a particular time is administrative. As Sen. Muthama has said correctly, once a Statement has been sought, it becomes the property of the House. Maybe, there are some Members who are not privy to the Committee proceedings who had come here prepared to interrogate the Statement. If that

be the case, they are entitled to know why the Statement is not here today. It is no longer Sen. Wangari's Statement, but a property of the House.

Sen. Kivuti, you may continue.

Sen. Kivuti: Mr. Deputy Speaker, Sir, we wrote to the Ministry of Water and Environment and they promised to bring the answer before 25th February, 2015. But as of today, the Statement has not yet been received by our Committee. I will request for your indulgence for a few more days so that we can bring a comprehensive report. Maybe Wednesday, next week, will be okay with us.

The Deputy Speaker (Sen. Kembi-Gitura): I notice you have used the word "maybe". Are you not sure?

Sen. Kivuti: Mr. Deputy Speaker, Sir, the only reason I used the word "maybe" is because between today and Wednesday, next week, there are two working days. I hope we will get the Statement and immediately we get it, we will table it here.

The Deputy Speaker (Sen. Kembi-Gitura): I will allow you to bring it on Wednesday so that you can pursue it on Tuesday.

CLOSURE OF LIVESTOCK MARKETS IN WEST POKOT COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, two weeks ago I sought a Statement directed to the Chairman of the Committee of Agriculture, Livestock and Fisheries in which I sought to know when the Ministry will step in to handle the ban they subjected to my people where cows were stopped from being sold as a result of foot and mouth disease. They promised to give the answer this week.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. Order, Sen. Wamatangi. You are consulting rather loudly and yet we need to do business of the House.

Sen. (Prof.) Lonyangapuo, you sought a Statement from the Standing Committee on Agriculture, Livestock and Fisheries?

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

The Deputy Speaker (Sen. Kembi-Gitura): Chairperson of the Committee of Agriculture, Livestock and Fisheries, your statement is due on 4th of March, 2015, not today. My records show that it is due on 4th of March, 2015. So, you are a bit hasty.

CHOLERA OUTBREAK IN KENYA

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, last week on Thursday, I sought a Statement from the Chairperson of the Committee on Health on the situation of cholera epidemic that is ravaging the counties of Migori, Kisii, even Kamukunji in Nairobi County and other parts of this country. I wanted to get details on how much Government

intervention there has been on the situation; both at the national and county levels. It was supposed to be replied to on Tuesday, but up to now, I have no information.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, we got a reply from the National Disaster Operation Centre (NDOC), which even as a Committee and having shared it with the questioner, we felt the answer is not satisfactory. I personally send a message to the Director of Medical Service after that and asked the clerks to follow it up. However, up to now, we do not have any communication from the Ministry of Health. I know that this is a very urgent matter; it is an emergency, but unfortunately, we do not have a satisfactory answer to give at this time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, an issue like the outbreak of cholera is, as you have correctly put it, an urgent situation that must be dealt with urgently so that people from the respective areas know what is being done. Although you say the answer is not satisfactory, I do not know whether you have shared it with Sen. (Dr.) Machage because sometimes it is good to put that one as a holding statement so that Members can interrogate it, discuss it and then see what exactly needs to be brought out. That is my view on this issue because some of these things are very urgent to be kept pending; they may become irrelevant in due course. Having said that, can you give your answer early next week?

Sen. (Dr.) Machage, I do not know what your view is, but that is the view I have on this issue.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, if I may seek your indulgence, there are figures here, but there also some activities that ought to have been done earlier. For example, up to now, there is no visit that has been done. Therefore, we felt that there are a lot of issues that the House will raise if we give this Statement because of the inadequacies that are very visible in it. We have shared it with the questioner.

The Deputy Speaker (Sen. Kembi-Gitura): Could you give us an indication?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, seeing the pace, we can give our answer by Wednesday, next week.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, the Chairperson of the Committee on Health is a medical doctor. I am privy to that information. He knows the importance and seriousness of this disease, its treatment and intervention. Fatalities of cholera can occur four hours after infection; and you have a death after an infection. Wednesday is rather too far and the weekend is there. Can he at least bring a comprehensive statement on Tuesday? One day difference in cholera means a lot.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, like Sen. (Dr.) Machage says, you, as a doctor of medicine knows better than most of us. So, could you give an answer on Tuesday even if it is a holding answer?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, we will try our best. I cannot promise because as you know very well, we have to seek these answers from the Ministry and other concerned parties. However, I will try my best and if we get a reliable answer, we will provide it on Tuesday.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, hon. Senator. That will be it for statements.

Next Order!

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

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

(Sen. Billow on 12.2.2015)

(Resumption of debate interrupted on 18.2.2015)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, do you want to contribute to the Motion?

Sen. Ndiema: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, you will, but let us hear Sen. (Prof.) Lonyangapuo first so that we can get the way forward on this issue.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, on behalf Sen. Murungi, I wish to withdraw the amendment that was introduced last week. We drop it so that we leave the Motion without that amendment.

The Deputy Speaker (Sen. Kembi-Gitura): The effect of that will be that, with the withdrawal of Sen. Murungi's Motion of amendment, then we go back to the main debate on the issue. Sen. Kagwe had finished contributing.

So, proceed, Sen. Ndiema.

(Proposed amendment by Sen. Murungi withdrawn)

Sen. Ndiema: Mr. Deputy Speaker, Sir, I rise to contribute to this important Motion. From the outset, I am very uncomfortable with the criteria because despite the fact that the CRA has been there for two years, it does not seem to have changed the criteria substantially, especially to conform with the requirements of the Constitution.

The Constitution requires that in arriving at the criteria, the following items must be looked at as indicated in Article 203(d) of the Constitution, which states:-

“The need to ensure that county governments are able to perform the functions allocated to them.”

Mr. Deputy Speaker, Sir, we are not told how this criteria relates to the functions or how it will help the counties to perform their functions. In the case of Trans Nzoia County, for instance, we recognize the fact that agriculture has been devolved. We do know how these criteria will assist in promoting agricultural production, which is fully

devolved. Secondly, Article 203(f) requires that development and other needs of counties are taken care of. We have not been told how development will be enhanced.

Third, Article 203(1) (i) of the Constitution states that:-

“The need for economic optimization of each county and to provide incentives for each county to optimise its capacity to raise revenue.”

Mr. Deputy Speaker, Sir, I do not see how this formula will encourage counties, which are contributing immensely to revenue to enhance that revenue collection capability. From what I see here, there has been a lot of emphasis on poverty which is right. There has also been a lot of emphasis on the expanse of the land of a county. It would appear that those counties which have high levels of poverty and expansive areas have been favoured despite that there is also the Equalization Fund to take care of poverty.

What is happening here is that, those counties which are contributing highly to the Gross Development Product (GDP) of this country, which are also contributing to high revenue collections, have been neglected. That is why if you saw the last World Bank report, counties like Nairobi and Mombasa, have very little left to enhance their services yet those counties have national responsibilities. For instance, Nairobi has a responsibility to create employment, not only for Nairobi, but for the whole country. A county like Trans Nzoia has a responsibility to feed the citizens of this country across the counties, yet its contribution has not been recognized.

Mr. Deputy Speaker, Sir, the formula or the criteria that has been put in place, we are aware that it is fixed for the next three years. It would have been better if the CRA considered putting up a formula or criteria for each financial year because we cannot sustainably use one criteria for all the three years because changes are bound to occur. The responsibility of CRA is to allocate or recommend allocation of revenue, but there are other requirements in the Constitution, for example, they have a role of ensuring proper financial management of funds in the counties.

As I speak, most counties are not managing their funds prudently. Some counties are using all their funds to fund recurrent expenditure and no development at all. I am not understating the importance of recurrent expenditure because even as we develop, put structures of development and physical infrastructure, we need to make sure that they are running. What I am talking about is that counties are not running their financial matters in a prudent and in the required manner. For instance, most counties, when they prepare their budgets, in the middle of the year, without any reason, they re-allocate funds to levels whereby the intention of the original budget is lost.

It is time that the CRA set ceilings or limitations as to how much counties can re-allocate or can revise their budgets because some of the revisions are not done with the public participation. Governors are deciding in the middle of the year which projects they want to do. Without participation, they just change to any level. Therefore, this upsets the Constitutional requirement of public participation.

With those few remarks, in future, each county's contribution to the GDP must be taken into consideration. Otherwise, this formula will not be sustainable because the difference between counties is growing larger and larger. As we allocate more revenue to

devolution, the gap between those who get less and more is widening. This is not sustainable. I cannot, for instance, understand why a county like Trans Nzoia---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof) Anyang'-Nyong'o, are you on a point of order?

Sen. (Prof) Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. Since the issues related to this particular Motion have been canvassed in this House for quite some time now and given the fact that we have substantial items on the agenda for today and subsequently, could I be in order to call upon the Mover to reply?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, you have a point of order?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, this is a very important debate. Therefore, it is important that many voices of Senators are heard. Therefore, it is important you reduce the time from that long time to a shorter time, but let everybody say something. Some of us are opposed to this thing. We want to be heard.

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. We all know how difficult it is to have numbers here to vote. In the Order Paper, we have three serious Motions which we need to vote for. It is my sincere request that we do not spend a lot of time debating this Motion which has been debated before. I want to request the Chair, because we have the numbers, we go straight into voting. Those who debated represented the House and they do so, on behalf of those who did not speak.

Sen. Musila: On a point of order, Mr. Deputy Speaker, Sir. I have a lot of respect for my brother, Sen. Muthama.

(Loud Consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! There is a lot of movement and very high consultations.

Sen. Musila: Mr. Deputy Speaker, Sir, I was saying that I have a lot of respect for my brother, Sen. Muthama. However, this habit of the House that whenever we want to ventilate on issues, particularly important issues affecting our counties, we are told that debate is enough---. It is not fair and we should be allowed to debate these matters exhaustively. It cannot be true that those who have spoken have spoken for others. I represent the people of Kitui County and nobody else here has the mandate, except me. I demand my right to represent the people of Kitui County by saying what I have to say on this Motion.

Sen. Billow: Mr. Deputy Speaker, Sir, much as we appreciate that every Member is here to debate, one of the fundamental responsibilities in this House is to vote on a Motion. This is where you express the desire, feelings and position of our counties. If we say that all the 67 of us have to ventilate on every Motion and there are timelines, then it means that we will really not make any progress on many of the issues. We must respect the fact that there is a timeline by which we must pass certain things. Also, not only can a decision be made by ventilation, but by voting on it. So, whether or not people support it, it is better to make a decision through a vote, than to continue speaking and then ultimately it becomes irrelevant.

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The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, can you complete your contribution.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I was saying that I cannot justify, perhaps, why one county should get three times more than any other county. Even if we are talking about equalization and addressing poverty issues, I cannot understand why Trans Nzoia, for instance, can get half of what another county is getting.

We are also aware that the population census that was carried out had a lot of questions. Therefore, relying merely on population would be unfair. We should reduce the weight that we give to population and increase the weight that we give to equal share to every county and also each county's contribution to the Gross Domestic Product (GDP). Even the issue of introducing personal emoluments aspects would not be there if we considered GDP contribution.

The CRA may say that it does not have figures on how much GDP each county is contributing. But if it is able to assess and rank counties according to their poverty level, there is no reason they cannot give us figures showing which county contributes what. We face a danger of destroying the goose that lays the golden egg.

Mr. Deputy Speaker, Sir, with those few remarks, I wish this criteria could be changed to take into consideration the constitutional requirement, because I believe that it has not been taken care of.

I beg to oppose.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have taken cognizance of Standing Order No.98. I know that there has been a request that the Mover be asked to reply, but it is important that we listen to a few more Senators, as Sen. Musila has said, and then we can make that decision depending on the time.

As Sen. Musila has said, this is an issue of great importance to all of us. We do also appreciate that there are timelines. However, it is not good enough reason to say that we must cut the debate short because the Senators want to go away. We have a duty to be here and debate. May I request that you take cognizance, as I had said earlier, that we are voting today on Order Nos.8, 9 and 10? It is imperative that we finish debate on them. I request you to keep that in mind. Please, stay around so that we are able to vote and achieve what it is that we need to achieve.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I rise to oppose this formula because it is skewed. It promotes the old system of just pushing resources to those who have, and those who do not have because they did not have a President or Cabinet Minister at one time are left behind. They will be kept even further behind by this formula. In the formula for Constituencies Development Fund (CDF), there was equal sharing initially of about 50 per cent of the kitty. Then the rest were added according to those other factors, including population, poverty and so on. But when you give such a high percentage (45 per cent) based on population, this formula marginalizes further the already marginalized counties. This is because those people are the same ones who used to receive resources since Independence and beyond.

