

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 22nd July, 2014

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

ARRIVAL OF THE PRESIDENT OF THE SENATE OF RWANDA

[The President of the Senate of Rwanda (Rt. Hon. (Dr.) Jean Damascene Ntawukuliryayo) and the Speaker of the Senate (Hon. Ethuro) entered the Chamber at thirty minutes past two o'clock accompanied by the mace]

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

[The President of the Senate of Rwanda (Rt. Hon. (Dr.) Jean Damascene Ntawukuliryayo took his Designated Chair]

(The Mace was placed on the Table)

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME TO THE PRESIDENT OF THE SENATE OF RWANDA,
THE RT. HON. (DR.) JEAN DAMASCENE NTAWUKULIRYAYO

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make on the Address to the House by the President of the Senate of the Republic of Rwanda.

It gives me great pleasure, on your behalf and on my own behalf, to extend a very special and warm welcome to our colleague and dear friend, the President of the Senate of Rwanda, the Rt. Hon. (Dr.) Jean Damascene Ntawukuliryayo.

Mr. President, welcome, *Karibu* to the Senate of the Republic of Kenya.

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(Applause)

As hon. Senators are aware, the President of the Senate arrived in our country last Friday, 18th July, 2014 for an official visit whose climax will be his address to the Senate and to the people of Kenya, this afternoon.

It is worth noting that the address by the President of the Senate of Rwanda will be the first to the Senate of Kenya by a visiting dignitary, which further restates the special place of Rwanda to our country in particular and to the East African Community (EAC) generally. Indeed, Article 5 of the EAC treaty calls upon us to deepen and widen the cooperation among the community.

Hon. Senators, allow me, therefore, to start by thanking the President of the Senate of Rwanda for honouring the Senate and the people of Kenya through this reciprocal bi-lateral visit. I have no doubt in my mind that the visit has entrenched the already existing cordial relations between our countries and Parliaments for the mutual benefit of our people and by extension, the greater East African Community. The Senate of Rwanda has been generous in enabling our committees perform study visits in order to operationalise the functions of the Senate.

Mr. President and hon. Senators, our countries are grappling with a number of challenges ranging from poverty, marginalization, unemployment, negative ethnicity, terrorism, insecurity, illiteracy, poor infrastructure, high morbidity rates *et cetera*. In addition to this, over dependence on rain-fed agriculture is leading to food insecurity, underdevelopment and internal strife, among others. The list is endless. However, tied to these challenges, like siamese twins, are tremendous opportunities to take our respective countries forward. As the old saying goes, “there is always a silver lining in every cloud.” Kenya and Rwanda must not only learn from our nasty experiences of genocide and post election violence of 2007/2008 respectively, but must rise from these ashes like a phoenix. These challenges should spur us to action to ensure that we do not only overcome them, but also take our societies and communities on a higher level, of a higher pedestal of economic growth, advancement in political institutions and social cohesion devoid of internal strife and conflict as captured in our visions (Rwanda Vision 2020 and Kenya Vision 2030). We must, therefore, invest in our institutions, the rule of law and constitutionalism in order to sort out any challenge that are societies are confronted with.

Mr. President, hon. Senators, this is what we have been called upon to do as leaders and as an institution of Parliament; namely, to tirelessly continue to seek solutions to the problems facing the people and to demolish structures that stand in the way or impede the achievement of the full potential of our people through robust legislation. I am sure I speak for the Kenyan Senate when I quote Winston Churchill upon his very first entry into the House of Commons as Britain’s new Prime Minister on Monday, 13th May, 1940, when he made this brief statement:-

“I would say to the House, as I said to those who have joined the government, I have nothing to offer but blood, toil, tears and sweat and in all these, in another speech, victory must be assured.”

Mr. President, as I conclude, I wish to reiterate that the Senate of the Republic of Kenya will continue to foster closer links with the Senate and the people of Rwanda, like many other countries in the region, in order to share experiences in addressing the challenges that confront us and together, I am certain that we shall overcome, each one of us, doing our part, as a legislature.

Hon. Senators, it is now my singular duty and honour to invite our distinguished guest and friend, the President of the Senate of Rwanda, to address the Senate and the people of Kenya.

I thank you.

(Applause)

Mr. President, before you arise, I will allow Members at the bar one minute to enter the Chamber.

(Several hon. Senators entered the Chamber)

ADDRESS BY VISITING DIGNITARY

ADDRESS BY THE PRESIDENT OF THE SENATE OF RWANDA,
THE RT. HON. (DR.) JEAN DAMASCENE NTAWUKULIRYAYO

Hon. (Dr.) Jean Damascene Ntawukuliryayo: Your Excellency, the Rt. hon. Speaker of the Senate of Kenya, the Rt. hon. Deputy Speaker, hon. Senators, please, accept my thanks for the opportunity to address the esteemed Senate of the Republic of Kenya as I conclude my official visit today.

This occasion offers me, first and foremost, a unique forum from which to convey the warm greetings and appreciation of the Government and the people Rwanda for the friendship and cooperation between our two countries as shown over many years.

(Applause)

A great spirit of cooperation has been and continues to characterize Kenya-Rwanda relations. It is my sincere hope, and that of the Senate of Rwanda, that this spirit keeps growing up until beyond when Rwanda and Kenya have transcended our political, economic and social challenges together.

There is no better evidence of the friendly relationship between our two countries, than the ambitious targets set by East African nations and the work being done by His

Excellency Uhuru Kenyatta, the President of Kenya, His Excellency President Yoweri Kaguta Museveni of Uganda and His Excellency President Paul Kagame of Rwanda in the framework of the Tri-Partite Projects in the East African Community at large. Today, we have before our eyes, an opportunity to make regional integration a success in a way never imagined before. Since June 2013, particularly our two countries, Kenya and Rwanda, together with Uganda, have been pursuing several joint integration initiatives, especially cross-border infrastructure projects, as well as other schemes designed to ease movement of people, goods and services across the region. These cooperation initiatives between our countries have brought real advantages and great hope to our people.

Hon. Speaker of the Senate, hon. Deputy Speaker and Members of the Senate, these achievements cannot be sustained unless there is peace and security. It is for this reason that Kenya and Rwanda are parties to the defense, peace and security pacts signed this year. This framework of solidarity will primarily put in place mechanisms to safeguard regional infrastructure that our countries plan to put in place and will increase partnership in the fight against terrorism. The pacts are meant to strengthen regional security and partnership in the fight against terrorism, cross-border crime and other regional security threats. This security framework will address the threats of several negative armed groups such as the Genocidal FDLR in the case of Rwanda and *Al Shabaab* in the case of Kenya and the region.

It is against that background that my presence here serves to express our solidarity with the people of Kenya. Our hearts were with you when *Al Shabaab* terrorists attacked and bombed Westgate Mall and caused immeasurable pain and desolation. We will continue to be with you, as you have been with us, at the time when we needed friends most after the 1994 genocide against the Tutsi in Rwanda.

Rt. Hon. Speaker of the Senate, hon. Deputy Speaker and hon. Senators, it is important to recall the role of national parliaments as an embodiment of representative democracy at the national level. National Parliaments, within partner states, are an important cornerstone of our regional integration. National parliaments have a very important role to play in order to sensitize our electorate and mobilize all stakeholders, private and public, so that they acquire a greater sense of urgency regarding these regional projects. It is our responsibility to call on our governments, our fellow citizens and all stakeholders, to maintain the momentum, especially on the infrastructure for transport and electricity, in order to complete the agreed projects for the benefit of our people and our region.

The role of the national parliaments on the national and community level is crucial for fostering the trust of citizens in the integration initiatives and their objectives. If parliamentarians play their role, there is no doubt that integration will be realized in our lifetime.

Rt. Hon. Speaker and hon. Members of the Senate, if we, the Senate of Rwanda, in partnership with the Senate of Kenya and the national assemblies of other partner

States can play a role in helping take regional integration matters on a higher level, we will do so.

The Rwandese are realistic about the challenges that lie ahead for our region as well as steadfast in our determination to overcome them. Resilience and optimism; these values of our national spirit have taken root in our lives in the last 20 years since the genocide against the Tutsi has been stopped. A key priority for Rwanda after the 1994 genocide has been to empower women so that they lead Rwanda through the critical period of reconciliation and transformation. Women empowerment is one among many lessons Rwanda is carrying to our friends, as a reminder that democratic empowerment, inclusion and fair representation have a transforming impact which regional integration cannot ignore and which the whole world cannot ignore.

(Applause)

Right hon. Speaker and hon. Members of the Senate, as we work with you and our fellow EAC partner States to advance regional integration, we strongly believe in the perspective of African renaissance, African independence and African dignity.

With this newfound optimism comes confidence that we prepared to face not only our own national challenges, but our share of the community's too. We are ready to play our part and, as I said, when I arrived here in Kenya, together we shall prosper and make it.

I thank you.

(Applause)

PAPER LAID

ADDRESS BY THE PRESIDENT OF THE SENATE OF RWANDA,
THE RT. HON. (DR.) JEAN DAMASCENE NTAWUKULIRYAYO

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I wish to lay the following Paper on the Table of the Senate:-

The Address by the President of the Senate of Rwanda, the Rt. Hon. (Dr.) Jean Damascene Ntawukuliryayo.

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

**DEPARTURE OF THE PRESIDENT OF THE
SENATE OF RWANDA**

The Speaker (Hon. Ethuro): Hon. Senators, it is now the pleasure of the President of the Senate of Rwanda to take his leave. I wish to suspend the sitting for about 30 minutes and request Senators to remain up standing until the procession leaves the Chair and thereafter to join the President of the Senate and Members of his delegation for refreshments.

(Hon. Senators rose in their places while the President of the Senate of Rwanda, the Rt. Hon. (Dr.) Jean Damascene Ntawukuliryayo left the Chamber)

(The Senate adjourned temporarily for 30 minutes at 2.53 p.m.)

(The Senate resumed at 3.35 p.m.)

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

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, as you can see the House has resumed.