Secondly, I know that some will argue and say: "What about the Equalization Fund?" Equalization Fund is Kshs6 billion, which is a drop in the ocean. It does not contribute in any way to equalizing. It just keeps people behind. Therefore, we want the

CRA to go back and come up with another formula. They could even just look at the formula by the CDF, which resulted in the development of many constituencies that had been left behind. One county should not receive three or more times than another county. Why would Isiolo and Lamu counties be at the bottom? They have been at the bottom for many years in very many parameters. We should have 50 per cent being shared equally and the other 50 per cent can be shared according to other considerations, including population, poverty or other indices.

I really oppose the phrase “the goose that lays the golden egg.” It is laying this golden egg because it was feeding on gold. It cannot lay golden eggs when it is feeding on sand. Let us have something in-between gold and silver, so that we can all move at an average level.

Mr. Deputy Speaker, Sir, I beg to oppose.

Sen. Musila: Mr. Deputy Speaker, Sir, in the interest of time, I will be extremely brief because I have only two points to make.

I agree with the Senator who has just spoken. This allocation of resources by the CRA should be geared towards correcting the disparities in development that exist today. It is 52 years after Independence and some counties are reeling with underdevelopment. There is poor infrastructure. Even today there are counties without even a single tarmac road, yet we see roads crisscrossing some counties here and there. Therefore, this formula does not address that issue.

Secondly, from the beginning I raised the issue of the Equalization Fund. On behalf of the Senator for Baringo County, I also voiced the concern that Kitui County and Baringo County were cut off deliberately, when we know that those two counties deserve a share of the Equalization Fund. I am sure that Elgeyo-Marakwet County also falls in that line, if they are not receiving those funds.

I request that we be given a report even before we approve this, on what has become of the recommendations on the Equalization Fund. Kitui County deserves and demands part of the Fund in this financial year.

Mr. Deputy Speaker, Sir, I beg to oppose.

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Members who have challenged this formula because we all mean well for our counties. Today I want to plead and persuade the Members that we dispense off this matter immediately because counties are waiting for us to make a decision on this formula. If we do not approve this formula, they will use the old formula to allocate resources to counties. I know that we have even passed the deadline for the approval of this formula, so that it can also go to National Assembly. We, as hon. Senators, should hold a conference to discuss issues pertaining to water, agriculture and health. These issues should be addressed immediately.

Mr. Deputy Speaker, Sir, we, as a country, have achieved a lot in the last 50 years of Independence. However, counties want this Senate to do a lot for them by passing the right formula which will help them achieve more development. We do not want to go back to the old formula where some counties were given meager resource. The Committee on Finance, Commerce and Budget needs to engage the CRA for us to agree on a formula that will be acceptable to all of us.

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

Sen. Okong'o: Thank you, Mr. Deputy Speaker, Sir. From the outset, I stand to oppose this Motion and the timelines set. The CRA from day one, in conjunction with the Committee on Finance, Commerce and Budget, should have taken us for a retreat to educate and enlighten us so that we can have an understanding.

Secondly, we are tying our counties which have given us mandate to be here for three years with this kind of formula. I do not understand why we are being told that there are timelines. Those timelines could have been considered from day one by CRA. They should have engaged and enlightened us. The governors have not even utilized effectively the money that has been sent to them with our involvement. Nobody will die if we deferred and used the current formula until we sort this matter out.

Mr. Deputy Speaker, Sir, I beg to oppose.

The Deputy Speaker (Sen. Kembi-Gitura): Now the Mover may reply, since there is nobody else seeking the Floor.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. I want to appreciate the comments made by the Members in the last two weeks. It is a very important Motion because it determines how much your respective counties will get. It is, therefore, a matter that I think that each Senator should pay attention to.

When I moved this Motion, I explained each of these criteria in details so that Members can appreciate how it was arrived at. Once we approve this, it will be valid for the next three Financial Years; 2015/2016, 2016/2017 and 2017/2018. The next review is after three financial years. That is a constitutional provision. So, there is no way we can make the review an annual thing because in the Constitution, it is very clear that the formula in the first two reviews, will be after three financial years. From there onwards, the review will be after every five years. We must appreciate that we cannot do it every year.

The second point that I want to clarify is that the Constitution is very clear in Article 217(7). It says:-

“A resolution under this Article that is approved under clause (5) shall be binding until subsequent resolution has been approved.”

In other words, if we delay in approving this year's new formula because of the timeline, the current formula will continue as far as the Constitution is concerned, which is, in fact, not an improvement. This is a bit of an improvement and we explained it in detail.

The third point that I want to clarify---

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Chairman to try and scare Members by insinuating that a delay in the passing or the failure to pass this formula would mean that Members will have to stay with the other formula for three years, when the law does not say so? It actually gives us an opportunity to renegotiate and we can do that in a day or two days. Is that really in order? Is he not misleading the House?

Sen. Billow: Mr. Deputy Speaker, Sir, I read the Section very clearly. However, the Members have an opportunity any time in the next three years to move an amendment to the existing formula. The point remains that if this particular resolution is not passed,

by both Houses as required, because after we approve or reject, it goes to the National Assembly. They will have 60 days and remember that they can decide to sit on it for the next two months and the thing will lapse. We need to appreciate that Article 217 is extremely elaborate on this matter and we should not down play it. The Chairman of the Committee on Devolved Government should appreciate that the risk is that we will end up with the current formula. It is important for the Members to know what is contained in Clause 8. It says:-

“The Senate may---”

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I do not want to interrupt the Chairman, but this is a very weighty issue and our constituents are waiting. He jumped to Article 217(7), but it has not even been reached, because we are now at Article 217(3). We first have to adopt as the Senate, then it goes to National Assembly. So, the question of Article 217(7) does not arise. We are just in the first step of approval by the Senate which is not provided in law here, what happens when we do not approve in the first instance. It means that we have time to still work on it.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. I think that Sen. Murkomen is misleading the House because Article 217(4) says that:-

“Within sixty days after the Senate’s resolution is referred under clause (3), the National Assembly may consider the resolution, and vote to approve it, with or without amendments, or reject it.”

Article 217(5) reads:-

“(5) If the National Assembly –

- (a) does not vote on the resolution within sixty days, the resolution shall be regarded as having been approved by the National Assembly without amendment; or
- (b) votes on the resolution, the resolution shall have been-
- (i) amended only if at least two-thirds of the members of the Assembly vote in support of an amendment;”

Mr. Deputy Speaker, Sir, it is very clear what will happen if we reject this. The resolution will be that we have rejected it. That resolution will go to the National Assembly and they have a right to approve or amend it. So, it is fair that when Sen. Murkomen is reading one section, he reads the other one as well.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. My point of order has something to do with the conduct of Members and fidelity to what they do in Committees. The CRA called the Committee on Devolved Government and The Committee on Finance, Commerce and Budget to Naivasha. In fact, one of the champions and advocates of this formula was the distinguished Senator for Elgeyo-Marakwet, who is the Chairperson of the Committee on Devolved Government. We left Naivasha with a unanimous decision on this formula. I am truly shocked that we now come here and engage in polemics and grandstandings on matters that we have agreed as hon. Senators of Committees.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Order! All of you are going to have your say on your point of order. I would rather we do not go into legal interpretations of the Constitution at this point in time because you had time to canvass on this when debate was going on. I would rather---

(Sen. Muthama spoke off record)

Order, Sen. Muthama! I could allow you to say what you are saying, but right now, I am the one talking. So, I would appreciate if you do not give me directions on what I should or should not do.

We have two points of order to be made, but you must make them with the realization that this is not the time to give us constitutional interpretations on this Motion because that should have been brought out when we were debating this Motion. So, I would rather we allow the Mover to finish replying and then we go to division on this issue.

(Several hon. Senators stood up in their places)

Order! If you had listened to me, I said that, subject to what I have said, I will give each of you who are raising points of order time to give them. However, you must do that appreciating that you will not be very helpful to what is going on right now in the House.

Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Deputy Speaker, Sir, with all due respect to the Senate Minority Leader, what he has said is a complete lie and he is totally misleading---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen! Could you start by withdrawing and apologizing?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I withdraw and apologize on the use of the word "lies," but let me repeat myself. With all due respect to the Senate Minority Leader and the Senator for Bungoma, what he said was totally misleading. It is not true. We went to Naivasha, not to vote as a Committee, not to agree with the CRA, but to listen to what they were providing. I objected to what they said in Naivasha. I still object to what they said. If anyone has a contrary position to what I said in Naivasha, he can tender the evidence. I am not a person who beats around the bush. But speaking for myself, what the Senate Minority Leader has said is totally misleading.

Mr. Deputy Speaker, Sir, to confirm this other issue, even my position on Article 217(3), I was very clear that the only time the National Assembly will have this formula to consider is when it is passed by the Senate. The Speaker of the Senate will refer it to the National Assembly. I am just reading the law; I am not trying to split hairs.

Sen. Hassan: Mr. Deputy Speaker, Sir, I was in Naivasha and I recall that the reason for that meeting was not to finally agree on a formula, but to consult on that formula. We were promised that the CRA will subject that formula to further processes, like public hearings, then get feedback and then bring it back to us---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! What is your point of order?

Sen. Hassan: Mr. Deputy Speaker, Sir, my point of order is that---

The Deputy Speaker (Sen. Kembi-Gitura): I am not going to allow people to debate using the backdoor. You either have a point of order or not.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we call ourselves hon. Senators and we must act as such. The information that my good friend, Sen. Hassan, is giving to this House is incorrect and misleading. My point of order is that he is misleading us.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Mutula Kilonzo Jnr.! If that is your point of order, then you have made it, because I did not allow him to continue with that point of order.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, can you, please, proceed and hopefully finish giving your reply?

Sen. Billow: Mr. Deputy Speaker, Sir, with all due respect, it is very clear that there is a record. This is a House of records. Our Clerks were in that meeting and they recorded minutes of those meetings. We have them.

Hon. Senators: Yes!

Sen. Billow: What the CRA said is that, “this is our formula.” We told them “fine, after we have looked at it, forward it now to the House.” The matter was forwarded to the House, it was referred to the Committee and the Committee has now brought its report.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, there is a point of order by Sen. (Dr.) Kuti.

Sen. (Dr.) Kuti: On a point of order, Mr. Deputy Speaker, Sir. Sen. Murkomen is just an individual who participated in that meeting. The Motion has been discussed by the House; there are those who support it and there are those who are against it. Why do we not just move to the voting? This reference to Sen. Murkomen is an individual issue. There are those of us who are opposed to it even without going there.

Sen. Ndiema: Mr. Deputy Speaker, Sir, is it in order for Senators to say that Senators sat in Naivasha and approved the formula while the fact is that the CRA was just there to collect views? Some of our views, especially those that I gave were not considered.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order! The reason I say this is not the time to interpret or go through all those things you are talking about now is because you have the strongest tool, and that is the vote. So, if you can allow the Chairman, Sen. Billow, to wind up on his reply, then we are going to vote. So, the points of order you are making are not being useful or helpful at all.

Sen. Billow, can you go on and finalize on what you were saying? I am not going to allow any more points of order on this issue.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. Please, allow me to finish then you can vote. It is important for Members to appreciate what the Deputy Speaker has said, because the right we have in this House is to make a decision through voting. So, let us not make a big issue out of this matter.

Mr. Deputy Speaker, Sir, let me now clarify one or two of the points raised by Members then I will sit down. I want to advise Members who are really concerned about the amount of money they are going to get that the most fundamental thing that this House needs to do so that we can have more money for Isiolo, Elgeyo-Marakwet or other

places is to push for more money to be allocated to the county governments; that is a mandate of this House. The Division of Revenue Bill will be brought here which will make sure that everyone gets money.

Mr. Deputy Speaker, Sir, the other point I want to clarify is on the question of population. One most important criterion that seems to have raised a number of issues is on the population parameter. This is one of the key---

(Loud consultations)

Mr. Deputy Speaker, Sir, there is a lot of loud consultation going on. Please, allow us to talk on this matter because I am just trying to clarify this issue---

(Loud consultations)

Can I finish talking?

An hon. Member: But people are going!

Sen. Billow: They can go, but allow us to talk on the matter.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members!

Sen. Billow: Mr. Deputy Speaker, Sir, we cannot talk if Members are consulting loudly and walking out.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! This is a House of honour and we have business to do here. As your Deputy Speaker on the Chair today, I will not be pressurized to end debate so that we can keep Senators here to vote. Every Senator knows that they have a duty and an obligation to vote. Our time ends at 6.30 p.m. So, if a Senator wants to leave and go away to do other things, then so be it. However, we cannot stop debate just so that people can sit here and vote. Every Senator knows what their duties and obligations are. So, we will allow the Chairperson of the Committee to finish making his reply and he will not be put under pressure by any Member.

After he has finished making his reply, then the Division Bell will be rung and those who will be here will vote. If we shall not have sufficient numbers in terms of the threshold, we shall deal with the situation like we always do as the Senate. However, I am not going to allow a situation where the Chairperson of a Committee has taken so much time to work on the Motion, to prepare a reply and then he is being made to rush just so that we cannot keep Members here. We must have decorum in this House. I am going to enforce decorum as long as I am sitting on this Chair.

Sen. Billow: Thank you very much, Mr. Deputy Speaker, Sir. One of the parameters that Members did not seem to have understood and which some of the Members have raised a lot of concern about is population. I want to clarify on it. Population is a key parameter because all over the world in anything that you deal with people, it is the numbers that count. When we vote, when we create constituencies, counties and all those institutions, people go by the population. This is because when you are allocating money for health, you are buying medicine for people.

I want to mention this because one of the Members who raised concern is from Isiolo. The population of Isiolo, as per census figures which are provided for here, is

143,000 people. The population for Meru County is 1.4 million people. We cannot tell Kenyans that the amount of money required for buying medicine for 1.4 million people in Meru will be the same as the amount of money you will require to buy medicine for 143,000 people in Isiolo or 101,000 people in Lamu. This is another example I will tell you, the amount of money allocated---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, do you have a point of order?

Sen. Billow: I am just taking it as an example---

The Deputy Speaker (Sen. Kembi-Gitura): But not a debate; a point of order!

Sen. (Dr.) Kuti: On a point of order, Mr. Deputy, Speaker, Sir. Is the Chairperson for the Committee on Finance, Commerce and Budget, the distinguished Senator for Mandera in order to insinuate that we are not saying that population is an important factor? All we are saying is that the percentage that has to be shared equally has to be raised.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Kuti! You had a chance to say that when you contributed.

Sen. Billow: Mr. Deputy Speaker, I was explaining the population parameter. Again, this thing is about devolution and counties. I want to clarify and discuss one important factor because there are Members who have tried to relate devolution to the CDF. CDF is the fund that deals with development projects only; you are building facilities like infrastructure. In county governments, it is about service delivery. Buying medicine is not like building offices. This is why you cannot say let 75 per cent of the money be shared out equally because of the number of people you are going to provide services.

There are a lot of services that have been devolved and we know because we are the ones who transferred those functions; those functions need money, per capita. When you look at, in fact, the way the resources have been allocated, per capita for the small counties with the smaller population is significantly higher than for those bigger counties with bigger populations. The figures have been provided very clearly here. I want to take this just as an example and not because I belittle the counties that have lower population. When you look at the per capita you find that in counties like Meru, with 1.4 million people, the amount of money allocated last year was 5.6 billion. The population for Isiolo was 143,000; you would say very easily that the population for Meru is nearly 10 times that of Isiolo, but the money allocated 1.8 billion to 5.6 billion is only three times.

This means that there is no county which, because of its numbers is actually getting so many times that number. It is because population is not the only factor. It is important to note that we are providing service. Therefore, population is a key factor. If you had more people in your county, in fact, you will be insisting that the money be allocated. That is the point I wanted to clarify.

Mr. Deputy Speaker, the second point that Members have raised is on the equal share; that we should be given a higher percentage and not 25 per cent. The trouble with the equal share is that what you are going to create is a situation where counties with huge populations that have to provide services to all those people will end up getting the same amount of money as those other counties that have very few people to provide

services to. It will be a bad incentive and that creates a situation where you are implying that counties have the same resource needs. They do not. The needs depend on the people and the services desired.

There are also many other factors. In fact, what I will personally recommend is that the basic share will have to be based on actual expenditure that is similar across counties. For example, we have Governors, Members of County Assembly (MCAs) and County Executive Committees (CECs). These are all across counties. So, we should find out expenditure for those ones and that becomes the equal share. That is the best way of ensuring that everybody is equal and that is something that will ensure equity.

Mr. Deputy Speaker, Sir, the last two points I want to emphasize are these: The process of reviewing this formula started in June last year. We, as Senators, had an opportunity to also give our views. These people went to every county and collected views. They submitted this report to us and our Committee itself published an advertisement asking for views. There is no Senator in this House who has provided any written memoranda or any view on the proposed formula which has been there for the last six months.

(Applause)

It will be wrong when Kenyans have given their views; these people have developed it all this time that we again come and say: "Look, this thing was not subjected to public participation." It was extensively subjected to public participation and everyone gave his views.

Mr. Deputy Speaker, Sir, the last point I want to clarify is that the process of revenue allocation to counties is not meant to address historical injustice. I want this to be very clear. The provision for addressing historical injustices is provided for clearly in the Constitution. Every Member who feels that his county, like ours, have been behind for the last 50 years, can demand, through the relevant Article 204 of the Constitution, for the Equalization Fund, which was an attempt to provide for that in order to bring up those counties to that level. But even then, if we now say "my county, Mandera was left out for all those years; I must now be the one that should get more money," it then defeats logic.

The purpose here is to provide money to ensure that services are delivered in counties for the functions we have transferred. Hon. Senators need to be alive to that fact. It is about the provision of services to the functions we transferred. If we focus on the injustices, we then will be missing the point. In our view, these parameters have balanced. If you look at the Kshs226 billion of last year, for example, my own county and I want Members to note because there are Members who think that we are pushing this thing for our own interests - the figure is reduced by Kshs500 million, if we apply this new formula. In Turkana County, for example, which had one of the highest, the amount reduces by Kshs2 billion merely by application of the new formula on the Kshs226 billion. So, it helps to bring down and at the same time raise for some because of the way we have adjusted; we reduce the poverty and we create some other factors that can be looked at.

Mr. Deputy Speaker, Sir, I want to urge the Members that it is in our interest that this new formula is approved so that we can apply it, because the Division of Revenue Bill will be published by 8th March which is in the next two weeks. Immediately after that Bill is passed, it will be published which is in the next two weeks. This is what will be used for the County Allocation of Revenue Bill. We should remember that it is also going to the National Assembly. Without it, there is no doubt that we will end up with the current one which, of course, not everyone is opposed to, including me.

I beg to move.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this is a Motion affecting counties. Therefore, the voting will be by Delegations. The Division Bell shall be rung for two minutes.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Elachi, Nairobi County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Kirinyaga County; Sen. Muthama, Machakos County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Obure, Kisii County; and Sen. Orengo, Siaya County.

NOES: Sen. Boy Juma Boy, Kwale County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Kuti, Isiolo County; Sen. Lesuuda, Samburu County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet; Sen. Ndiema, Trans-Nzoia County; Sen. Okong'o, Nyamira County; and Sen. Sang, Nandi County.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the results are as follows:

NOES: 13

AYES: 11

ABSTENTIONS: 0

The "Noes" have it.

(Question negated by 13 votes to 11)

(Sen. Moi crossed the Floor without bowing)

The Deputy Speaker (Sen. Kembi-Gitura): Next Order!

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. Did you notice that the distinguished Senator for Baringo County just crossed the Floor with impunity? Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, could you do the correct thing?

(Sen. Moi went back and bowed at the Bar)

MOTION

ADOPTION OF FINANCE COMMITTEE REPORT ON THE MEDIUM TERM BUDGET POLICY STATEMENT, 2015

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

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2015, laid on the Table of the House on Wednesday, 25th February, 2015.

Mr. Deputy Speaker, sir, on behalf of the Members of the Committee on Finance, Commerce and Budget and as required under the Second Schedule of the revised Senate Standing Orders, I want to present the Committee's report on 2015/2016 Medium Term Budget Policy Statement.

Mr. Deputy Speaker, Sir, we had an opportunity to deliberate on it and make recommendations. It is these recommendations that are in Report that we would want Members to vote and adopt. It is significant to mention that the purpose of the approval of this Report on the Medium Term Budget Policy Statement is to communicate the Senate's position on the preparation of all subsequent budget documents for the remainder of this year beginning with the Division of Revenue Bill, which will, probably, be out in the next couple of weeks. It is important to also note that this Budget Policy Statement informs the preparation of annual estimates. It is the policies and the strategies of the Government that inform the process of making the Budget. This is what the Budget Policy Statement is about.

Mr. Deputy Speaker, Sir, we had an opportunity to engage the public and I want to urge Members to get a copy and look at it. There is also the timeline that we are required to submit, latest, today 26th February, 2015, so that the recommendations we have can be taken on board. In particular, the Budget Policy Statement looks at the following and includes the following issues:-

(i) As assessment of the current state of the economy and the financial outlook over the medium-term for the next three years including the micro-economic outlook.

(ii) The financial outlook with respect to the Government revenues, expenditure and borrowing for the next financial year and over the medium term.

(iii) The proposed expenditure ceilings in the three arms of Government.

(iv) The fiscal responsibility, principles and the financial objectives over the medium term including the limits on the annual debt.

(v) The total resources to be allocated to individual programmes and projects including the counties.

Mr. Deputy Speaker, Sir, our role is to review and approve these economic and spending policies contained in these document. I want to briefly look at some of the issues in this pillar then I go to recommendations so that we can save on time.

On page two of the document, we will look, very briefly, at what the policy statement addresses. The Committee looked at the five-policy pillars which include the macro-economic performance, the spending revenue and debt framework, the proposed sharing of revenue between the national and county governments. The Committee considered the five policy pillars as critical in setting out the broad government policies and proposed reforms.

The other thing that I want to mention very briefly is the concerns and implications on the counties of this Medium Term Budget Policy on page 14. The Committee received reports and recommendations from various Standing Committees of this House on this policy statement. One of the things that all the Committees raised is the limited time in which the Committee was required to consider and give their recommendations.

Mr. Deputy Speaker, Sir, most of us, including the departmental committee, were of the view that the limited time constraint inhibited detailed scrutiny of the past performance and the future policy proposed in this. We have recommendation to that effect. I will come to that later.

Regarding the social sector, for example, the health sector, we made the following observations. We are concerned about the huge pending bills in the health sector. There are concerns also about allocations towards the free maternity health care, the leasing of health equipment and the financing of Level 5 hospitals. The Committee also observed that in this sub-sector, there are issues that needed to be addressed in this Report that had not been addressed. For example, inadequate health facilities and equipments, particularly the available infrastructure and equipment in many of the health facilities are either inadequate or dilapidated.

We also considered the inadequate staffing problems. We have noted that on average there are 19 doctors per 100,000 persons compared to the WHO recommendation of 36 doctors to 100,000 persons. In the case of nurses, we also have the same challenge of 173 nurses against the recommended 356 per 100,000 in the population. There are also widespread inequalities in the distribution of the health workers in the country. Therefore, the Budget Policy Statement (BPS) proposes significant resources to go to curative services within the national Government. We will also come up with recommendations on that.

Mr. Deputy Speaker, Sir, on the energy sector, communication and technology, we also noted that the Ministry responsible for Information, Communication and Technology (ICT) seems to be under-funded. This may potentially affect the realization of key flagship projects such as Konza City and other ICT pacts.

According to this Report, the problem of pending bills is also a major issue. We also noted that in the ICT sector in particular, there are inadequate policies, guidelines and regulations to mainstream ICT usage in the economy.

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

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

Mr. Temporary Speaker, Sir, regarding agriculture, rural and urban development, the Standing Committee on Agriculture, Livestock and Fisheries looked at it and also gave us their views and we noted the following observations. There is need to urgently provide adequate funds for research particularly on disease resistant varieties of food crops to ensure food security in the country. The introduction of the Minimum Price Guarantee to farmers as an incentive is also one of the things that Members thought is critical and the development of Kenya Animal Genetic Resource Centre.

Mr. Temporary Speaker, Sir, there are a number of issues that have been raised by the Committee. Hon. Members will have the opportunity to look at it, but I will mention very briefly on water. The Committee also observed that the programme to construct and rehabilitate at least 3,000 water pans of over 50,000m³ every year was a target that had been identified in 2014 and again identified in the 2015 Budget Policy Statement (BPS). The Committee found it important that the output arising from these targets be appropriately identified and published on a regular basis.

On Governance, Justice, Law and Order Sector (GJLOS), we also looked at the reports from relevant Departmental Committee, which also had a number of observations. In particular, hon. Members felt the need for provision of litigation services to county governments under the Office of the Attorney-General. This is important because we need that service to be expedited so that county government can also enjoy the services of litigation advisory offices for the Attorney-General's Office.

Mr. Temporary Speaker, Sir, the Committee also noted that Parliament should fast track the legislative process for the enactment of the Office of the County Attorney Bill, 2014, which is Senate Bill No. 37 and which is before this House. Members thought that the proposed allocations to the Judiciary of Kshs.17.9billion for the next financial year was inadequate to allow for the construction of the proposed 17 new High Courts and 15 new Magistrates Courts in addition to providing money for running of the courts.

On the Ethics and Anti-Corruption Commission (EACC), the Committee noted that grand corruption was on the rise and was undermining human rights, good governance and economic development in the country. Therefore, there is need for a specific programme in terms of the policies on fighting corruption. The details did not go far to provide any specific policies or key performance indicators from the relevant institutions. Further, there is need for Parliament to establish or extend the life of the Commission for the Implementation of the Constitution (CIC), noting that the Commission will stand dissolved by January, 2016.