Next Order!

PAPERS LAID

REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF
REVENUE BILL (NATIONAL ASSEMBLY BILL NO.15 OF 2014)

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to lay on the Table of the Senate the following Paper:-

The Report of the Mediation Committee on the Division of Revenue Bill, National Assembly Bill, No.15 of 2014.

(Sen. Billow laid the document on the Table)

REPORT OF THE STANDING COMMITTEE ON NATIONAL SECURITY
AND FOREIGN RELATIONS ON THE ALCOHOLIC DRINKS
CONTROL (AMENDMENT) BILL, 2014

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Sen. Adan: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the House:-

The Report of the Standing Committee on National Security and Foreign Relations on the Alcoholic Drinks Control (Amendment) Bill, 2014.

(Sen. Adan laid the document on the Table)

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

NOTICES OF MOTIONS

ADOPTION OF REPORT OF THE AD HOC COMMITTEE ON LEGISLATION ON HARAMBEE

Sen. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the *ad hoc* Committee on Legislation on Harambee (voluntary contribution) laid on the Table of the House on Thursday, 19th June, 2014.

APPROVAL OF THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

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

THAT, in accordance to Standing Order No.227 (1) and (2), the Senate approves the Report of the Standing Committee on Agriculture, Livestock and Fisheries laid on the Table of the House on Thursday 17th July, 2014.

THANKS FOR THE ADDRESS BY THE PRESIDENT OF THE SENATE OF RWANDA

The Senate Majority Leader (Sen. (Prof. Kindiki): Mr. Deputy Speaker, Sir, I be to give Notice of the following Motion:-

THAT, the Thanks of the Senate be recorded for the address by the President of the Senate of Rwanda, the Rt. Hon. Jean Damascene Ntawukuliryayo delivered on Tuesday 22nd July, 2014.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I had made a request to make contributions to a Bill that was already listed on the Order Paper earlier. So, I think that is where the mix up came from.

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APPROVAL OF REPORT OF THE MEDIATION
COMMITTEE ON THE DIVISION OF REVENUE
BILL (NATIONAL ASSEMBLY BILL NO.15 OF 2014)

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

THAT, the Senate approves the Report of the Mediation Committee on the Division of Revenue Bill, Nation Assembly Bill No.15 of 2014, laid on the Table of the Senate on Tuesday, 22nd July, 2014.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, do you have something else you want?

Sen. Billow: Mr. Deputy Speaker, Sir, yes, when we come to the Motions.

The Deputy Speaker (Sen. Kembi-Gitura): But we are not there yet.

Sen. Billow: But I have given the Notice of Motion.

The Deputy Speaker (Sen. Kembi-Gitura): You have given the Notice of Motion, but I could still see your request.

Sen. Billow: Sorry, Mr. Deputy Speaker, Sir.

(The Deputy Speaker consulted the Clerk-at-the-Table)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I am waiting for a small clarification as we move on to the next order. So, please, bear with me.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 45(2)(b), I wish to request for a Statement from the Chairperson of the Departmental Committee on Legal Affairs and Human Rights---

The Deputy Speaker (Sen. Kembi-Gitura): Order! We are not on Statements yet, but I still have your request here.

Are we through with notices of Motions?

(The Deputy Speaker consulted the Clerk-at-the-Table)

Next Order!

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): We have Statements that are listed on the Order Paper. Let us deal with them first and then we move on to the next ones.

Is Sen. (Prof.) John Lonyangapuo not yet here?

Sen. Wilfred Machage.

STATUS OF ISEBANIA-KEHANCHA-GWITEMBE AND MIHURU BAY-MIGORI-
KEHANCHA-NGORENGORE ROADS

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, allow me to seek a Statement from the Chairperson of the Committee on Roads and Transportation regarding the Isebania-Kehancha-Gwitembe Road, otherwise, referred to as E166 and the Muhuru Bay-Migori-Kehancha-Ngorengore Road, otherwise, referred to as C13.

In the Statement, I would like the Chairperson of the Committee to state:-

(i) whether the Ministry of Transport and Infrastructure is aware that the two above stated roads are in very dilapidated state;

(ii) whether the Government of the Republic of Slovakia is financing the construction of Road E166 to the tune of about Kshs4.3 billion loan and explain why the construction of the road has stalled;

(iii) whether China Wu Yi Construction Company was awarded the contract to construct Road C13 and why the construction has not taken off; and,

(iv) when construction of Road E166 will be completed.

Thank you, Mr. Deputy Speaker, Sir.

COMPLIANCE WITH ARTICLE 231 (4) OF THE CONSTITUTION

Sen. Orenge: Mr. Deputy Speaker, Sir, with your permission, I seek the following Statement from the Chairman of the Senate Committee on Legal Affairs and Human Rights, relating to compliance with Article 231(4) of the Constitution in the following terms:-

(1) What is the national Government doing to ensure that notes and coins issued as currency by the Central Bank of Kenya comply with the provisions of Article 231(4) of the Constitution and why there is delay in compliance?

(2) Can the Chairman confirm or deny that there is a serious scheme on the part of the national Government to go round or circumvent the said provisions by issuing notes and coins that bear the images of individuals by way of depicting statutes of certain individuals in our currency?

The Deputy Speaker (Sen. Kembi-Gitura): We will start with Sen. (Dr.) Machage. We did not get a return date for your Statement.

Where is the Chairperson of the Standing Committee on Roads and Transportation?

(Sen. Ongoro and Sen. Muthama consulted while standing)

Order, Sen. Ongoro and Sen. Muthama! You cannot stand in a straight line between me and the Senator who is standing to speak.

(Sen. Ongoro and Sen. Muthama resumed their seats)

Sen. Sijeny: Mr. Deputy Speaker, Sir, I would request for three weeks to get all the details and respond adequately.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, three weeks is a bit too much. Two weeks may be acceptable.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, you are aware that according to our calendar we will be going on recess towards the end of the month. So, by three weeks you mean after the recess. Is it not?

Sen. Sijeny: Mr. Deputy Speaker, Sir, I will try within two weeks.

The Deputy Speaker (Sen. Kembi-Gitura): No! No! I want a date. You can tell me that you will give it on 31st July, 2014, before we proceed on recess.

Sen. Sijeny: On 31st July, 2014.

The Deputy Speaker (Sen. Kembi-Gitura): What day is it?

Sen. Sijeny: It is a Thursday.

The Deputy Speaker (Sen. Kembi-Gitura): Then you will give the Statement on 31st July, 2014.

Is that okay, Sen. Machage?

Sen. (Dr.) Machage: Yes, Mr. Deputy Speaker, Sir.

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

Regarding the request by Sen. James Orengo, is the Chairperson of the Committee on Legal Affairs and Human Rights not here?

Vice-Chairperson.

Sen. Sang: Mr. Deputy Speaker, Sir, I undertake to respond to the questions, maybe, the first week when we resume from recess.

The Deputy Speaker (Sen. Kembi-Gitura): In September?

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

The Deputy Speaker (Sen. Kembi-Gitura): Is that okay, Sen. James Orengo?

Sen. Orengo: Mr. Deputy Speaker, Sir, two weeks will be sufficient because this is a straight forward question. He can give an answer on the 31st July, 2014, but if it is possible he can do so within two weeks before we go on recess, I will not have any objections.

Sen. Sang: Mr. Deputy Speaker, Sir, we have handled several questions with the Attorney-General's office. But speaking from experience, I know that since we have one week before going on recess, I can give progress on the same on 31st July, 2014. However, I will give a comprehensive answer on the first week after we come from recess.

The Deputy Speaker (Sen. Kembi-Gitura): I do not recall that there is a provision for a progress report. You either can give us an answer or not. If you cannot

give the answer on 31st July, 2014, in good faith, then ask for a day that is practicable to you.

Sen. Sang: The first Tuesday after recess.

(Sen. Orenge nodded)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orenge agrees and so, that is okay.

Sen. Khaniri.

LOSS OF VEHICLE REGISTRATION NO.KYN 263 BELONGING
TO MR. CHARLES IRAVONGA MATENDECHERE

Sen. Khaniri: Mr. Deputy Speaker, Sir, pursuant to the provisions of Standing Order 45 (2) (b), I wish to seek a Statement from the Chairperson of the Standing Committee on Health regarding the loss of vehicle registration No.KYN 264, Honda; dark gray in colour, belonging to Mr. Charles Iravonga Matendeche during his medication at the Nairobi Hospital.

Mr. Deputy Speaker, Sir, Mr. Matendeche drove himself to the hospital for medication and was admitted on 21st September, 2003. His vehicle was parked within the designated car park at the hospital. It was towed to Kilimani Police Station and consequently disappeared.

In the Statement, the Chairperson should explain under what circumstances the vehicle disappeared from the hospital precincts, why it was towed to Kilimani Police Station and when Mr. Matendeche will be given back his vehicle, including measures undertaken to compensate him for the inconvenience.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is the Chairperson of the Committee on Health not here?

Sen. Kittony, do you have something to do with the Committee on Health? Who is the Chairperson of the Committee on Health?

Sen. Kittony: Mr. Deputy Speaker, Sir, the Chairperson is Sen. Kutu and I am the Vice-Chairperson.

The Deputy Speaker (Sen. Kembi-Gitura): When will you be able to give an answer for this question by Sen. Khaniri?

Sen. Kittony: In two weeks' time.

The Deputy Speaker (Sen. Kembi-Gitura): Is that satisfactory, Sen. Khaniri?

Sen. Khaniri: Mr. Deputy Speaker, Sir, it is okay with me. But in two weeks' time, of course, we will not be here. I would request that if possible, just like Sen. Sang gave a commitment that he could try and do it on 31st July, 2014, they could try and have

an answer, because this is a very straight forward matter. We just want to know the whereabouts of the vehicle. If she can do it on 31st July, 2014, I will be very grateful.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, you need to look at the HANSARD, so that you can understand what the question was and the answer that needs to be given in a particular period of time.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I was looking at this question and wondering what relationship it has to do with the Committee on Health.

The Deputy Speaker (Sen. Kembi-Gitura): It is too late. The question was approved by the Speaker, it has been asked and a date for giving the answer has been given.

Sen. Murkomen: It is a security problem, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): It may very well be, but the question was approved, the Statement has been sought and a date to give the Statement given by the Committee.

Sen. Kanainza, do you have a point of order?

Sen. Kanainza: On a point of order, Mr. Deputy Speaker, Sir. Did you notice Sen. Kittony pointing at you?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, did you do that? Is it true?

Sen. Kittony: Mr. Deputy Speaker, Sir, I did not hear that. I was consulting with somebody here.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, before I make my request, could the Clerks-at-the-Table help me, because when I key in my Personal Identification Number (PIN), my gadget reads "Russian?" I do not know if it means Russian language or whatever it does. Could they check?

The Deputy Speaker (Sen. Kembi-Gitura): But here it reads your name.

(Laughter)

IRREGULAR RETIREMENT OF MR. FRANCIS AWOLI
AND MS. JACKLINE MUGO FROM THE NSSF BOARD

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 45(2)(b), I wish to request for a Statement from the Chairperson of the Departmental Committee on Justice and Legal Affairs regarding the irregular retirement from the National Social Security Fund (NSSF) Board of the Central Organization of Trade Unions (COTU) representative, Mr. Francis Atwoli, and the Federation of Kenya Employers (FKE) representative Ms. Jackline Mugo by the Cabinet

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Secretary for Labour, Social Security and Service, one Hon. Kambi Kazungu. Last week, the Cabinet Secretary allegedly retired the said representatives to the NSSF board citing the new NSSF Act of 2013 in disregard of the Transitional Clauses of the same Act. Yesterday Monday, 21st July, 2014, the Industrial Court revoked the gazette notice published by the Cabinet Secretary on the alleged retirement and ordered the reinstatement of the two representatives.

In the Statement, the Chairman should inquire into and report on the following:-

(i) the powers, laws or alleged powers and/or whose authority the Cabinet Secretary for Labour, Social Security and Service used to justify his decision;

(ii) whether the reason for the unprocedural retirement had any relationship with mega corruption in NSSF;

(iii) whether this Cabinet Secretary can make unlawful decisions in total contravention of the law, retraction of the law and Constitution of Kenya;

(iv) whether in light of the Industrial Court decision, appropriate and immediate measures will be taken to ensure that the Cabinet Secretary is investigated and prosecuted for a possible abuse of office offence against the Ethics and Anti-Corruption Act and the Penal Code.

Sen. Sang: Mr. Deputy Speaker, Sir, judging from the urgency of the question, I undertake to reply to the Statement on 31st July, 2017.

The Deputy Speaker (Sen. Kembi-Gitura): Do I take that to be 31st of this month?

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

The Deputy Speaker (Sen. Kembi-Gitura): That brings us to the end of---

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o Omogeni.

Sen. Okong'o: Mr. Deputy Speaker, Sir, I am Sen. Mong'are Okong'o.

The Deputy Speaker (Sen. Kembi-Gitura): Sorry, I called you Omogeni?

Sen. Okong'o: Yes, Mr. Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, sometimes, your list shows like that and I do apologize. Of course, I know your name very well. I hope you will accept my apology.

Sen. Okong'o: Mr. Deputy Speaker, Sir, if the list shows like that, then it is very wrong.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, the original list. I apologize and I do not think we should pursue that issue.

Sen. Okong'o: Mr. Speaker, Sir, that notwithstanding, I had sought a Statement from the Chair of the Committee on Agriculture, Livestock and Fisheries on the damning report by the Kenya Tea Board which was due to be answered last week on Tuesday. But by virtue of the intervening urgent business of the House, it was not responded to. So, I am requesting if the Chair of the said Committee can undertake or let us know when he can respond to that Statement.

The Deputy Speaker (Sen. Kembi-Gitura): Who is the Chairperson of that Committee?

Sen. Ndiema, do you have some instruction on that?

Sen. Ndiema: Mr. Speaker, Sir, mine is also reading Chinese.

(Laughter)

Sen. Ndiema: Mr. Deputy Speaker, Sir, I undertake to ensure that it will be responded to on Tuesday, next week.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o, is that okay?

Sen. Okong'o: It is okay, Mr. Deputy Speaker, Sir.

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

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Munyes, why can you not move to the Dispatch Box if you have a point of order to make?

Sen. Munyes: Mr. Deputy Speaker, Sir, last week, I requested a Statement which was supposed to be issued today regarding custom barriers at Nadapal Post along the border of Kenya and South Sudan. It was meant to be presented today.

The Deputy Speaker (Sen. Kembi-Gitura): From which Committee?

Sen. Munyes: Mr. Deputy Speaker, Sir, from the Committee on National Security and Foreign Relations.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji is not here.

Who is from the Committee?

Sen. Ongoro: Mr. Deputy Speaker, Sir, in view of the importance of this matter, I undertake to inform my Chairperson and we will present the response on Thursday, next week.

Is it okay with you?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ongoro, it is not in your place to ask the hon. Senator whether it is okay or not with him. You are exceeding your authority.

Sen. Munyes: It is okay, Mr. Deputy Speaker, Sir.

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

Let us get the response Thursday, next week. It is so ordered.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I raised an issue and Sen. Ndiema also said his card reads Chinese language and Sen. Munyes says his reads Russian language. All of them are members of my party and CORD. Is this some form of conspiracy against my party?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I can say what you are saying clearly in English language. I think it is a typo.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, can it be corrected?

The Deputy Speaker (Sen. Kembi-Gitura): We shall check and find out what is wrong.

The Senate Minority Leader (Sen. Wetangula): Is it a coincidence that this problem only affects me, my party's national chairman and the distinguished Senator for Trans Nzoia County?

The Deputy Speaker (Sen. Kembi-Gitura): I want to hope it is not, but I undertake that we shall check and come back to you in due time.

That brings us to the end of Statements. No more requests for Statements.
Next Order!

MOTION

APPROVAL OF REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2014)

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

THAT, the Senate approves the Report of the Mediation Committee on the Division of Revenue Bill, National Assembly Bill, No.15 of 2014, laid on the Table of the Senate today, 22nd July, 2014.

Mr. Deputy Speaker, Sir, I am sure if Members have not received copies, they are available now. In view of the time, I want to be brief. I do not want to go into the history of how this Bill ended up in mediation. There are two issues that were raised by the National Assembly. The first one is on the amendment to Clause Four that we had made regarding a provision for adequate funding of Level Five hospitals; the second was amendment to the Schedule. Members of the Mediation Committee from our side; myself, Sen. Kagwe and Sen. Mutula Kilonzo Jnr. and three other Members from the National Assembly, hon. Mutava Musyimi, hon. Mary Emase and hon. John Mbadi - we looked at the two areas and we made some agreement which forms the basis of the report. I will be requesting the Senate to approve this mediation report.

Mr. Deputy Speaker, Sir, in both of those areas, what we have agreed very briefly is as follows: With regard to the Schedule, the Committee noted that the removal of the 43 per cent as a representation of the percentage of the Kshs529 billion being the national revenue for the year 2009/2010 in line with Article 203(2) of the Constitution was one of the reasons the amendment was rejected by the National Assembly. We deliberated on that and agreed to reinstate the third column of the Schedule, but with a better explanation as a footnote. The explanation now reads as follows: "Based on the

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2009/2010 audited revenues, approved by the National Assembly, the county allocation of Kshs226.66 billion represents 43 per cent of Kshs529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.”

We agreed on that and it is just on presentation. We thought that our presentation in the Senate was more useful for the layman or the public out there, but when we discussed, Members felt that the percentage needs to be reflected because of the constitutional requirement and we agreed to that.

The second was the amendment to Article 4 of the Division of Revenue Bill regarding the allocation to Level Five Hospitals. The Committee discussed the issue and noted the fears of the Senate that Level Five hospitals risk closure if they are not well-funded. The argument we gave was that counties with Level Five Hospitals will be unfairly disadvantaged as they will be forced to put in an extra amount of the equitable share to run the Level Five Hospitals which provide services to other nearby counties.

Mr. Deputy Speaker, Sir, it was also noted that the monies that the counties are getting from the equitable share may not be sufficient to run the Level Five Hospitals. Those counties had made a specific request for an increase in additional revenue to support the running of those hospitals. We also noted that there is an urgent need to conduct costing of Level Five Hospitals’ functions to determine the amount of resources required to run them. We looked at all these and concerns were raised by the Committee on the utilization of funds by the counties. There are accusations in the media that counties are now misusing money and we have also seen reports from the Auditor-General and the Controller of Budget. It is said that counties are using money on issues that are not of priority. We assured the Committee, the Senate was engaged in active consultations on all budgetary issues and that we are in the process of setting up a framework on county government ceilings on expenditure.

Based on these discussions, it was agreed that there is an urgent need for the Health Committees of the two Houses of Parliament to work together in consultation with other stakeholders to address the issues of Level Five Hospitals. We considered all the issues raised. Briefly, the Mediation Committee recommended as follows: That the national Government shall allocate an additional Kshs1.87 billion, being conditional allocation for the financing of the Level Five Hospitals as currently listed. What that means, therefore, is that the counties will get the equitable share of Kshs226.6 billion, but they will also get a conditional allocation of Kshs1.87 billion. That is what we have agreed as the Mediation Committee because of the fact that the time is running out and we have to get this Bill passed so that we can go to the County Allocation of Revenue Bill next week.

Mr. Deputy Speaker, Sir, the county budgets are also still waiting for these Bills to be passed before they can be allowed to draw money from the county revenue funds by the Controller of Budget. So, it is also important for Members to note that fact because the estimates of the National Revenue have already been tabled and approved by the

National Assembly. So, pushing for more money than what we have got was not going to be easy. However, I want to conclude by saying that the national Government still has the mandate, as a Government, to ensure that those hospitals are not closed. Over and above whatever is being allocated for them, they have a mandate because the Constitution is very clear that for every function that is devolved to the county governments, adequate resources must be provided for them. So, to the extent that resources that are being provided may not be adequate, it is still within the mandate of the national Government to ensure that those hospitals run and the county governments have to ensure that they do not close those hospitals.