Lastly, it was also important to note that the Independent Electoral Boundaries Commission (IEBC) should take whatever measures necessary to ensure that it meets its target of registering 11 million additional voters in 2015/2016 and 2016/2017 Financial Years. However, from the Statement, that provision looks like it will not be achieved because of the resources that the Treasury proposes to allocate.

Mr. Temporary Speaker, Sir, I want to move a bit faster and I will go to the Public Administration and International Relations sector. Again our observations there on foreign relations are well laid out. On the national security and vehicle leasing on page 20, the Committee observed that the Government intends to lease 800 motor vehicles in the next financial year and an additional 500 vehicles annually after that over the medium term to facilitate mobility and enhance security operations. However, it is important to note that there is no adequate leasing policy regarding these leases of motor vehicles. It is important that they put a policy in place to guide how that whole operation of leasing of motor vehicles and their maintenance will be carried out. Particularly, we have seen concerns about fueling and servicing especially in far flung areas of this country. The Committee also observed that this financial year, there was a provision for leasing 2,700 vehicles. However, the process of leasing those vehicles has not started.

On roads, the Standing Committee on Roads and Transportation also considered the BPS and they noted a number of issues. I will not go into details because the information is provided for on page 21. For example, the Committee observed that the ongoing construction of the Standard Gauge Railway (SGR) - which will soon reach Nairobi within the medium term - according to current financial year, phase two was to cover the line up to Malaba. The Committee noted that, actually, the BPS does not contain any specific pronouncement on the second phase of the SGR, which ideally should be envisioned in the medium term in the BPS so as to remove potential bottlenecks once phase one is completed.

Lastly, I now move on to the recommendations of the Committee, which are on page 22. The Committee recommends that this House pronounces itself on the critical policy matters which are identified in the BPS. These are as follows:-

All the relevant spending agencies of the Government should provide a clear framework to enable counties access pharmaceutical products from the Kenya Medical Supplies Authority (KEMSA).

We have a situation where some counties access while others do not have access. It has become arbitrary because some people are buying it from their own within counties. There is need to address that issue.

The second recommendation is to demarcate and enhance the allocation for research in the health sector. This is very important.

The need to institute curriculum reform in health care training so as to match the training of health care personnel requirements in the market including, of course, the additional personnel who may be required for the modern medical equipment that are being leased for hospitals.

The criteria for direct cash disbursements to disadvantaged groups such as the older persons, orphans and persons living with disabilities. That criteria which was developed by the Ministry of Labour, Social Security and Services should be subjected to parliamentary approval so that we can have a chance to interrogate and ensure that there is equitable allocation of resources in that area.

Mr. Temporary Speaker, Sir, I have mentioned earlier, the fact that the future BPSs needs to come in early.

On the Auditor-General's Office, one of the challenges we face today in the counties and which many Senators have noted is the rampant misappropriation of resources in the counties. The office of the Auditor-General lacks the capacity in terms of human resources to adequately have a presence on the ground in all those counties to do real time audit and provide reports to the Senate and to the county assemblies.

Mr. Temporary Speaker, Sir, we have realized that very inadequate amounts of money are being provided to the Auditor-General and, therefore, we are also recommending that the Office of the Auditor-General be provided with sufficient funding to enable all the spending agencies to be audited on time.

Mr. Deputy Speaker, Sir, in order to enhance competitiveness and reduce the cost of doing business in the country, we also recommend that the Government allocates more resources towards the speedy development of the various ICT parks, including Konza Technopolis. It is important that adequate resources are allocated so that these facilities can be developed. I have mentioned earlier the need to fast track the ICT policy to guide all stakeholders in the ICT sector, including county governments.

We have also recommended that the spending agency should curtail unbudgeted expenditure practices that result in pending bills by ensuring that there are effective and robust monitoring units in this agency. We have seen that there are huge pending bills in many departments. The law is very clear that you cannot spend unless money has been voted for a particular programme or activity. We are using programme-based budgeting where funds must be made available. So, we must put in place measures to ensure that unbudgeted expenditure is not allowed in the public service.

To boost agricultural production, we have recommended that the Government provides for adequate resources for research on the development of disease resistant food crops and the minimum price guarantee to farmers, which will act as an incentive to help boost food production. There are concerns about food production in this country, not just in the cereal sector like maize, but we also have the same challenges today, in other cash crop areas, including sugar. So there is need to address that.

In order to meet the Maputo Declaration of ten per cent of total expenditure, there is need to ensure that progressive allocation to agriculture is made, both at county and national level. We are urging the Treasury in this Report for the speedy enactment of the County Allocation of Revenue Bill once the Division of Revenue Bill is done so that the counties can conclude their budget by 30th April as required. This is the point Members need to appreciate; that the Division of Revenue Bill should be published in the next couple of weeks and approved as soon as possible, so that we can have the County Allocation of Revenue published and passed in time to allow the county governments also do their budgets before 30th of April. So we have a tight deadline.

There is also a concern about some of the devolved funds. We have recommended that an independent study be done to establish the impact and effectiveness of funds such as *Uwezo* Fund, the Women Enterprise Fund (WEF) and the Youth Enterprise Development Fund (YEDF), with the view to harmonizing their operations as securing capital to special groups.

There are a number of recommendations that I have mentioned earlier on Commission for the Implementation of the Constitution (CIC) and the Independent

Electoral and Boundaries Commission (IEBC). We have also recommended that the relevant spending agency expedites the production of a new Household and Budgets Survey, to replace the 2005-2006 Kenya Integrated Household Budget Survey, whose statistics Members felt, are now outdated. Those are the same statistics we have just used even in the criteria for revenue allocation and we thought it is important that it should be updated.

Regarding the transfer of functions and revenue sharing, the Committee recommends as follows: That all the devolved functions together with the resources tied to them on health and agriculture in particular, currently being performed by the national Government, be immediately sent or cascaded down to the counties. We have noted that there are still functions that have actually gone to the counties, but for which resources are still being retained in the national Government. We are making a very deliberate Statement here that the national Government, in preparing the estimates, should be careful not to provide for funding for functions that have already been transferred to the county governments.

We have also noted that, the Revenue Growth Factor will be used to determine the amount of revenue that will go to the county governments is 10.4 per cent, which is an average of the last three years. However, we are recommending that Revenue Growth Factor be adjusted to between 12 and 15 per cent, over the medium term which is consistent with average historical ordinary revenue growth. The conditional allocation set out in the BPS be maintained and enhanced to reflect the usual expenditure inflation to safeguard the real cost of implementing. For example, the conditional allocation that was provided for Level 5 hospitals, this year we expect because of inflation factor alone, it should be increased.

We have also recommended that the 2015-2016 budget ceiling for the Parliamentary Service Commission (PSC) be enhanced, to enable both the Senate and the National Assembly carry out their oversight functions effectively.

To enhance oversight of devolved resources, including the county governments, we recommend the Auditor-General, the EACC, the Senators and all other oversight institutions be provided with sufficient financial resources to enable them check inefficient spending and misappropriation of resources at the counties.

Those are the recommendations and I want to take the opportunity to thank Members of my Committee who worked very hard, in a very short time, to review this Report. I also thank the relevant departmental committees because they had a one day period to go through and come up with the recommendations and observations on the various sectorial policies that are contained in this document.

Lastly, I want to thank the Cabinet Secretary and the Principal Secretary of the National Treasury, who appeared before the Committee and also helped us to understand this document better. I also want to thank the Office of the Speaker and the Clerk of the Senate. I want to urge the Members to adopt this Report which contains the input from the relevant committees, so that it can inform the National Treasury in determining the appropriate allocation of resources both at the national and county government level.

I beg to move. I will be seconded by the Senator of the great County of Makeni.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir. I rise to support this Motion. I want to tell my fellow Senators that, in fact, this particular Motion is more important than the Revenue Sharing Formula that we have been quarrelling about because under Article 96(3), the question of the determination of revenue between national Government and the county government is contained in this BPS. This is where Senators should put all their efforts because in the division of revenue that we are going to debate, these details are contained here in this document. Therefore, I expect that Senators will come and look into these details because the questions that are affecting this country appear here.

In supporting this Motion, we have recommended because the law states that this document should be tabled at the Senate or in Parliament on 15th of February, what they did is to deposit this document on 13th of February. What we did is spend a whole week and in all committees to go for an overnight retreat to put this document together, a result of which we were to study this document under an element of certificate of urgency. I suspect that even the Senators who have left this House have not had the time to interrogate this document, as important as it may be to their counties, not the Revenue Sharing Formula because page 51 of this policy has the figure that the National Treasury has allocated sharable revenue of Ksh 258 billion. The basis upon which they have calculated that money is in this document.

The money that is said to have been allocated last year and not factored in the budget has also been put in this document. The Senators need to look at this because when we come to debate this policy, those factors that they have used will come into play. I will use an example that the Chairman has highlighted. They have put in a factor of 10 per cent on page 51, in the division of revenue as the growth factor, yet the analysis we have received from the good officers of the budget of Parliament is that the growth is actually at 15 per cent. Therefore, the figures should be altered to that extent. What about the question of registration of voters?

Members do not know that while the National Treasury has allocated the Independent Electoral and Boundaries Commission (IEBC) Kshs3 billion, they have debts of Kshs5 billion arising out of questionable legal fees by advocates. People do not know that the three counties; Kitui, Makueni and Machakos have only managed to register 6,000 people over a period of 14 months. They have no funding to register people at the local level, yet in the Medium Term Budget Policy Statement you will find figures increasing from Kshs3 billion to Kshs10 billion progressively in the next financial year and Kshs15 billion to the next financial, purposely for registration of voters. These are things that the Senators should come to this House and look at.

There is an item called witness protection agency, which has been receiving money. We should start questioning who these people are protecting. Where is this money going to and how has it been allocated? The Office of the Attorney General is receiving a huge amount of money, yet the Office of Public Prosecutions, which should be arresting the people who get money from “Chicken-gate” and Good Year, is receiving less allocation. These are things that the Senators should be asking about. Look into the eyes of these people and tell them: “This is wrong.”

Maybe Sen. (Dr.) Kuti can enlighten us on the Level Five hospitals. Instead of giving the function of Level 5 hospitals more money, the Government has allocated more money – Kshs4.5 billion - for the hiring of equipment. Those are things that you should be looking at, because in as much as it is important to have equipment in our hospitals, the functions of those hospitals cannot be less important than hiring of that equipment. Therefore, in supporting this Motion and the recommendations herein, I urge the Senators to look into this document in details.

We have proposed – maybe we forgot to put it in our recommendations – that instead of suggesting that the Medium Term Budget Policy Statement (BPS) be submitted to us by September, we should amend the Public Financial Management (PFM) Act, so that, that date and month is in the law. In as much as we attempt to persuade the Treasury to deliver this document to us in December, they will not do it. They will bring it on 14th February and deliver it to us, so that we do not interrogate it like we have done in this financial year.

Sen. (Dr.) Khalwale said that counties have not been audited. Why have they not been audited? It is because for some strange reason the National Treasury does not think that it is important to audit them. Therefore, they have not been given money. The consequence of that is that although there were supposed to have been reports on the audits of how our counties are spending – in fact, misusing money – we do not have them. We are spending so much time, in fact, shooting down formulas and looking for more money for counties, yet our mandate of oversight---

(Sen. Mutula Kilonzo Jnr.'s microphone went off)

Mr. Temporary Speaker, Sir, I was not alerted. It is called digital rigging.

On the cash disbursements, the BPS proposes that in that last financial year, we spent Kshs12 billion on the elderly people. Where is that money? Where are the regulations? Every time you are in the counties, you are asked about this money. Now the figure in the BPS has remained the same. I asked the Cabinet Secretary in charge of Treasury this question. He made a statement that since the money for laptops – Kshs17 billion or so - by the Jubilee Government has not been spent, it should be reallocated to another function, yet in this Policy Statement, the same figure that appeared last year is appearing again in those figures.

Senators, this is the opportunity for you to say that this money that is not being spent should be not be allocated to national functions. We should allocate this money to county functions, so that under Article 187, the functions that have been devolved can have resources that follow them. Under Chapter Six, the Government says that one of the pillars of this BPS is strengthening counties. Strengthening counties includes increasing the money for auditors, hospitals and functions that would help these county governments to work. For example, they have said that one of the things they are thinking, which I must highlight, because it is also in this fiscal responsibility of the revenue sharing formula--- They have suggested that the counties that raise money well should be given an incentive. Why would you give an incentive to people who already do not want to collect revenue?

Why would we allocate money for incentives for people to collect more revenue, when we have stated under the Constitution that people must be accountable? Counties must collect revenue and we have given them the formula. Why should we give them further allocation? The revenue sharing formula that Members have shot down this afternoon, has proposed one per cent for fiscal responsibility, which includes rewarding counties for what is called prudent accounting systems. This BPS has got something that will help you to look at it and assess whether or not we are planning our money well. That is our responsibility.

I want to talk about the Equalisation Fund. For those counties which have been worked up about money – that they have not been included properly in revenue sharing – this is an opportunity for them to say: “This financial year – irrespective of the fact that the revenue sharing formula has been shot down – the money that has been allocated here is Kshs6 billion. Everybody asks: “Why is it that the Equalisation Fund has not been put in place?” There are regulations that are supposed to be under Article 204. We rejected the regulations that were brought to the Committee on Finance, Commerce and Budget. One of the reasons is: Why would you set up a board to manage the Equalisation Fund and their management kitty is 10 per cent? If it is Kshs3.4 billion for the 14 counties, it had been suggested that they should each be given Kshs340 million. If it is Kshs6 billion in this financial year, they should be given Kshs600 million for management. This is an opportunity to say that they must fast-track the Equalisation Fund, so that the counties that think that they are suffering or have been given the benefit or privilege to enjoy the Equalisation Fund for 20 years under this Constitution, are given that opportunity. That is the work of Senators.

I want to thank the Committees that presented their reports. As I second this Motion, I am very happy, as a Senator, that, truly, that Article 96 (3) is working.

I beg to second this Motion and ask my fellow Senators to look at these documents in great detail, because the devil is in all these details, in all these books. Take time to read them because this is where the rubber meets the road.

(Question proposed)

Sen. (Dr.) Kuti: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion. I would like to congratulate the Chairperson, Sen. Billow Kerrow and his Committee for a commendable job in analysing the BPS within a very short time and also inviting the chairpersons to input this Report.

I was among the first chairpersons to appear before his Committee. I am impressed that all the other chairpersons raised the same kind of complaints about the time provided to interrogate this BPS, which is very short. In fact, it is an ambush; where you are given 24 hours to call your committee, go through the part that relates to, for example, health, comment on it, make a report and present it to the Committee on Finance, Commerce and Budget.

Mr. Temporary Speaker, Sir, the Committee on Finance, Commerce and Budget has taken that into consideration and we hope that next year, by a specific date in September, not in February like now, when the deadline is just a few days away, then we

will look at this document and interrogate it. I agree with Sen. Mutula Kilonzo Jnr., that there are a lot of details in this document. However, it is only when you have ample time that you can peruse through this document, analyse and critique it better. Therefore, the issue of time is very important. The National Treasury is still using the old technique where they try to make proposals and they think that those proposals must remain unchanged by ambushing the stakeholders. It is, therefore, very important that this document is submitted to the Senate in September. I fully agree that a specific date should be set in the Constitution, then these preparations will give every stakeholder time to contribute positively.

Mr. Temporary Speaker, Sir, as concerns health, we realised that Kenya has been lagging behind in the Abuja Declaration where health is to receive about 15 percent of the Gross Domestic Product (GDP). Until now, we are in the region of 8 percent of the GDP. I do not know about this year because the county allocations to the health sector are not easily detectable at the moment. It was just the national allocations that we were able to see in this Budget Policy Statement (BPS). Therefore, we would really like as a nation, to consider the fact that health is a very critical sector. It is only a healthy human being who can contribute to the development of this county. Therefore, the issue and the commitment that we made in Abuja of 15 percent of the GDP, we need to work towards that. I hope that we do not fall back.

The other issue as concerns health is that we should concentrate more on preventive medicine. As the old adage goes; prevention is better than cure". You will see that the national Government is rushing towards leasing of equipment. The Governors are rushing towards buying ambulances and building infrastructure. However, we know very well that if we invest, for example, in the antenatal care for pregnant mothers so that safe deliveries can happen for healthy babies to be delivered, that will go a long way in preventing a lot of mortality.

We would like to congratulate the First Lady, for her 'Beyond Zero Campaign', which the country is warming up to. I hope that all of us will be there on the 8th of March to run with her. This is part of the prevention programme.

On issues of immunization, we must really raise our levels of immunization in the counties. The Governors and the health executive committee members in the counties must really focus towards issues of prevention and increasing the level of immunization in their counties by ensuring that there are mobile outreach programmes. In fact, they should invest in vehicles that move around in the counties rather than wait for emergencies and blare up sirens. I am aware that leasing of ambulances is very expensive. It could even have been better if we invested in one or two vehicles that went round doing immunization while attending to emergencies as well.

Mr. Temporary Speaker, Sir, we, as a nation; be it at national or county level, are not focusing on prevention which will bear more fruits than the curative approach that the country is taking now. Issues like community health workers are very critical because these people will go around, weigh kids and prevent malnutrition rather than running with nutrients to the counties that are malnourished. Simple issues that these community health workers could give in terms of creating awareness like washing of hands and digging of pit latrines will improve our health indicators, such that all these diseases that

we are now rushing to cure, the hospitals we are rushing to build and all these equipment that we are investing in, if this money could be directed more towards the preventive aspect, we will have a healthier nation faster. We will be able to control various diseases and eradicate some of them.

Mr. Temporary Speaker, Sir, the issue of research and development cannot be over-emphasized in matters health because right now, the research that takes place in the field of health in this country is done by donors. We do not know to whose interest. Obviously, all scientific research is for the common good, I would not like to water down that part. However, I think that it is very important that if the Kenya Medical Research Institute (KEMRI) could get more allocation so that research in health is done by Kenyans for the interest of Kenyans rather than KEMRI, which is attached to the Centre for Disease Control (CDC). It is an appendage of CDC because it is getting funding from the donors. More finances are coming from USAID, Japan and other donors. Our own commitment to research is wanting. We need to invest in research. We have very competent scientists who can contribute to disease control through research and new findings.

I would like to talk about staff and drug supply in the health sector where there is a lot of hue and cry among the health workers. Somehow, the devolution of the health function to the counties took place in a parachute form where we woke up one day and we just devolved health. That obviously was a good thing and we had to move with it. Devolution is with us and is inevitable but we now need to manage the repercussions that go with this.

For example, the staff welfare is in jeopardy. I am fully aware that while all health staff - doctors, nurses or clinical officers - are now being paid under the payroll of the counties, their files are with Afya House. All the files of all health workers, while they are employees of the county governments, all their personal files that were used for promotion and to programme for their leave, are still at Afya House. We talked with the Principal Secretary for Health and he gave a very genuine assurance that they had started giving these files out and they saw some of them being eaten by goats in the counties because the counties do not have human resource departments that are capable.

On the issue of leasing, I would like to say that until now as you see in the newspapers and I have even met some of the governors, there is still a lot of dissatisfaction and we need to come in. We have offered as the Committee on Health, to sit and we have set a date with some of the governors and the Chairman of the Committee on Finance Commerce and Budget to sort out this matter. However, it is very important for these machines to work, both parties at the national and county level be in agreement as soon as possible and put in place structures and personnel to run these equipment, so that they do not become white elephants because they cost a whopping Kshs38 billion.

Mr. Temporary Speaker, Sir, the issue of health insurance is a major concern in this country. We know that there is a lot of inequity; there are many people who cannot access quality health care because up to now, we charge for it. There is a very small charge and the quality of health care is still very poor. The Constitution and the health policy document 2014-2030 stresses on the creation of the National Social Health

Insurance so that we have a minimum package where all Kenyans have access to quality health care.

Mr. Temporary Speaker, Sir, on the issue of the Kenya Medical Supplies Agency (KEMSA), I note that KEMSA has completely changed from push, where they used to create and supply the kits to the district hospitals, rural health facilities like health centres and dispensaries. They have now moved from that and allowed the counties to order for medicine. So, it is a pull system like in a supermarket, where you go, pick what you want and then pay for it. On the issue of complaints that are there right now, I think governors are not allocating appropriate amounts of money for medicine. Some governors are not allocating the 8 per cent or the 15 per cent that the national Government has allocated for health facilities within the counties. Therefore, they run out of the money and KEMSA expects them to put their cheque and order what they want for them to be supplied with medicine.

It is very important that Senators liaise with the governors to ensure that there is enough allocation for medicine so that county health executive members can deposit enough money with KEMSA to be supplied with medicine as they wish. In fact, if possible, they should make their orders for medicine to KEMSA every quarter or every half year as they get their allocations. Obviously, KEMSA cannot provide everything and they should be left with some small amount of money to buy this medicine from other sources like private pharmacies.

Mr. Temporary Speaker, Sir, we support this document but with a lot of concern about the time allocated so that we understand this. Some of us are not financial experts; we even need to have some financial input so that a session is created for the Senate – either a *kamukunji* or a workshop – where we can go through this document thoroughly so that when we come here, we have internalized it and we can contribute from a point of knowledge.

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

Thank you, Mr. Temporary Speaker, Sir.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. I want to support this Motion very strongly and, in doing so, I also want to commend the Committee that has done such a good job. I want to carry on from where Sen. (Dr.) Kuti left off, on the issue of health. As we speak, the standards of health in most counties have fallen. A lot of dispensaries and health centres have no medicine simply because counties – particularly my county of Kitui – have not allocated sufficient funds to cater for these facilities. To make matters worse, the national Government previously used to open up new dispensaries every time, but some counties have said that they are not going to open new dispensaries citing lack of funds.

Mr. Temporary Speaker, Sir, we devolved services, particularly health services, to the people so that they can get better services as opposed to previously, where they were getting services from the national Government. Therefore, we would expect health services at county level to be much better than what it was. But on the contrary, the quality of these services is deteriorating and I think it is high time that counties allocated more money from the money that the national Government gives to health. Ideally, 15 per cent should actually be the amount of money that counties should give for health. But as

of now, that is not happening and, therefore, the services have deteriorated. Most facilities do not have enough personnel and medicine. So, where there were previously one or two nurses, there are none and, therefore, the facility shuts down. So, this is a matter that we, as the Senate, needs to look at and ensure that instead of any services that have been devolved deteriorating, they should be improved because that was the purpose of devolution.

Mr. Temporary Speaker, Sir, last week, I raised the issue of cash disbursements or cash transfers on the Floor of the House. Yesterday, the distinguished Senator for Makueni also raised the same issue. If you look at the amount of money that the Government is purportedly using in the cash transfer programme, it is enormous. The Government has even announced an additional Kshs29 billion to be disbursed, but as we sit here, we do not know how this money is being disbursed. Any public meeting that I attend and we ask questions relating to this fund, old men ask “where is the money that is disbursed?” And I say “but it is around here;” and they say “no” and I do not get even a single person out of a crowd that has been receiving this money.

Therefore, Mr. Temporary Speaker, Sir, this is a good idea; it will lift or improve the poverty levels of our people, but it should not be surrounded with secrecy. We want to see how this money is allocated so that we can ask for more, because I think it is a very noble thing that will help the poor people. I am hoping that this matter will be given the seriousness that it deserves and that we are going to get the information and even participate in formulating rules to ensure that there is equity in the distribution of this important fund.

Mr. Temporary Speaker, Sir, infrastructure is covered in this budget. There is nothing that we can celebrate about the past. I have always said during the 17 years that I have been in Parliament; every time I stand here, I talk about infrastructure and I give examples of Kitui County, which has been neglected for the last 52 years. I want to pledge here that as long as I have some breath remaining in my body, I will continue to talk about infrastructure, so long as the Government continues with this practice of marginalizing some areas. My first Motion, if you recall, when I came to this House, was about infrastructure and ensuring that there is equity in the development of infrastructure in this country. I see no reason why some counties will be having better infrastructure than others after 52 years of Independence.

Mr. Temporary Speaker, Sir, I was assured that the Annuity Program, which is in this document is going to be started as a pilot project during the 2015/2016 Financial Year which is just around the corner. I want to appeal to the Government to ensure that even if it is a pilot project, let it start piloting from the areas that have been marginalized in the past. I can see the distinguished Senator for Elgeyo-Marakwet nodding in agreement because you cannot go and pilot on a scheme in areas that are already endowed with infrastructure. I would like to see Kitui-Kibwezi Road being the first road to be done under the Annuity Program.

Mr. Temporary Speaker, Sir, there are many things we can say about the Independent Electoral and Boundaries Commission (IEBC), but the Constitution gives the IEBC the mandate to do continuous registration of voters. It is now two years since the last elections and we see no registration going on in our counties, at least in Kitui

County, I do not see any registration. They have said that the base for registration is from the constituency. These are enormous areas in size. How do we expect people to travel 100 kilometres to the constituency headquarters to be registered as voters? You cannot forgive this; that the Constitution provides for continuous registration. I want to ask the Jubilee Government; unless it intends to rig these elections, let there be equal registration of voters across the country.