Mr. Deputy Speaker, Sir, with those few remarks, I want to ask Sen. Mutula Kilonzo Jnr. to second the Motion.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I rise to second the Report by the Committee. I would like to thank the Senators who participated in this process for sticking to their guns so that the sharable revenue remained as it was passed by this House at Kshs226.66 billion. Additionally, we managed to get an additional allocation of Kshs1.87 billion.

Mr. Deputy Speaker, Sir, in seconding this Motion, part of the impression created at the National Assembly and which we must bring to the attention of the Senate is that the National Assembly thought wrongly that the Senate had taken a different position with regard to Level Five Hospitals. However, our position as the Committee was that the position of Level Five Hospitals is contained in the Constitution and not necessarily what they thought the Senate had passed in the previous Bill.

Mr. Deputy Speaker, Sir, in recommendation Number 25, it is important that we mention on the Floor of this Senate that we have urged the 11 counties that have Level Five Hospitals to go further, do the costing and negotiate with the national Government so that Kenyans do not suffer because of lack of adequate facilities at these hospitals, which cover more than one county and yet they have been left as a burden of some counties where the said hospitals are situated.

Mr. Deputy Speaker, Sir, as I second this Motion, I would like to make one last remark because it has raised some controversy. This is the issue regarding the 43 per cent. It is fair that we say so because the Constitution requires under Article 2013 that the percentage mentioned in the Schedule, that the Chairperson has mentioned, shall be calculated. So, the 43 per cent, although our position was that it would read that it is above 15 per cent, the Constitution requires that it should be calculated. But more importantly, it is the fact that the Senate must bear in mind that these figures are borne out of the 2009/2010 Budget, which says that we have some work to do so that the sharable revenue that we have come up with in the Schedule should ideally be more; but we have not complied with the Constitution.

Mr. Deputy Speaker, Sir, I second this Motion and thank the Senate for giving us the mandate to mediate. I am happy to say that we have made history in the passing of this Mediation Bill in line with the Supreme Court order made last year.

Mr. Deputy Speaker, Sir, in conclusion, I would also like to observe that this Report and the minutes that you will see here will inform the Senate that in the next financial year, we need to put in a little more effort so that we do not find ourselves in the same position we found ourselves in this financial year.

With that, Mr. Deputy Speaker, Sir, I beg to second.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, hon. Senator.

(Question proposed)

Sen. Kagwe: Thank you, Mr. Deputy Speaker, Sir. I gather that my colleagues would rather like us to go straight into voting on this matter, but let me just emphasize one small item. This is to do with a big issue that came up when we were mediating this process on whether, indeed, Level Five Hospitals have been devolved or not. As we sit here today, the question still begs an answer, because if we stick to Article 187(2) of the Constitution which says very clearly that money must follow a function that is devolved-- - We are getting Kshs1.87 billion for those Level Five Hospitals. If that money is not enough and if the estimate is about Kshs9 billion to Kshs10 billion for running those hospitals, the question that the Senate should be asking itself is: Consequent to that, have we devolved Level Five Hospitals to the county governments? My answer would be "No, we have not." Therefore, the Kshs1.87 billion that we are getting is an initial amount to start running those hospitals while the county governments within which those Level Five Hospitals fall will then go, identify and clearly find out how much money the hospitals cost and the national Government will then give that money to them. Failure to do this, the county governments should surrender those hospitals to the national Government. So, this is not just a simple matter. It is a serious matter.

Mr. Deputy Speaker, Sir, I think the Committees of this House together with our counterparts in the Budget and Health Committees of the National Assembly must sit with the national Government to address the issue of Level Five Hospitals before we come here next time to discuss the same issue with the same problem. Last year, the money allocated to Level Five Hospitals was Kshs3.8 billion. This year, they have been allocated Kshs1.87 billion. Next year, we do not know how much will be allocated. We need to resolve this matter once and for all.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

Sen. Musila: Thank you, Mr. Deputy Speaker, Sir. I just want to briefly make a point. First is to congratulate the Mediation Committee for doing a good job and particularly our representatives in the Committee, Sen. Billow, Sen. Mutahi Kagwe and Sen. Mutula Kilonzo Jnr.

Mr. Deputy Speaker, Sir, I have been concerned in the past, although this was not a matter of mediation, with the issue of the Equalisation fund. You will recall that last

year, we dwelt on this issue of the Equalisation Fund and the Kshs3.4 billion that is to be availed to counties under the Fund. We need a list of those counties that will benefit because, as you will recall, last time we raised the issue, we were promised that the list of the counties will be revised this financial year. I have not seen any list to show that a revision of this list was done. I hope that the Budget Committee will make sure that this list is amended because some counties which are already marginalized are being further marginalized by being denied a portion of this fund.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. I know that we will be moving to division very soon. However, I would like to thank the ladies and gentlemen who did a very good job in the Mediation Committee. This was the first time we were engaging in this very difficult process knowing the attitudes that surround this issue. How did we treat Level Five Hospitals in the last Budget?

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. My point of order is also coupled with some information. We now have numbers in the House. I have been going round in the House alerting hon. Senators to get ready for voting.

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

Mr. Muthama: Mr. Deputy Speaker, Sir, if it is possible, we should stop debate and go straight into voting.

The Deputy Speaker (Sen. Kembi-Gitura): That sounds reasonable. Sen. Kajwang is the only one on my list. I think it is only fair that he completes his line of thought.

Sen. Kajwang: Thank you, Mr. Deputy Speaker, Sir. Mine is very straightforward and short. If we treated the Level Five Hospitals as if they belong to the counties; where they exist, I need to know who pays their salaries. Do the salaries go to the counties where the hospitals are located?

I am looking at the New Nyanza General Hospital, Coast General Hospital and Kisii Level Five Hospital; the eleven of them. If they were treated as county hospitals, then the Budget of last year would stay. However, the Kshs1.87 billion would be additional. It seems to me as if we have participated in reduction of the budget of the Level Five Hospitals for this financial year. Did I get hon. Mutahi Kagwe correctly when he said that last year, the budget was over Kshs3 billion and now it is Kshs1.87 billion? That means that we have not achieved much. If we do that, we will have hurt the hospitals.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, there are no more requests from the Floor. Does the Mover wish to reply?

Sen. Billow: Mr. Deputy Speaker, Sir, I want to thank all Members and to call upon all hon. Senators to support this Mediation Report so that we unlock the financing of the counties which is pretty urgent.

I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): This is a report on a Bill which affects counties. So, we will go into Division. In keeping with Standing Order No.74 (2) of our Standing Orders, I will now order that the Division Bell be rung for five minutes after which we shall proceed to vote.

Anybody voting on behalf of a delegation should know that the rules are very clear. You have to register with the Clerks-at-the-Table and show that you have authority to vote on behalf of the leader of your delegation.

(The Division Bell was rung)

Order! For the sake of clarity, we are voting on the question that I have already put;

THAT, the Senate approves the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.15 of 2015), laid on the Table of the Senate on Tuesday, 22nd July, 2014.

We are all now used to the Electronic Voting. So, we will proceed under Standing Order No.74 (2). I want to bring it to the attention of Members that this will come out as a print out.

Standing Order No.74 (3) is mandatory. During Electronic Voting, hon. Senators shall cast their votes by pressing either the “yes,” “no” or “abstain” button. There is a print out which will later show who voted “yes,” “no” or abstained.

Hon. Senators, remember this is voting by Division where every Member will be shown how they voted if they were in the House. The otherwise is that you can be declared by the Speaker as disorderly and the sanctions are all here. The sanctions are here and are clear. So, this is not a question of choice and whether you are going to vote or not. The rules are clear.

Standing Order No.74 (3) says that you should either vote “yes,” “no” or “abstain.” This is a Division Vote. I am bringing this to your attention because I will get a print out that will show how everybody in this House voted. I think we can now proceed to vote.

The Clerks-at-the-Table will let us know when they are ready for us to vote.

DIVISION

ELECTRONIC VOTING

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

The Deputy Speaker (Sen. Kembi-Gitura): What is it Sen. Murkomen?

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Sen. Murkomen: Mr. Deputy Speaker, Sir, every vote here is very important. I am trying to assist my colleague Sen. Chiaba who is unable to vote, for technical reasons, with his card. I just want to inform him that when he is not doing that, he can do it analogue by recording at the Clerks-at-the-Table.

The Deputy Speaker (Sen. Kembi-Gitura): So, why are you talking for him because he can still come to where you are and speak without a card?

Sen. Murkomen: Mr. Deputy Speaker, Sir, even his button cannot work.

An hon. Senator: Why are you representing him?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I am his lawyer.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Chiaba and anybody else who may have that problem---

(Sen. Bule stood in his place)

Sen. Bule, what is the problem?

Sen. Bule: Mr. Deputy Speaker, Sir, I lost my card. I am using a temporary one and I do not know how to apply for a new one.

The Deputy Speaker (Sen. Kembi-Gitura): If you had not interrupted me, I was going to explain to Sen. Chiaba how it is going to be done. So, if you can take your seat now, I will explain to you.

Sen. Bule: Okay, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Standing Order No.74 (5) provides for manual voting when the Speaker is satisfied that for good reason the Senator would not be able to vote electronically. Once everybody else has voted, those of you who do not have your cards or for whatever reason are not able to vote, you approach the Clerks-at-the-Table and you will be shown how to vote manually and your vote will count. Since you are in the House, you must vote one way or the other. Are you satisfied?

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

The Deputy Speaker (Sen. Kembi-Gitura): Then let us proceed to vote for one minute.

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Munyes, Turkana County; Sen. Muthama, Machakos

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County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Ongoro, Nairobi County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators the vote is in. Those who voted electronically were 24 and those who were assisted to vote were six. So, the total vote was 30.