We know that there are some areas where even voter cards are being sent to schools for them to get voter cards while in other areas, they are not, and this is what happened last time. We know that some constituencies had many voter registration kits while in others, five polling stations were given one kit, while others had one each. This will not be allowed this time round and I would like to appeal as early as now that this matter be corrected. We want to see enough funds allocated to the IEBC in order to do thorough registration of voters throughout the country.

Mr. Temporary Speaker, Sir, the issue of the Auditor-General's Office has been touched on by the previous speakers. We cannot emphasize this more. As we speak, we do not have up to date audit reports of our counties. They did very well during the first three months and they submitted some reports but we decry the misuse or misapplication of funds in our counties. But this is purely based on what we hear - rumours - and what we see. We would like the Auditor-General to ensure that he provides us with tools for oversight. One of the most important tools is audit; we want counties to be audited in time and the audit report not to be given after two years when the horse has already bolted. We want to know what happened and what is happening right now in our counties. We see things that we do not like yet we cannot challenge them because we do not have audit reports.

Mr. Temporary Speaker, Sir, the issue of the Ethics and Anti-Corruption Commission (EACC) is shameful. For all these years we have attempted to set up a body that will ensure that corruption is reduced, if not eliminated. Why is it that we get people convicted out there having bribed Kenyans and we do nothing about it? Yesterday, Americans were convicted for bribing Kenyans at the tyre company and this company was fined. The other day, we had "Chickengate" Scandal. We are victims of corruption. It is our money that has been taken and yet we do nothing about it. It is those people who have given bribes who are being punished for giving us bribes yet with us receiving, taxpayers' money having been wasted, nobody raises a finger.

If the EACC is not able to investigate and come ahead of those other people, it might as well be wound up because as we speak, they are not doing enough. They keep on telling us "we are going to deal with Anglo Leasing in two or maybe three weeks." Why do you have to announce to us? We want to read that, today, the people involved in Anglo Leasing scandal have been arrested and charged. But you keep on saying: "We are going to arrest five, we are going to arrest three; files are ready;" you do not have to tell us all that; just go to court and present your case! This is one body that has failed Kenyans miserably despite its importance in the country.

(Applause)

I would like to plead with the Chairperson and his staff that they should pull up their socks in arresting corruption, in investigating cases or just quit so that we can know that we have no body that is looking after this important matter. I have raised my voice a little bit on this matter because it touches on us; it shames the country that people are being arrested and yet those who are victims are just happy about it and they do nothing. Is it easier to investigate those who have given or is it easier to investigate those who have received? These are big questions and if the Government of the day has to have credibility, it should ensure all cases of corruption are investigated. Stop chasing the simple policeman there; go for the big fish. That is when Kenyans will believe that the Government is ready, willing and capable of arresting corruption in this country.

Mr. Speaker, Sir, I beg to support.

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. I also rise to support this Motion and also support the sentiments from the Senators for Makueni and Kitui counties. Indeed, this is a very important document that we must critically look at, analyze and come out with recommendations that can also guide the Treasury as they move on with their work.

When you look at the Budget Policy Statement (BPS), you will find that there are many issues that we need to raise. For example, if we are talking about devolution in this country, then one of the first things we need to fast track as the Senate, is to ask the Government to ensure that the Information, Communications and Technology (ICT) sector is working. You find that the ICT docket in Government is put in every ministry and, therefore, in terms of monitoring, you will never understand where the ICT money is. That is maybe one thing that is within the counties. When we talk about capacity building, we wonder how we support our counties to ensure that everything goes digital and there is automation.

We now have the issue of Narok and this has come about because of resources and lack of a better way of collecting those resources. Narok has done its best to have a semi-manual way of collecting revenue, which is also better than the other counties that have really ignored that.

The BPS also comes out clearly and gives us five pillars that they talk about. Within those five pillars, the Government anticipates or wishes to ensure that this is what they will give Kenyans. But when you look at those pillars, the challenges that you face, for example, in the roads sector, you find that there is a lot that the Government has talked about. But when you look at the sustainability of the same, it is going to be a very tall order especially when we talk of those roads.

We have to ask ourselves whether the Government will have money, looking at our external and domestic debts. I think they should go back to the drawing board, relook at it and ensure that it is realistic for Kenya. If it is roads, if we say we want to see 2000 kilometres, it will be so. We should not start a project and then in the middle of it, we face challenges. When you look at the BPS itself, last year, when we were nearing December, we had a deficit of Kshs48 billion. This means that we must relook at many of these things.

Mr. Temporary Speaker, Sir, we are proud of the Standard Gauge Railway (SGR) project, but what we are saying is that it will be very important for Treasury to tell us

how it will be extended from Nairobi to Malaba. It would have been fair to show how that project will go to the end and all Kenyans will feel proud to benefit from this project.

The Registrar of Political Parties office is a docket which we would have wished as Members of Parliament to see it build capacity and also assist political parties to ensure that they manage their affairs properly, especially now that we are moving towards the electioneering mood. We would want to see things work. That is why we have queries with regard to the operations of the IEBC. As Kenyans, we should stop accusing one political side of intending to rig elections. We should come up with a new identification card in the form of a SIM Card. Once we get that card, even issues to do with security and the problems we face during the population census will be solved. This card should have a chip that carries all personal data and can be used as a voter's card, driving licence or NSSF card.

For the many years I have lived, I have never seen the NSSF call Kenyans and inform them how much money they are holding from them and how they are going to use it. They do a lot of business with people's money, but when you look at the person who contributes, I wonder whether they understand what NSSF stands for and what it holds for this country.

Mr. Temporary Speaker, Sir, issues to do with agriculture and health care are some of the areas which the BPS does not clearly capture. For example, as you work on the irrigation projects, on, say, a million acres, how do we ensure that everybody benefits? Are we spreading these projects or we are just looking at one region? The best would be to spread these projects in all the regions and then culminate to the million acres that you are thinking about so that every Kenyan can reap the benefits. These are new projects that Kenyans would want to own as they move on. The national Treasury should ensure that new projects are spread across the whole country. Sen. Musila has just talked about the road joining Kibwezi and Kitui. This is a very critical road which can be of assistance to travelers from Mombasa who want to go to Kitui or Embu. We have not seen in this PBS how they have allocated the funds and if, indeed, that road will be prioritized so that it opens up that area.

As Senate, there are critical issues – without looking at our various political parties – that we must support Government to ensure that it succeeds. If we want devolution to work, then it is time we told the governors that as we look for these resources and interrogate documents for the sake of increasing the allocation of resources, they have a responsibility to ensure that Kenyans are given a service. Secondly, that they have a responsibility to prove to Kenyans that devolution can work. The Senate should stamp its authority and probe the operations of governors. I would like to thank the Judiciary for stamping their authority and ensuring that the Senate is given a responsibility to ensure that this country moves on.

Mr. Temporary Speaker, Sir, when we go home, Kenyans ask a lot of questions. At the moment, we are staring at a crisis that is about to start because there is no rain in the whole country. Today, farmers are struggling and wondering what to do with their crops. We should ensure that we no longer see images on television of people dying of hunger. I am hoping that the Governor of Turkana is tackling the hunger situation in his county. He has good resources that can cater for such eventualities. We should never see

children in Turkana learning under trees and writing on sand. We even wonder why all these resources are being given to the counties. Why is it that these resources are not transforming people's lives? Why is it that we cannot see change? We have had the CDF for ten years and we thought we would see change. Today, we are still in the same mess in some of the counties.

The Auditor-General's office has a critical role to audit the funds, but we should ensure that they are provided with sufficient funding for them to move forward. The Sen. (Dr.) Khalwale Committee should bring this Senate to where it belongs in order to understand that this Senate is supposed to do oversight as Article 96 stipulates.

Mr. Temporary Speaker, Sir, when you look at the Attorney-General's office, it has so many commissions, some of which can now be merged. We should ask ourselves whether we are really spending money properly. Could we merge some of the commissions so that they work together and we do some saving besides strengthening that institution to do better?

Among the five policy pillars that we have been given, we hope that the national Treasury will appreciate the recommendations we have made to them and that they will look at it as we move on. One of the things that we must tell the national Treasury is that if they really want to be supported by all the stakeholders, then they must hand in this document as early as December. I know we are usually on recess at that time, but the Committee has a right to come back and interrogate it and nobody will dispute it. They must ensure that they look at the Public Finance Management (PFM) Act and bring the rules and regulations. This is the third year now and we do not have the rules and regulations to run the PMF Act. Last year, they put the rules in the BPS and this year, they have done the same. I know as a Committee, we requested them not to go to next year with the same query. They can finalize it and it will assist to unlock some of these things.

In the BPS, one other thing they quoted was the issue of procurement. I think it is something the Senate has to look at and assist to unlock this procurement system that has so many challenges. That is why the National Assembly is also finding itself also in many challenges because of the same Public Procurement and Disposal Act (PPOA). Everyone is running to the Public Procurement Oversight Authority (PPPOA) to stop tender processes. It is also one way of doing things. I hope that the Senate can unlock some of the regulations that we have talked about.

I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Moses Otieno Kajwang, the Senator for Homa Bay County.

(Applause)

The Senator for Homa Bay County (Sen. Moses Otieno Kajwang): Thank you, Mr. Temporary Speaker, Sir. I beg to support the Motion that is before the House.

This being my maiden speech, I had anticipated to speak on a different matter, but when I looked at the weight, content and juiciness of the Budget Policy Statement, I was compelled to make my first comments on this particular subject.

(Applause)

I have come from the private corporate sector where issues of budgeting and laying out strategy are given prominence. When I look at this Budget Policy Statement, probably it is because it is merely a statement. It is fairly docile and it is not as aggressive and as bold as I would have anticipated it to be. I have come from outside there and there is a lot of hope in the public that Vision 2030, or something similar to it, will still be realised in this country.

Mr. Temporary Speaker, Sir, when I look at the projected growth rates in the Budget Policy Statement, we are looking at Kshs5.3 per cent in 2014, projected to grow at 6.9 per cent in 2015 and 7 per cent thereafter. Of course, the magic that we are going to deploy to grow that aggressively has not come out very clearly in this Statement. I hope that with time, that will be quite clear. More specifically, I have looked at the Budget Policy Statement and looking at the second pillar on Agricultural Transformation and Food Security, there is the issue of value addition on agricultural products which has not really been given prominence. In as much as this is an overview, I would have expected that value addition would be given prominence.

We must go beyond the issue of providing fertilizer and seed because they are the primary inputs. We need to focus on the product and how we can add value to it, so that our farmers can get more out of it. More specifically, the cotton industry in Nyanza and, more specifically Homa Bay County, is an issue that we need to look at so that we provide the necessary incentives, have ginneries and a value system that can make farmers get back to cotton farming.

On the Budget Policy Statement, there is a section that talks about empowerment of the youth and women for employment creation. It indicates that tenders worth Kshs1.4 billion have been awarded to youth and women enterprises. It will be interesting to know what percentage of the total pie that Kshs1.4 billion makes. We have previously stated that 30 per cent of the tenders should be reserved for women and youth. At Kshs1.4 billion, I am not convinced that we have scratched the surface as far as providing preferential access to tender for youth and women apply.

Mr. Temporary Speaker, Sir, in terms of transport and logistics, we still do not see a lot of mention on lake transport. We have addressed everything to do with air transport, Lamu Port Southern Sudan-Ethiopia Transport corridor (LAPSET) and the Port of Mombasa. However, we seem to have historically decided to forget about lake transport in Lake Victoria, yet, this is something that can spur a lot of growth and support trade within the East African Community.

I wish to take advantage of this opportunity to make my first speech in this House, just to extend my gratitude to a number of people who have contributed to my being in this House today. I convey my gratitude to the people of Homa Bay for overwhelmingly giving me the mandate to represent them as their Senator. I wish to convey my gratitude to my party, the Orange Democratic Movement (ODM) and the Coalition for Reforms and Democracy (CORD), that they showed confidence in the youth. My nomination was a confirmation that this Coalition pays a lot of attention to the youth and the demographic

dividend of this nation. I also wish to thank all the Senators who stood by my family and the people of Homa Bay during the untimely demise of my brother and former Senator for Homa Bay, the late Sen. Gerald Otieno Kajwang.

I have just come from the trenches and we have been talking to the public to gauge their perception on devolution. The main reason I decided to join this House is because I believe in devolution and the mandate of this House. When we walked round the great Homa Bay County, we saw cases of success in devolution. In as much as county governments are barely two years old, we have started seeing small fruits of devolution. A few examples could suffice. By having solar powered street lighting in some remote villages, women there can now trade for longer hours than before. This means that they can make a little bit more money to feed their children and take them to school. That has made a positive contribution to the lives of people.

We have seen small initiatives like opening up of roads. In Suba Constituency in Homa Bay County, there is no single inch of tarmac. Through the county government opening up roads, at least 12 kilometres of roads per ward, it has opened up parts that were hitherto no-go-zones in this constituency and allowed farmers to reach the market with their produce much faster.