AYES: 30

NOES: 0

ABSTENTIONS: Nil

(Question carried by 30 votes to nil)

The Deputy Speaker (Sen. Kembi-Gitura): You can now draw the Bar. Next Order!

BILL

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, (SENATE BILL NO.10 OF 2014)

(Senator (Prof.) Kindiki on 17.7. 2014)

(Resumption of Debate interrupted on 17.7. 2014)

The Deputy Speaker (Sen. Kembi-Gitura): Now, this Bill had been proposed, seconded and the Question proposed. So, we are now proceeding to debate.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to support the Bill although we have discussed it at length in the Senate Committee on Finance, Commerce and Budget and have proposed some amendments to it. The amendments are informed by the fact that there are reports indicating that, in fact, the county governments are spending up to 70 per cent of their revenue on Recurrent Expenditure. Some counties-- for example, Nyeri County is spending 19 per cent on development. Therefore, we have suggested that we upscale the amendment from 30 per cent development expense to 40 per cent and not 60 per cent because it might cause some problems in the county. We were informed by the Controller of Budget that the majority of the counties, in 2014/2015 have allocated 42 per cent of their total budgets to development expenditure which complies with the law. It is, therefore, our proposal that in order to comply with the budgets which have already been prepared and which are sitting with the Controller of

Budget, that the Mover of this Motion contemplates that amendment so that then we do not cause a financial crisis in the budgets that have already been prepared by the counties.

In addition, we have also proposed that the method of allocating the 40/60 per cent as opposed to 60/40 per cent will ensure that the counties are given an opportunity to manage their recurrent expenditure which appears to be a common phenomenon across the board and even in national Government in terms of wage bill management. So, I do not wish to continue more than I have and support this Bill with the proposed amendments so that then we do not put the counties in a financial quagmire for the year 204/2015.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I rise to support this Bill. I would like to congratulate my co-sponsor of this Bill, Sen. (Prof.) Kindiki, for moving it with passion, great information and well researched notes. I would also like to congratulate Sen. (Dr.) Khalwale for seconding this Motion with a lot of well researched comments.

Devolution was meant to ensure that there is development in the counties. If you read Article 174 of the Constitution, the focus for devolution is development. If you look at the functions that have been devolved, those functions are functions that are geared towards greater local development. If you look at issues like agriculture, health, distribution of water and all those social issues that have been devolved, you will realize that devolution is key to achieving Article 43 of the Constitution which is socio-economic rights.

Mr. Deputy Speaker, Sir, there have been arguments about why counties are unable to spend more money on development. One of the arguments has been that counties have inherited a lot of staff that used to serve the local authorities in the past and those who were serving the Central Government in their respective jurisdictions in those counties. The truth is that there is no law that makes it mandatory for counties to absorb all the staff they found in their counties. In fact, the law is very clear. It says that the counties can rationalize, assess, look at the staff that they need and look at the functions that have been devolved. Even if a particular person was performing a particular function in that particular county and they think in their own assessment that that person is incompetent to deliver that service in a manner that the people of that county can be proud of services in their county, they can dispense with that person.

The responsibility of rationalizing staff, redeploying them and finding a different responsibility for them is not for county governments. It is the responsibility of the national Government and the Public Service Commission to now sit down and say, out of the 1,000 staff that we had in Elgeyo-Marakwet, they have only chosen to stay with 200 staff. Where are the 800 going to work and what responsibilities are they going to perform? That is not a responsibility for counties. Some counties are carrying a burden that was not given to them by law. What is expected is to ensure that those counties can only take lean staff that is capable of delivering the services that were given to them under Schedule 4 of the Constitution.

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

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

Madam Temporary Speaker, it is possible to give greater allocation on development. It is possible to even have 70 per cent of the money go to development. It must be borne in our minds and Sen. Kajwang will tell you, that the money that he used to manage under CDF; about 97.5 per cent was going to development, manned by few staff. With technology, you do not have to employ so many people. It is possible to avoid a situation where you employ five secretaries because you can have your computer and you work. In fact, a friend of mine told me the other day that he does not know how to utilize the Secretary, except to receive people to his office. This is because he is capable of working on his laptop.

We need to do away with this mentality in this county that Government exists to employ people. The Government cannot continue putting a lot of money on the wage bill even at the county level because if the Government becomes fat, the people will be lean. We must ensure that the Government is as lean as possible so that the people of Kenya can be fat and so that the people of Kenya can get good roads and so that the people of Kenya can be supplied with water, so that the people of Kenya can get better agricultural services, invest in factories and attract investors. It is possible that our counties can have less allocation on recurrent expenditure.

Madam Temporary Speaker, if you see what is happening in the counties, you can get shocked. You have a lot of money and a Governor going to launch a project of Kshs2 million, but during the launch of the project, they use Kshs500,000 to organize the launching of that project. They hire tents, public address system and invite people to clap for them. This is not acceptable. Indeed, the people who are hired are the same suspects. The same people who used to be hired at the national level have now decentralized. One person getting the same profit goes to run a shoddy job in 47 counties. There must be a difference in the manner in which we run our counties.

Madam Temporary Speaker, I have also witnessed that in our counties the process of hiring people is shrouded in mystery. There are people who are working for the Governor alone. People who are basically hang-ons around the Governor are given various jobs within the county to increase the wage bill on the county, in the name of political adviser and economic adviser, where they have also a county executive committee member in charge of economics. There is also a chief of staff and personal assistant. If you read Article 174 of the Constitution, it says that the devolved government is the government of the people at the local level. But we are creating an imperial government at the local level that cannot be accessed and does not allow public participation; it does not allow people to ask questions about transparency and accountability. The reason we must increase the money that goes to development is so

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that we can do away with those people who are hanging around the Governor. There will not be enough money to have largesse and feel good, because the money will have gone to development.

Madam Temporary Speaker, there is something that pains me. The level of participation of the people in the development of their counties is almost zero across the country. The development of the county has been personified and become privatized. So, two or three people are busy and know whom they are going to give the contracts and what they are going to do with that contract. There is a lot of corruption, kickbacks and so forth. We must save our counties from these elites' capture, lords of corruption and brokers, taking charge of our counties. I have contemplated that it is important for us, either as individual Senators from our countries or a House, to come up with a tool of accountability in the county. Such a tool will have the following questions: How many development projects have been put up in the county? How are they spread out in the county? What is the worth of that development project in every ward, for example? How many people have been hired in a particular county? How is it spread across the wards? What is the position of marginalized groups and communities? By this, we can achieve more transparency.

Madam Temporary Speaker, it is important for that tool, for example, to have the provisions that will say how many contracts have been awarded in the county, who was awarded that contract, how many of them were youth and how they are spread. I am saying this on the Floor of this House because I am determined not to wait for this Senate even to provide that tool, but to write my own tool with those questions, submit to the Governor of Elgeyo-Marakwet County and demand an answer within one month. This will enable me to know how many contracts have been given to the indigenous youth who have suffered for many years in Elgeyo-Marakwet. I will also know how many new women are being given opportunity to do business in the county and what the county is doing to move women from being “*mama mboga*” to “*mama development*”, “*mama contractor*” and “*mama supplier*.” It pains me to know that the person who was doing this road is the same person who is doing it in Siaya, Homa Bay and even a road that could have been done by a group of youth in that county. We must ensure that transparency and accountability is achieved in our counties if we must get development. This can be done.

Madam Temporary Speaker, I am going to do that letter to Elgeyo-Marakwet County. If they do not respond within one month, Article 35 of the Constitution gives me the right of access to information. That is the time now that I will do another letter that will compel them to bring that information. If we do not do that, this money will not make sense. If a Senator does not know the kind of development that is happening in his county, how much worse will it be for that person in the village that never went to school? If you go around, people ask you: “Senator, you say that you pushed for resources from the Senate.” We have been fighting here to ensure that we have more money that goes to the counties. If this Senate had not acted prudently, only Kshs217

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billion would have gone to the counties. We worked so hard to increase it to Kshs227 billion.

We are working even harder to ensure that in the next financial year, we will have more money going to the counties. But how do you work that hard and do not know exactly what that money is doing in the counties? It is important that, that message is made public and that accountability be put in place and pinned in all the centres of Elgeyo-Marakwet County, so that people can read it and say: “The reason so-and-so is now driving a Prado and not a Probox is because he was given that contract. Devolution is working because our youth have been moved from what they were to this stage.” But if it becomes a situation where the same person or supplier who was supplying to the national Government is going to do that in all the counties, we will not be able to spread the wealth in this country.

Madam Temporary Speaker, I support this Bill to move development expenditure to 60 per cent. This will reduce the recurrent expenditure and the number of people who will go to Jerusalem using public funds. We are told that some people go to Jerusalem using public funds to see the birth place of Jesus Christ. What does the place where Jesus was born have to do with the Fourth Schedule? It is even worse for people who go there using public funds and they do not go to church in Kenya. If this Senate travels to a particular area, it must be benchmarking on a specific issue and a report tabled. It is not possible that 30 Senators are going to Malaysia. We must show a level of prudence. When we say this, we are not hitting the county assemblies. Even the county executives, the national Government and even this Parliament are travelling. But let us have measures that are prudent enough to ensure that recurrent expenditure is kept in check, so that development can be done in our counties.

Madam Temporary Speaker, whereas money can and should be devolved to the constituency and ward level, it has come a time that we need, as a country, to pronounce ourselves as to whether the legislature can superintendent upon finances and at the same time, become the checks and balance. The county assemblies are now struggling and saying: “We must have our own Constituencies Development Fund (CDF) because we are being discriminated upon. Why are Women Representatives and Members of the National Assembly being given their money?” We must settle that matter as a nation. I know that we fear each other and ask: “What will the National Assembly say?” We must put that debate on the table, so that we agree and say: “The legislature will handle money and at the same time do oversight or that we will only do oversight.”

Sen. Obure: *Sawa*, Sen. Murkomen!

Sen. Murkomen: Madam Temporary Speaker, that is the position and you can see that the Senator for Kisii agrees with me. We need to have an honest conversation about whether we will continue doing oversight or combine oversight and direct management of resources.

Madam Temporary Speaker, although my brother, whom I respect and call a reasonable man, Sen. Mutula Kilonzo Jr., has proposed that we should bring the

development expenditure to 40 per cent, I still insist that it would be great for this country if we could move development funds, at least, even for the first five years of devolution, to 60 per cent. Then after five years, we can come back and ask ourselves: "Maybe now that the counties have grown, collected more taxes and are capable of hiring more people, let us bring it down to 50 per cent or 40 per cent."

Madam Temporary Speaker, with all those remarks, I beg to support.

Sen. Kajwang: Thank you very much, Madam Temporary Speaker. I want to say one or two things about this very important Bill.

Madam Temporary Speaker, when we say 40 per cent and 60 per cent, we are not quite sure what it amounts to. Unless you do the costing and we are advised by experts on the actual costing of what it is that these counties do in terms of paying out certain sums as recurrent expenditure, we might say: Okay, let us move the amount for development to 70 per cent, when 30 per cent that is remaining cannot pay the staff, assemblers and for all those things that should be paid for as recurrent expenditure. So, we needed advice. That is why when I was listening to Sen. Mutula Kilonzo Jnr., I thought that when he was making his contribution, he said that he has received advice from the Controller of Budget that after looking at the budgets in terms of what they used to pay salaries, allowances and buy fuel and all those things that are called recurrent expenditure, it seems like it comes to about 40 per cent to 42 per cent overall. With that kind of expert advice, then that is where we should link it, so that there is no wastage. I am sure that she has looked at what they spend on travel and many other things and come to a conclusion that 40 per cent to 42 per cent is where to settle, so that we do this.

Madam Temporary Speaker, I know that there are constitutional questions about this; whether the Senate can enact a law that would then put the other assemblies on a straight jacket. I know that, that will come as a constitutional question. It might even go to the Supreme Court, but for the moment, what has alarmed us and the reason we are debating this is that at one time, I went home and my own Member of the County Assembly told me that he had just come from Singapore. I asked him: "What did you go to do in Singapore?" Almost all the Members of the County Assembly had gone to Singapore. I know where Singapore is and the amounts of monies that you will spend on flights, hotels and allowances. This is almost looting and it cannot be the case. At least, Sen. Murkomen said that some of them have gone to Jerusalem. It is better to go to Jerusalem because, at least, you can pray there. But this idea of going to Singapore, China and so on just to enjoy---

What is this benchmarking business between Homa Bay County and Singapore? Singapore is a port, largely, and Homa Bay is not a port. Singapore is an industrial country and business hub while Homa Bay is still in 80 percent rural agriculture. So, really, what are you going to see in Singapore? Jesus at one time asked his disciples: "What did you go out to see?" I may ask the Members of the County Assemblies: What did you go to see in Singapore? They might not tell you. But they want to go furthest, because the further you go, the more allowances you have. They almost went to Brazil

for football on our own account, if they had not run out of funds at the time that the World Cup Final was being played.

Madam Temporary Speaker, I know that there is an argument on both sides – those who support large Government and those who support a lean Government. Sen. Murkomen has been good at supporting a lean Government, like the Republicans do in America. The Democrats always support their large Government. At the same time, we must have a government and an assembly which must function and which must have resources. At the same time, you cannot kill them by reducing the amount of money they use so that they function on a day to day basis to an extent that they cannot function at all. In fact, that is what we did with the earlier regional governments and later on with the earlier county assemblies; we denied them revenue.

First, they were collecting some income tax which we removed and then we were sharing PAYE which we removed, then they remained with market dues and parking fees which is not even there because other than Nairobi, there is nowhere else with enough vehicles to park so that you get any revenue out of it. If we are not careful, we might stifle them. So the Government must be very careful. It must be informed by data and if the advice by the Controller of Budget is that 40 would be reasonable for the moment to start with, then we stick there. I will support the amendment if it is brought with that learning put into it.

Madam Temporary Speaker, I know that regarding CDF, we agreed in Parliament that we would only use 3 per cent for management and we did well because you needed only a few staff like a coordinator or manager and one or two clerks because it is just a matter of sharing out the money to schools, hospitals, water or to the road. So it was not a huge bureaucracy. You cannot translate this to the Government and I think the 40 per cent is good. I think we should not complain too much. This was the beginning and they were excited. They have now seen the public react very swiftly and angrily. This House has passed a Bill that will make Senators the chairpersons of the development boards. I am sure each Senator will be looking at the budget and asking questions like why we are putting so much in travel, unnecessary seminars and launching of beautiful things. I saw a launch of a water project that was costing about Kshs2 million. When I saw the colour of the tenting, the carpets, the dancers, the comedians, school choirs and so on, I knew everybody had been paid. It was like royalty and I thought I should have been a governor because it is good to feel like royalty but it is bad when you are feeling like that on poor people's money. So, we must put certain ceilings and controls.

The governors themselves are also between a rock and a hard place. They are telling us quietly that if we do not control these things, they have been put in a tight place because if they do not allow certain things, they will be impeached. Governors fear impeachment like hell and the MCAs use it for purposes of blackmailing them. They demand to travel to South Africa, Singapore and so on. For example, what happened in Kericho, and I am glad the Senate found that the professor was clean, it was just blackmail. The MCAs put governors in a situation where either he has to do what they

want or the governor will be impeached. Governors will not function that way. If they have a rule where they can fall back to where there is a limit, at least they would be protected. We protect them as we also control them because they are also another dangerous animal especially when it comes to consumption.

Madam Temporary Speaker, let me then support with a caution that we will be supporting an amendment to put the percentage at a point which would not hurt the county governments as they are presently constituted and also to spur development. Do not forget that development is also about people and not just about roads and electricity. I know now in my former constituency, there is a road and electricity but the people who benefit from that road are very few. At one time when we were in the university, there was a very eloquent young man from Bungoma who was then a student leader. He told us that sometimes even building a tarmac road can be underdevelopment because if you do not have a vehicle to travel on it, it might finish your *akala* shoes faster.

So, development is not just about roads and electricity. There are very few people in Mbita who actually use electricity even now. They want you to spend more money to connect it to their homes. Even after connecting, you should also pay the bills. So, if you employ a few people to teach people on what to do and how to prioritize, move agriculture, conserve water, do afforestation and so on, it amounts to development. Do not cry too much about the wage bill because it is useful to employ a few technical people to help our people move forward. It would not be development if we do not change the way they live.

With those many remarks, I support.

Sen. Elachi: Madam Temporary Speaker, I also rise to support the amendments knowing that we shall agree to bring the percentage to 46. As I say that, I know each county has its own challenges and achievements. When you look at the report of the Controller of Budget, you will find that most governors have budgeted in a way that they will be able to consume 40 per cent going up. It is very unfortunate that indeed as my colleagues have said, we need to ask ourselves about the money that has been decentralized. The lowest constituency will be getting Kshs95 million and it would be important to know how the constituencies will work with governors to ensure that services reach our people. It is this Senate that is supposed to ask questions about all the devolved funds. It seems everyone is focusing on what the governor is getting but we are not looking at what the whole county gets. Therefore, we might lose out when we just focus on what the governor is getting. If a county has four to five constituencies, we are talking about Kshs600 million or Kshs700 million.

The most important thing is the Senate to ask itself whether all elective positions must have a fund. Since Kenyans believe in tangible results and not legislative results, let all elected leaders have a fund. Even the Senators should have a fund so that they can go and do something for their people. Today when you go to a meeting, you will find that everybody is coming out with a cheque except the Senator. As much as one would want to prove that you do not need a cheque, trust me, you will need it. When the governor and

the Member of the National Assembly come with their cheques and the Senator has nothing, people will wonder what he is bringing on the table.

Kenyans would wish to see all legislators do their work like legislation, build roads and come up with policies that can guide this country. Where we are headed, we cannot stop the vice. Right now, CDF has been allocated Kshs33 billion but next year it might be allocated Kshs50 billion. We must think on how we can come in and see development in the constituencies. When we talk of development, the next question we pose to the governors is: Are they bringing out institutions and foundations that will transform to better development? When you look at what happens in the constituency, it does not even translate to development.

This Senate needs to amend the Public Finance Management Act to ensure that we put a ceiling on the spending by county assemblies or else some of them will be surcharged. The MCAs are just blackmailing the Governor. The county assemblies should have their budgets and should only make their requests.

Madam Temporary Speaker, Kenyans are very worried. They are wondering whether devolution came so that MCAs can travel abroad. I would wish that they also engage in domestic travelling and benchmarking which can assist them to move forward. The Senate should look at different counties individually and tell us whether there is a county that can be cited as having the best practices. I would also like to say that the governors should stick to the functions spelt out in Fourth Schedule. Some of the challenges we are facing in this country is that governors are doing both national and county functions. How are we going to account for money used to perform a national function instead of a county function? How is the Governor going to justify the spending? The Auditor-General is not willing to listen to such justification. So, I want to ask the governors to stick to their functions and deliver the best services to the people of the county. If one wants to coordinate a function that is national, then the rules and procedures must be followed.

Madam Temporary Speaker, I now want to talk about health. Women are suffering in terms of health. We would want to see the national Government and the county governments come together and discuss broadly on how to approach matters of health including referrals, districts hospitals, supply of medicine, delivery of services, nurses, doctors and so on. We are now getting to a situation where we are facing challenges with governors. They are starting several funds including a fund for the elderly, bursary funds and so on. We also have Women Representatives who are also being given funds and will also have bursaries, then the Member of the National Assembly also has bursary and therefore we need to ask ourselves how we shall cover all the children. We want Treasury to advise on this matter so that we can avoid duplication. If everyone has a bursary fund, it would be challenging to know the beneficiaries. This situation might lead to wastage of funds instead of focusing on development.