Mr. Temporary Speaker, Sir, there are many small success stories on devolution. Unfortunately, a lot of these stories, to me, are neither as revolutionary nor as innovative as we would wish them to be. A lot of the things we are seeing coming out of the county governments are what we would call business as usual. They are not revolutionary and will not transform our counties and the country, to the level of the Singapores and the other more developed economies of this world.

Having walked round looking for votes, there is a lot of concern that on the objectives of devolution, as stated in the Constitution, perhaps we seem to be missing the point. The people are saying that we did not go for devolution so that we could devolve payrolls because to a great extent, we are seeing a lot of money going into paying of salaries. We did not go into devolution to create a new bourgeois within the counties. We are seeing an emergence of another class of Ministers, Permanent Secretaries and chief officers – an emergence of a new upper class within the counties. That was not the intention of devolution.

(Applause)

We did not go into devolution so as to devolve nepotism and rent-seeking. There are a lot of negative attributes that have found their way within the devolved governments. We did not go into devolution so that we could devolve corruption.

Those of us who subscribe to the Christian faith are quite familiar with the parable of talents in the book of Mathew 25. The parable talks about a rich a man who went on a journey and left his servants with talents. There was the foolish servant who buried the talent and the industrious servant who multiplied the talents. When Christ comes back, for those of us who believe in the advent, the challenge will be what we did with the talents that he gave us. For the people of Homa Bay, we were given black cotton soil, yet, we are not even planting cotton on that soil. We are busy planting sorghum and millet.

God was not foolish to give us black cotton soil. We have given all sorts of argument as to why we cannot grow cotton. We are saying that there are no incentives for farmers and that the industry has collapsed, yet, hon. Members of this House continue wearing cotton garments. We must provide the right incentives for our people to exploit some of these resources that God gave us.

The good God also gave us Lake Victoria and all the fish therein. At the moment, we export all the fish while our women and children are left with something called – for lack of an English equivalent – “*mgongo wazi*.” We are left with the skeleton of a fish, which is what we put on the table everyday while the fillet is exported to the European Union (EU). We are misusing the talent that God gave us.

Mr. Temporary Speaker, Sir, we were given Ruma National Park and all the animals therein, yet we are not exploiting it for its tourism potential. The challenge for the people of Homa Bay and this august House when Christ comes is; will we be like the foolish servant who buried his talent or the wise one who multiplied his talent? Beyond the challenges that we face at the county level, nationally, we have challenges too.

Mr. Temporary Speaker, Sir, I believe that it is the mandate of this Senate to discuss some of those challenges. As we speak, this country is in a state of digital darkness. I am an ICT expert, and I have spent many years in that sector. I appreciate the benefits of digital migration and I know that by freeing up spectrum, there is a lot more that we can do. However, as a leader of a county like Homa Bay, my first consideration will be that fish-monger in Remba Island. I would ask myself what that person stands to gain in this digital migration. If she has a choice of buying a new television set or buying a digital set-top box, compare that with taking a child to school, what then is the order of priority?

Mr. Temporary Speaker, Sir, we have seen that there are countries that have requested to defer their migration because they are not ready. There is nothing that stops Kenya from seeking for a deferment on the basis of lack of readiness.

Being a maiden speech, I expected that I would go beyond the mandatory time but I beg---

The Temporary Speaker (Sen. (Dr.) Machage): You still have more time. Just continue, if you have more information.

The Senator for Homa Bay County (Sen. Moses Otieno Kajwang): Thank you, Mr. Temporary Speaker. I just want to speak to this particular issue of the digital migration - The issue of benefit to the common man. I also want to look at the youth in this respect. I concur that the youth who are involved in content creation should get more opportunities to make money. However, if we rush this, there is nothing that stops us from setting up local industries to assemble digital set-top boxes. A digital set-top box is not rocket science. It is not more complicated than a speed governor. We need to think of innovative ways through which we can create and provide employment opportunities for the young men and women of this nation.

Mr. Temporary Speaker, Sir, my vision for Homa Bay for the youth and women is quite clear. We need to include them. The women in Homa Bay, out of 40 wards, only one ward has an elected woman representative. Homa Bay County has given birth to very beautiful and intelligent women. In fact, we only marry beautiful and intelligent women

in Homa Bay County, and I believe that they deserve to be given position, not by affirmative action but by their own right. This is something that I will work through this House to ensure that it sees the light of day.

I like to speak and I speak passionately for the women because out of these elections, we established that the women of Homa Bay, when they promise to give you something, they really give it to you.

In conclusion, I would like to pay tribute to the fallen Senator, whose position I have assumed today. Sitting in this same position on 18th November, 2015, the late Sen. Kajwang made a passionate contribution on insecurity and the need to recognize police reservists. He made this appeal, oozing more charisma than I can possibly marshall. He spoke passionately and made this august House believe that *kumi kumi* and *Nyumba kumi* were more or less the same thing. The late Sen. Kajwang, will be difficult to be replaced and to fill his shoes.

I believe that when we work collectively and jointly as the Senate, we will follow and conclude the journey that he had started. The path that he trod was a path of dedication to his country, to his community and to his party and he did it with utmost fidelity. I hope and pray that we shall work together and maintain that fidelity that the late Sen. Kajwang demonstrated.

With those few remarks, I beg to support the Motion.

The Temporary Speaker (Sen. (Dr.) Machage): I must confess and actually testify that in my many years as a Member of the august House, this is one of the best maiden speeches I have ever had.

I thank you and think that you will be a good legislator.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I would like to join you in congratulating Sen. Moses Kajwang for the eloquent presentation. I saw a man speaking with a lot of passion, calmly. He has also demonstrated his deep understanding of faith and relevant example about the parable of the talent. In that regard, he can be sure that he is in good company. I have been lonely for a long time but I am very happy to have a man who can properly quote the scriptures and contextualize the current debate.

Mr. Temporary Speaker, Sir, I also want to congratulate the Committee on Finance, Commerce and Budget for doing a very good job on this document. From the outset, I would like to say that this is a thorough job considering that all the committee chairs had to be pushed within a very short time to contribute to this document. It means that despite the short time and the challenges the Committee was going through, they did their best to ensure that we have a very good document. I read through this document and I am very happy because, first of all, we need to appreciate that when we are discussing matters of national planning, it has to be clear to Kenyans that national planning is not national Government planning. National planning is planning for the nation which is a function that touches both on national and county issues. When we talk about revenue raised nationally, the revenue benefits both county and national Government.

Mr. Temporary Speaker, Sir, we are key players; no wonder the Constitution provides very clearly that there is a time that the Senate will not only be voting on matters affecting counties but also on other matters like this one. In my interpretation, other issues of national importance and which will castigate an impact on the counties is

the Senators' responsibility. That is why in Article 96, we are told to protect the interests of the counties. It is impossible to protect the interests of the counties if we are playing no role in matters of national planning, use of the resources, how they are collected, how they are budgeted for at the national level and so on.

If you think about the Fourth Schedule of the Constitution which is very clear about matters of functions, we know that there are functions that are exclusive to the county and national Governments. There are functions that are overlapping and concurrent. If you look at all these functions, if the national Government is going to do policy and the county governments are going to implement those policies, then it means there is a close relationship; no wonder Article 6 of the Constitution talks about co-operation and consultation between the two levels of Government.

Mr. Temporary Speaker, Sir, I would like to go straight to recommendations. There are certain sectors that are very key to all of us. Let me start with the issue of the health sector. This is a very important sector. It is about life. You realize that it is a sector that cannot be domesticated, to say the citizens or residents of Elgeyo-Marakwet will only be treated there. Many residents of Elgeyo-Marakwet are treated in Uasin Gishu and *vice versa*. So, there is something very unique and peculiar about health. It is the fact that every one of us can get services in different places.

I had a very candid conversation with the county government, that is, the governor and the county executive, a few weeks ago and one thing that came out very clearly is that if a certain county decides to spend a lot of money on health and word goes round, residents of other counties will cross over to this facility to be treated. Therefore, they will consume all that medicine, being the stock bought from money allocated, to another county. For example, if you go to Iten, people are now leaving Eldoret to go to Iten because there are better bed facilities, better medicine and so on. Therefore, we must protect the health sector in devolution.

That is why we were saying, the current formula is not reflective of the challenges of the people. We want to safeguard certain sectors like health. We should also do a proper analysis of the amount of money we reasonably need to achieve certain targets in health and then allocate the resources. We should then safeguard these resources and lock them out of equal sharing of the other money.

It is important for us, as a Senate, to streamline the health sector. There was a time the Senate Majority Leader came here with Kenya Medical Supplies Authority (KEMSA) Bill. It is time again we sat as a Senate to discuss the position of KEMSA as an intergovernmental body, because at the moment, it is a national Government entity but it serves both national and county governments. How do we ensure that there is fairness in terms of resources, access to and in the distribution of medicine? What kind of relationship does KEMSA have with counties? It must be very clear in law, and I think the Committee on Health has a responsibility to ensure that we achieve that.

Mr. Temporary Speaker, Sir, about the question of transfer of functions, I thank the Committee on Finance, Commerce and Budget for capturing very clearly the question of functions overlap. There is a lot of overlap; there are certain things that are still being performed by the national Government which even when you see with your own eyes, they are county functions. As demonstrated in this Report, there are certain budgetary

items that are county government in nature but which are being budgeted for at the national level. It is time we did a follow up - I think this is a responsibility of my Committee.

We transferred functions to the counties, how will the national Government work with counties to ensure that they have clear Ministries or functions that are county in nature? Have they tried to clean up their budgets to ensure that we have no double budgeting so that we do not have a situation where the national Government is budgeting for the same road that the county government is budgeting for? We have to look at that so that we do not have a situation where budgetary items are allocated to hospitals that are actually being run by counties.

We must have an honest conversation, for example, about referral hospitals or what we call Level Five Hospitals. Is Nyeri County able to deal with Nyeri Provincial hospital? Is Mombasa County able to accommodate all patients from the *Pwani* region, who are going to be referred to that hospital? One incentive is to give that county, over and above, division of revenue that will ensure that we can finance those resources. How do we go in to even force these counties - that is the question that I was going to ask - to spend on health up to a certain level so that they do not put pressure on hospitals that are in the neighbouring counties? Therefore, it is important that we do a follow up on matters of transfer of functions so that allocation of resources is done properly.

The national Government proposes that there be conditional grants in the health sector to deal with matters of free health services and free maternal health care. The Government proposes that there will be resources for ensuring we deal with diseases like cancer. That is a very noble idea. We went to Mexico as a Sessional Committee on Devolved Government, and we realized that in many countries where they have devolved systems of government, conditional grants are very useful tools that are used to ensure that resources are targeted on policies that national government had already put in place.

So, it is important for us to also scrutinize, as a Committee - and I think the Chairperson of the Committee on Finance, Commerce and Budget is here - whatever shall be allocated as conditional grants. There must be a mechanism for the Senate to scrutinize so that those conditions are very clear and reasonable. We should also ensure that counties are living within those conditions and are not re-allocating that money. It also has to be clear whether the conditions include transferring the money to them or the vote of the money and budget is continuously going to be done at the national level. That criteria must be clear so that counties can be sure that if you have certain conditional grants from the national Government, you do not continue spending budgetary allocation of revenue on the same sectors that have conditional grants from the national level.

Finally, Mr. Temporary Speaker, Sir, I want to talk about accountability. We have said over and again, that accountability is not negotiable. The only way we are going to achieve maximum benefit from devolution is what Sen. Moses Kajwang, who spoke eloquently, said; that we must deal with matters of rent seeking because devolution was not to create new lords at the local level. There is a serious competition as a result of the two levels of government and various levels of leadership as to who has made money using county resources, who is going to have financial muscles to control the next

elections and so on, and so forth. All this discussion is around who has stolen more from the money that is being allocated to the counties.

The office that is going to assist us on matters of accountability is the Auditor-General's Office. However, at the moment, this office is not giving us the confidence that we need to indicate that they are capable to deal with matters of accountability in so far as county finances are concerned. But we must also be assisted by other sectors; we must be assisted by county assemblies. We must strengthen the county assemblies but for now, we have crippled the county assemblies completely. We have denied them the budget and their budget is being controlled by the Executives Department of Finance at the county level. The County Executives decide when they will transfer money to the county assemblies or not. This is a condition that we can no longer live with.

Mr. Temporary Speaker, Sir, we must also be assisted by the media. At the moment, as we are sitting here, there is a Governors' Summit going on in Naivasha. Although we cannot see it, one media is supporting the Summit. The same media house has an interest in matters related to advertisement and communication with the counties. I request media houses to be careful not to insert this mentality that as long as they are going to get businesses from the counties, they will not report accurately on matters of accountability in so far as corruption is concerned. They must give us that assurance, because I have seen, over and again, a Senator goes to a particular place, say certain things that are related to that county on matters of accountability and the story is reduced to a small footnote because it is going to injure the relationship between that media house and the County Executive. We cannot continue like that! We must stand by accountability.