Madam Temporary Speaker, the other thing is that this House was to deliberate on the roads for the counties. I know it is a subject that is also very sensitive, yet we are

saying that development is infrastructure and all that. Therefore, we now need to get the exact class for county roads so that we can tell the Governors: “This is the class of roads you are supposed to venture in” so that we also do not have conflicts that we have had between the national Government and the county governments. We need to ask ourselves whether, indeed, the Rural Electrification Authority (REA) will continue the way it is and since we have agreed in this House that it is still a national function, how do we ensure that areas which have not been connected by the REA are connected?

Therefore, Madam Temporary Speaker, in the end, we need the Governors to start costing their functions and all that they are doing. I think one of the challenges that we have faced in this country for years is that we have not seen specific costing of items. I think that is where now we get into a lot of confusion when you ask: “How much do you spend on Early Childhood Development (ECD) education?” No Governor will tell you how much. When you ask: “How much are you even spending on salaries?” No Governor will tell you. Therefore, we hope that next year, we shall see the costing of items from every county on how they have been paying so that you can say: “We paid this much on recurrent expenditure” and, therefore, you have this much for development.

Lastly, Madam Temporary Speaker, as I support, I think it is very important now for the Governors to stop the blame game; for them to get down to work; for them to understand that Kenyans passed this Constitution with one main issue; that they wanted delivery of service. It will be very important for us to look at what is really ailing us; is it the way we do our tendering system? Is it the way people have manipulated the process; that in every tender indeed, somebody just changes a company name but it is the same face and the same person? I think it is time we named some of these things because in every county you go, you will find the same person who is at the national Government is still at the county level also receiving the same, same favours and doing the same thing because he knows very well that we give money for us to get tenders.

It is there within the public domain; everyone will tell you, and that is why young people and women cannot venture into this business as they think because it has cartels, brokers, agencies and all these need to be addressed, especially at the county level. But we also need to look at the Public Procurement and Disposal Act and see whether we can assist in unlocking some of the funds so that not everything goes through a tedious process. We need to see if the counties can move their things faster in order to be effective in terms of what they are doing. They must digitize all their solutions.

Madam Temporary Speaker, today when you ask all the counties “how much have you collected as local revenue?” None will tell you because all of them have gone down to even beyond what they used to collect when the local governments were there. So, we are asking ourselves; if the national Government does not give county governments money, what happens? The law is very clear that they were supposed to be assisted in a few years and then handed over. So, how will they manage? These are questions that we need to ask ourselves; these are questions that Governors should also ask themselves.

What happened to the local revenue that they used to collect during the time of the local authorities? How come a county that used to even collect Kshs1 billion is now getting below Kshs300 million?

These are very serious questions that we need to ask ourselves. Is it that the cartels took advantage? Is it that the Governor is not in control of his county; that he cannot know exactly how revenue is getting lost? Therefore, for the Governors to come and start accusing everyone at the national Government, I think the best they can do first is to ask themselves “how much have I put on the table from my local revenue before I ask the national Government for money?”

Therefore, Madam Temporary Speaker, I want to support and I believe we will bring amendments to ensure that we have a 40:60 recurrent to development ratio.

Thank you, Madam Temporary Speaker. I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. Mutahi Kagwe.

Sen. Kagwe: Thank you very much, Madam Temporary Speaker. I also rise to support the Bill. In doing so, I also wish to bring up something that Sen. Kajwang also mentioned here. It is all very nice for us to say that we should spend 30 per cent or 40 per cent, but if you look at the Schedule of the expected expenditure on development, you will see that, for example, the Nyeri County is budgeted to spend 19 per cent of its resources for development. It is not out of choice that that money has been put there, because I have looked at the figures. But, the question is, it is 40 per cent of what? It can be 40 per cent of Kshs100 or 40 per cent of Kshs2,000; *et cetera*. The reason why a county will budget 19 per cent and another 15 per cent is because of its expenditure base. We cannot escape from the reality of what we are taking over from the national Government. If you look at counties like Kisumu and Nakuru, you will find that inevitably, their expenditure on development is going to be lower, the reason being that they are carrying a lot of expenditure on human resources. Most of those people are actually people who used to work for the provincial administration and, now, as we sit here today, those people are still in those offices.

You all heard about the rationalization that is supposed to be taking place by the Cabinet Secretary (CS) for Devolution and Planning. Those of us who had provincial staff are really looking forward to seeing how that is going to be done and, indeed, whether it can be done in a very short time. The reason for rationalization is not just to do with the numbers *per se* but also the quality of the people who are being taken over by the county governments. In fact, on the outset of devolution, what happened is that a lot of national Government staff who had discipline cases were sent as seconded personnel to the county governments.

An hon. Senator: Shame!

Sen. Kagwe: Madam Temporary Speaker, this is something that is known to this House and to the Governors – if you speak to the Governors, they will tell you that they have a lot of staff that they do not need. However, as anybody with experience in Government knows, it is not very easy to retire staff from public offices; it not very easy

to fire staff from public offices either. In fact, we have situations in Nyeri County where we have a huge number of people who are supposed to be livestock inspectors and agricultural officers who sit in Nyeri Town and in the last many years, they have never visited a farm within Nyeri County. When the Governor proposed that these people get motorbikes so that they can be visiting the farms, a lot of them opted to resign; only that there was no scheme to do so. So, you will find that the issue of quality is as important as the issue of quantity.

So, Madam Temporary Speaker, what we are saying is that we prefer that every county, indeed, should be given the capability of using at least 50 per cent of their money on development because devolution did not create a personnel office whose job is simply to pay people; that is not the idea! The idea is to utilize those people so that they can bring development to the counties. But if we do not assign sufficient funding for those counties and if, as I was saying earlier in the day, we devolve functions to those counties and we do not devolve the requisite amounts to enable them to function and to carry out those responsibilities that the national Government was carrying out, then you will find that money meant for development will still be used for recurrent expenditure.

Madam Temporary Speaker, we are hoping that when the Public Procurement and Disposal (Amendment) Bill comes to this House, a few things are going to happen; one, is that we are going to ensure that 30 per cent of the procurement from the monies allocated are actually given to youth and women. But even if we sign in this House that, that is what is going to happen and you do not have the money to spend on those development issues, then even the 30 per cent we are talking about procuring will be an insignificant amount. Therefore, we need to focus on this issue; we need to work backwards rather than forwards. In other words, the way to do this – and we should also consider this aspect when we look at the formula that the Commission for Revenue Allocation (CRA) brings to this House – when we are considering that formula, let us work backwards; let us ask ourselves “what is the expenditure base of the various counties?” Then, after that, we can talk about adding the 40 per cent for development. But if you simply give a county a certain amount of money and expect that automatically, 40 per cent of that money is going to be spent on development, I think we will be behaving like the proverbial ostrich – simply burying our heads into the ground and assuming that everything is okay. The only thing we can be sure about is that it will not be okay and we will not achieve the 40 per cent that we are talking about.

Madam Temporary Speaker, the Committee on Information and Technology, which I chair, in conjunction with the Committee on Finance, Commerce and Budget, which I am also a Member, intends to bring to this House what we are calling the County Resource Management Transparency Bill. This Bill will mandate the county governments to publish in a website the details of all expenses so that *wananchi* are able to engage them immediately. For example, if you issue a tender, you must record in that website information about who applied for that tender, how they were shortlisted and who was

shortlisted, how much money each of them proposed to spend; why the first one was not given the tender and, instead, the second one got it. This is the only way to do it.

If, for example, you travel for benchmarking, then you must indicate how many people travelled for that trip, the names of those who travelled, how much money they spent on that trip, how much the *per diem* for each person was, who they engaged wherever they went, what value they got out of the people they engaged and what is the expected benefit to the county when that happens. For example, the Committee on Information and Technology went to benchmark in Berlin, Germany, the other day and it was in the County of Hamburg that we got the idea of this; the County Resource Management Transparency Bill. So, this Senate and this country are going to have a direct benefit from the benchmarking that the Committee on Information and Technology did in Berlin, Germany. This is what we are talking about; let us see the results of where you went.

Madam Temporary Speaker, the other day I was taken to task when I spoke about travelling. I was told that the Senate itself is travelling, why then would we stop the Members of County Assemblies (MCAs) from travelling? Let me make it clear that I am all for benchmarking; I have nothing against benchmarking even by the counties. However, it is important to remember that when we advise here in the Senate that “let us limit expenditure to say one person per year” or so, then people say “also limit the Senate to the same thing.” Two things arise; one, these people have different roles in the country.

Two, even when you look at the number of Members County Assemblies (MCAs); 2,300 of them, if each MCA took one trip, that would be 2,300 trips out of Kenya in one year. If the 67 Senators, each took 10 trips a year, that would be 670 trips. So, let us do simple mathematics. I am not proposing that we go ten times because we do not have the time to do it anyway. However, let us compare oranges with oranges and pineapples with pineapples. Let us never compare pineapples with oranges because that is a different animal altogether.

I heard my colleague and many of you, including I, propose that the Senate should also be treated the same as the National Assembly in terms of funding for our own office use. Let us make it clear that what I would propose would be funding to ensure that a Senator can ably contribute to legislation. If we go on this path where we say each legislator; every ward representative and everybody should get a fund for use in harambees, this will be a complete mess. You can imagine going to a county as a Senator and saying that you are contributing Kshs50,000 for a bridge. The Governor would then stand up and say; “that is peanuts; I have brought Kshs200,000 for the bridge.” The CDF person would then stand up and say; “if this is about competition, so be it. I have Kshs500,000 for the bridge.” Where would that end? We must educate this nation. Kenyans are not foolish people.

Kenyans understand the role of a Senator. I have been at pains to explain to people that when they notice that a bridge needs to be done, they should not think that is

the role of the Senator. The role of the Senator is to go to the Senate and to acquire funding which is then given to the Governor and his team to build bridges and to put murrum on the roads. Kenyans understand that it is not necessary for us to act out of desperation and to go on cheating *wananchi*. That is exactly what this would be. We would be cheating these people by telling them that we are building bridges for them. True, enough, it could have an impact as far as a few votes are concerned. However, by and large, we have a large group of people who are educated. Kenyans are no longer a bunch of illiterate people. They know who is supposed to do what.