The media is a public mechanism for us to share information with the public and all of us who are doing oversight. Therefore, we cannot gag it up. If it shall be that counties or those who manage money will be given space, then everybody here will be running around to say that Senators must also be given money so that they can control information and how it is going to be shared. We must not give an opportunity to our governors to pretend that they are massaging their egos so that they think they are doing well. How can you have such a conference without even one person to go and question or to give them a challenge about what they should do better or differently? It just becomes a place for them to clap for themselves and feel happy.

We must have a proper conference in the near future that will discuss matters of devolution from different sectors so that we do not create this impression that devolution is only good if we support a sector that has money. We must be very cautious that we cannot accept a situation where we will say devolution is only good if we support the sector that is having money. Everybody now wants to be in good books with governors because they know you will make something small left, right and centre. But that is not the point; we must ensure that we have a plural system, a free environment where Kenyans can question their counties to ensure that we have maximum results.

Mr. Temporary Speaker, Sir, I support this Report and I believe that if this conversation started three months ago, things could be different at the counties.

The Temporary Speaker (Sen. Mositet): Hon. Members, I can see that quite a number of you want to contribute. We may not have time. So that we give each Member

an equal opportunity, can we reduce the time for debate to three minutes except for the Senate Minority Leader who will have ten minutes?

Sen. Omondi: Mr. Temporary Speaker, Sir, thank you for allowing me to add my voice to this important Motion. First of all, I want to congratulate the Committee for working tirelessly to ensure that we have this Report that touches on the development of our counties. As we know, development is a matter that is concerned with people's lives and the future of the generations to come. I want to say that as we work as a House or as Senate to ensure that the Government gets revenue allocation, they need to be reminded that this money is not for personal gain or for rewarding their close allies. I want to speak with a lot of passion regarding the way the people I represent, that is, people with disabilities are being treated when it comes to matters of budgeting, revenue allocation within the counties, involvement with people with disabilities and touching the lives of these people.

I want to make it clear that as far as we talk about involvement, there is a group that is left behind and these are people with disabilities who are never consulted, involved or given information about what is happening within their counties. The service providers and the implementers of the Constitution are very happy moving ahead thinking that they are serving everybody when they are leaving the most vulnerable group behind. I want to say that even if remind ourselves of all that has been talked of here, nothing has touched on the people with disabilities. The 30 per cent requirement for tendering, only talks about two groups of people, when constitutionally, it is about three categories, that is, people with disabilities, women and the youth. Since disability is not something to be given a priority and most of the time, it is given at the end of the tail, I think that is why most of the time disability does not feature anywhere.

Mr. Temporary Speaker, Sir, when we look at the issue of health, you find that most people with disabilities are not able to access health facilities because there is lack of accessibility within the existing facilities and also the distance. To add on that, the kind of services offered to the people with disabilities is demoralizing and it sends away this group of people.

As I support this Motion, I want to mention two counties which have the best practices as far as disability is concerned; Kiambu and Migori counties. These are the only counties that have keenly worked to ensure that disability is mainstreamed.

The Temporary Speaker (Sen. Mositet): Order, Sen. Godliver! Your time is up.

Sen. Mungai: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I would like to thank Sen. Moses Kajwang for his very eloquent contribution and making his Maiden Speech today. Nakuru is looking forward to working together with you.

Mr. Temporary Speaker, Sir, my contribution will be on three of the five pillars that are in the Budget Policy Statement. I want to focus on agriculture. Our Government has proper plans to ensure that we become food-sufficient, but as it tries to achieve this target, I would want irrigation to be looked into further. When the Government itself becomes the main player in farming – we have seen the Agricultural Development Corporation (ADC) and other bodies - it might not perform well. Nakuru County, for example, is able to supply the country with very cheap electricity. By so doing, the

Government is supposed to come up with a policy where farmers would have boreholes and are given subsidies in terms of even the piping and everything that is required.

I say this knowing very well that towards the end of last year, farmers in this country faced serious challenges regarding their produce. Despite the fact that the Government came in and added some Kshs500 million to cushion farmers against the viral disease, this never benefitted the majority of the farmers. This is because it was only---

The Temporary Speaker (Sen. Mositet): Your time is up.

Senate Leader of Minority, you have ten minutes before we call the Mover to reply.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to contribute to this very important Motion. I salute the distinguished new Senator, Moses Otieno Kajwang. I regret that I was in a meeting and missed his Maiden Speech. I would have loved to hear him. But I know how eloquent and bright he is. I campaigned for him and we criss-crossed Homa Bay County. He was quite dynamic. So, I thank the people of Homa Bay for electing a young distinguished Senator to fit in the shoes of our departed brother, Gerald Otieno Kajwang.

Mr. Temporary Speaker, Sir, I will speak to a few things that are in this Report. I am a Member of this Committee and want to salute my Chairman who is seated in front of me. He is sometimes high-handed, but he has chaired the Committee very competently. The Committee has done a good job.

Looking at the Budget and resources that we are pumping in this country, the big question that we keep asking ourselves is: Does this annual ritual and cycle make a difference in the lives of the people of Kenya?

Mr. Temporary Speaker, Sir, does every single cent that goes into the Budget reach the destination where it is destined? How do we fight the bottlenecks, the leakages and seepages that hemorrhage the budget? Today, in this country, what is now commonly called “rent seeking” -some people call it *mlungula*, others call it corruption and now we have a new name “chicken gate” - has reached fever pitch.

People are working in Government and public offices not for the public but for themselves. The obscenities we are seeing around governors is frightening. For those of us who believe in devolution, it is very disheartening to see that what we have devolved is to create a small clique in every county that is busy living in opulence and obscenity while the ordinary person is suffering. Take any county, the amount of money, inadequate as it is, that has been sent to each county, ought to have changed the lives of the people. However, it has changed the lives of governors and those who hang around them. The ordinary person in the counties is worse off than before devolution. You expect to see water, good roads, proper health services and many other things, but they are not there. We face this because the problem of corruption in this country has become endemic. What are the institutions that fight corruption doing?

Mr. Temporary Speaker, Sir, we have the police with a fully fledged Criminal Investigation Department (CID) wing. We do not hear of them anymore. When we hear about the CID, they are pursuing a Member of Parliament for making a speech that annoyed a leader or a Member of Parliament who went to demonstrate to demand

people's rights. The CID is very active on that yet on matters of accountability and corruption, you no longer hear them. The creation of the Ethics and Anti Corruption Commission (EACC) was not in place of the CID. It was in addition. We do not hear about the CID anymore, and in EACC, we do not see much going on. Somebody was telling me that the case of the 'chicken people' in London was predicated on evidence from Kenya provided by the EACC. The men in London are now in jail, including a 75 year old man. In Kenya, we are told; "Where is the evidence?" It is really distressing.

Then, we have the Office of the Auditor-General. I listened to Sen. Murkomen, pontificating about the failure of that office to work. My Chairman can tell you that the Office of the Auditor-General has been dismembered to a level where it cannot work. They are not given adequate budget to even audit Nairobi County which is 60 per cent of our GDP. One would expect that with this runaway corruption, the Office of the Auditor-General should now be moving to have a fully-fledged office in every county, so that we move away from these postmortems on theft and corruption and have a process of stopping corruption and theft.

What is the purpose of the annual ritual of telling the country that last year, we lost Kshs10 billion in corruption; last year, we lost so much; last year, this or that department lost so much? We can do prevention, but what are we seeing from this Government? There is a Bill in the National Assembly crippling the Office of the Controller and Auditor-General even further. In fact, it is attempting to make him an independent constitutional office accountable to the Attorney-General. This is not the conduct of a country that desires to fight corruption.

Mr. Temporary Speaker, Sir, I want to urge my Chairperson – who is quite good at figures and other things – that our Committee should originate a Bill – regardless of what is in the National Assembly – and bring it here to strengthen the Office of the Controller and Auditor-General. Let them kill it at some level or at some place, but let it go into the history of this country that we in the Senate fought to strengthen the Office of the Controller and Auditor-General, including a provision for a full fledged office in each county to monitor the expenditure of public resources.

Then, Mr. Temporary Speaker, Sir, we have the county assemblies, which have been completely crippled. They have been captured by governors; they live on the goodwill of governors and they cannot possibly oversight them at all. I have heard Sen. Murkomen talking about the media. Once again, sometimes we say things that we do not believe in – and I reserve my harsh words for him – but he has been part of the problem. On the overlap of functions, I listened to my Chairperson and he was very eloquent. I dare ask; the Ministry of Devolution is a transitional Ministry; why is it controlling devolved functions like water? People are queuing at the Ministry of Devolution to be given gifts and political goodwill projects to go and construct dams when water is a devolved function.

The National Youth Service (NYS) at the very most is a paramilitary organization; it should be under the Office of the President, which is Maj. (Rtd.) Nkaissery's office. What is it doing under the Ministry of Devolution? Is it because last year its budget rose from Kshs200 million to Kshs17 billion? Why is it under the Ministry of Devolution? What is devolution about the NYS other than creating centres

where money is to be siphoned and hemorrhaged for political purposes? Health is a devolved function, but you can see a claw back by the national Government. We, in the Constitution, gave the national Government an opportunity to run referral hospitals and it can very well establish these hospitals either in every region or in every county. But as it is, they are making it impossible for county health facilities to run. Because of rent seeking, again, they want to control the procurement of medicine and they want to control every manner of bits about health. This is not the way to go.

Mr. Temporary Speaker, Sir, transport is very critical. I agree with the Chairperson that we want the Standard Gauge Railway (SGR), the fraud in it notwithstanding. You know how much has been stolen from the SGR; a project that was costing Kshs200 billion is now costing Kshs427 billion by the same company that had tendered for Kshs200 billion. This is massive theft! It disheartens us when such a fraud that is so glaring comes to Parliament and Parliament says “we give you a clean bill of health, move on! The stories you hear are not good either. We want to see the SGR extended to Malaba. There is some malicious conspiracy being brewed to make sure that the SGR does not go up to Malaba. We are watching and we are waiting.

Finally, Mr. Temporary Speaker, Sir, we want to see tarmac roads all over the country, including northern Kenya. Tarmacked roads should not rotate around central Kenya and parts of high potential like Nakuru and so on, and so forth. We want to see tarmacked roads in Wajir, Garissa and Mandera.

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

The Temporary Speaker (Sen. Mositet): Order, Senator! Your time is up.

Now I call upon the Mover to reply. Proceed, Sen. Billow.

Sen. Billow: Thank you very much, Mr. Temporary Speaker, Sir. I want to start by thanking all the Members who have contributed to this very useful Motion. Not in the least, I also want to express my great appreciation for the speech by the Hon. Member for Homa Bay. I listened to it and I think he did it very eloquently. I am sure that the people of Homa Bay who listened just as the Senator for Nakuru was impressed - I am sure the people of Homa Bay will be more impressed and would appreciate that they made the right choice.

Mr. Temporary Speaker, Sir, I just want to make a couple of comments. One, I want to urge the Ministry of Finance and the national Treasury to ensure that the budget estimates that will be prepared for the national Government, reflect the development priorities predicated on the policies and strategies that are contained in this Statement. Quite often, you will find that the resource allocation by the Government is not aligned to national policies or even, our development blue prints, like the flagship projects in Vision 2030. We have made recommendations to that effect and we urge them to take note of that and take on board all those recommendations.

Secondly, Mr. Temporary Speaker, Sir, the final pillar that the Government focused on is to entrench devolution for better service delivery. The import of that is that the Government will provide adequate resources to ensure that devolution is entrenched. Notwithstanding the fact that the proposed criteria for revenue allocation for the second generation was rejected by the House a short while ago, I think it is very important that these Members are alive to the fact that when the Division of Revenue Bill comes up in

the next few weeks, they have an opportunity to ensure that more resources are allocated to the counties.

I want to really urge Members to walk the talk. It is a pity that some of the Members who very strongly objected to that criteria are not here because some of them, in fact, it is not a secret, that when it comes to proposals to amend the Division of Revenue Bill and increase revenues, they are the first ones to shoot it down. We are talking about none other than the Chairperson of the Committee on Devolved Government and the Senate Majority Leader, who would not allow a penny to be increased yet they are the same ones who want their constituents and residents to hear that they rejected the formula because their counties are getting small amounts of money. The solution to getting more money is to push for more money when the Bills come for allocation of revenue between the two levels of government.

Without wasting more time because we have to vote on this, I beg to move.

The Temporary Speaker (Sen. Mositet): Hon. Senators, the Motion that has just been concluded is not a matter that affects counties and I so rule pursuant to Standing Order No. 72(1). Therefore each Senator has one vote pursuant to Standing Order No. 72(3)

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 3rd March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.