What we should be asking for is amounts of money that can be used to conduct civic education in the counties so that in future, Senators will not ask for money to go and build cattle dips. That is not our responsibility. How will we oversight the Government if we are part of the people who are building bridges? Whose responsibility is it to build bridges? Who is responsible for constructing short murrum roads that lead to cattle dips? Is it the MCA, the MP, the Governor or the Senator? At what point do *wananchi* decide who is responsible for what? All we are doing is confusing people.

I urge all of us in the legislature to desist from this practice of trying to assume that the only way you can get elected by people is if you cheat them that you are the one who has built cattle dips or constructed murrum roads. Kenyans know very well that you will never build murrum roads with your money. Money will only come from the taxpayer and from the Governor who will have received it from the Senator. This is what we must emphasise.

I am very happy about MCAs who are now going round educating people to that effect. They have been telling people that once they see the bridges being built, roads being constructed and classrooms being built, it is because the Senators are at work, they have negotiated for money in the Senate and have brought money down. This is the key. The key is for us to go there, sit with MCAs, ward representatives and communicate with church people who preach every Sunday and to tell them what people should be told.

There is a Ministry of Devolution and Planning that is supposed to be conducting civic education. This is where we should be. They are the people we should be talking to and telling them that every county should have a certain amount of money to carry out civic education. That is what will save the Senate, not just now but in the future.

As I finish, it is very important to engage the youth in this exercise. If we do not engage the youth, we will fail. I can see that my time has run out but I beg the next speaker to address that issue.

Sen. Ndiema: Thank you, Madam Temporary Speaker. I also stand to support this Bill that seeks to set some order in financial management and budget control. This Senate should not be seen to be assuming the roles of other organs of Government. It should be seen as an organ which tries to give guidance in accordance with its mandate. I know that counties are not currently getting adequate funds. By setting certain ceilings, our purpose is not to cripple the counties.

The national Government and the county governments should work towards the goal of ensuring that there is a balance between what is spent on recurrent expenditure and development. The level of 60 per cent as earlier proposed has been seen to be rather high. I support the idea of consultation so that we look at what is feasible. If the Controller of Budget has already seen that our current level is at 40 per cent, then that is a good beginning. We should benchmark there so that we do not have a worse performance. If we do not control that perhaps next year, the money for development may move to 30 per cent and even the following year to 20 per cent.

We are trying to put a ceiling of how low we can come in terms of development. When we talk about spending more in terms of development, we are not underestimating the role of recurrent expenditure in the overall development of a county. We know that it costs more to run an institution more than setting up the initial construction. If we are talking about a health centre which was constructed using money from the CDF, this is a one off thing that may cost a lot initially. However, manning it and equipping it in all the years that may come will certainly cost more. So, we should not worry very much if there is slightly more being spent on recurrent than on development. It would serve no purpose to construct a county hospital and yet we do not have drugs and doctors. Most of the functions that are going on in the counties are under recurrent expenditure. If you construct a tarmac road or even a murram road, whatever follows in the year after until reconstruction falls under recurrent expenditure.

Recurrent expenditure is not only about salaries or personal emoluments. This is anything that goes into running an institution that the Government has put in place. This brings me to the point of costing functions which is long overdue. Functions that have been devolved should be costed. Someone should answer why that costing has not been done. If it is the Ministry of Health or a health function that has been devolved to Trans Nzoia County, we should know how much it costs to run that function. As we set up ceilings, we should know what it means to construct a new hospital and to run it.

This is just the beginning. We are trying to set ceilings or parameters on how to spend on recurrent and how much to be spend on development. However, even within the recurrent expenditure, there will be need to give guidance. How do we spend on personal emoluments to service other issues like procurement, stationery, running of motor vehicles and so forth? Currently, the level we are running our departments; both the national and at the county level, the item on personal emoluments is taking a lot of resources.

We hear of rationalization which does not end. We should bite the bullet and decide how many people we should retain in every unit so as to run effectively. We do not want to restructure and to retrench people for the purpose of retrenching. That way, we cause more problems to the families concerned. A thorough job should be done on this and very urgently.

There has been a difference of opinion in the counties in terms of how much we should spend on county assemblies and how much should go to the Executive. This is a

matter that the two arms of government at the county will continue to disagree about. There may come a time when this Senate will address itself and resolve the problem once and for all by setting levels.

Right now, the Controller of Budget is trying to do something. The Commission on Revenue Allocation is also trying to do something. We should get something that is legal and which cannot be challenged in any court of law that will guide us even if it means calling MCAs and the county executive. We should put them in a forum so that there is consensus. I believe that consensus can be arrived at if this Senate plays its part.

There is also the issue of funding to counties. If we set the level at 40 per cent, that will not be the end. Counties can still get up to 60 per cent later. This can be done because what we gave to counties this year was very little. We based it on revenues raised in the 2009/2010 Financial Year. If we are dealing with the audited accounts of last year, they would have got more and the 40 per cent would still have been a lot of money. As we look at setting standards, we should also look at the Constitution or the law to ensure that these accounts are audited and approved on time. Penalties should be imposed against those who do not approve them in time.

There is also a tendency for the national Government to borrow. It has been borrowing. However, there is a tendency that whatever is given as aid must be given to the national Government. I think we should relook at all our funding agreements so that even if something is donor funded, the funds can also be managed at the county level and to county projects.

I say this because the functions that have been devolved such as agriculture, health and provision of water heavily rely on donor funding. If those funds are not trickling down to the counties, then agriculture is going to suffer. What is going to happen is that the national Government will cling to those funds and start mega projects in the pretext that counties are not able to manage those funds. This will defeat the purpose for which we devolved.

Madam Temporary Speaker, I recall when we had the District Focus for Rural Development where projects had to emanate from the districts; the people had to decide and they were allocated the money. Since the Permanent Secretaries had no access to that money, they made sure that no money went to those projects. They started other mega projects, most of which ended up being white elephant projects. Major procurement took place, which ensured that nothing trickled to the ground. Devolution has come to save the majority of the people. It is supposed to provide services to the people. The Senator for Nyeri has talked about the youth; that they are not going to benefit from the contracts if a deliberate action is not taken to ensure that there are enough funds for development in the counties because it is only in the counties that they can be taken care of.

With those few remarks, I support the Motion and urge that we increase the funding so that the counties can use our formula to bargain for more. It is possible to get more funding. Thank you.

Sen. Wamatangi: Thank you, Madam Temporary Speaker. I rise to support this Motion. In supporting the Motion, I wish to state that in view of the contributions that have been made by my colleagues, at this time, we should rethink whether it is 40 or 60 per cent which is adequate and whether there are constitutional issues about this Bill. The fact remains that today we have just voted for the Division of Revenue Bill and hot in pursuit is the County Allocation of Revenue Bill.

Last year, we voted for the allocations to the counties and all the billions that we voted to go to the counties went into a basket that had no control. The basket that we sent those billions into was completely devoid of any rules of how to spend the money other than the very few structural rules which indicated how much would go to the county assembly and the executive arm of the county government. All the complaints that we are having about the mismanagement of resources is actually a direct result of that oversight. As the Senate, the Constitution mandates us to oversight counties and we cannot shy away from that responsibility. The long and short of this is that eventually we must come up with rules and regulations within the law that are going to guide the allocations that we are going to give to the counties.

Madam Temporary Speaker, if fiscal responsibility failed at the county level, there is no way devolution would be claimed to be a success. It would never succeed. In simple analysis, if the common *mwananchi* at the grassroots does not feel the effect of the resources that have gone to the county; if they do not see responsibility on the part of Governors on how their resources are being spent, for example, roads being done, change in the education sector, medicine being availed in the local dispensaries and change of attitude that we have witnessed in the spending of the resources of the county, then it does not matter how important we rate devolution. It does not matter the kind of plans we come up with; devolution will be deemed to have failed.

I wish to remind ourselves and the country that the issue of resources that go to the counties is a matter that this Senate has gone to court for. I wish to congratulate the Mediation Committee that sat to mediate between the Senate and the National Assembly on this Bill. Last year, we were forced to go to court to ensure that the counties got the allocations. If we are taking this trouble as the Senate to ensure that those resources have been taken to the counties, if we then do not also equally up our game and ensure that we follow it up with another law to show how it should be done, then we will have failed. For actual progress to be seen at the county, the leveraging of resources must be done responsibly by Governors. It should not only be by Governors, but also by the county assemblies.

I remember two weeks ago, I was attending one of the meetings of the Senate and it was reported to us that the Parliamentary Service Commission (PSC) has received 14 letters from 14 different countries that have said that they are no-longer willing to host Kenyan delegations. The reasons advanced by those countries are that they have hosted so many huge delegations from the Republic of Kenya that they no longer have the facilities to accommodate us. This is just but one of the many cases.

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Madam Temporary Speaker, when I speak of having sent resources to the counties' baskets that had no rules, I mean, for example, just here in Parliament, if we have to make any travels as a Committee, we are restricted.

Sen. (Dr.) Khalwale: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Senator, do you wish to be informed by Sen. (Dr.) Khalwale?

Sen. Wamatangi: Yes, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I just wanted to inform the Senator for Kiambu that he should not only have on his mind the County of Kiambu about this foreign travel. In fact, in Kakamega and Vihiga counties, the business of the assemblies had to be adjourned because all the MCAs had either gone to Israel, South Africa or Uganda.

Sen. Wamatangi: Madam Temporary Speaker, I thank my colleague, the Senator for Kakamega, for that information. Indeed, just in addition to the point that the Senator has informed me on, it is not only the county assemblies, but as a Committee, there was a time when we made a visit to one of the counties and we could not find even one county executive committee member. All of them had also traveled. This is the kind of responsibility that we are saying must be seen now to come from the Governors.

Madam Temporary Speaker, I know that it is very controversial, but one question that, as a country, eventually we might have to deal with and give an appropriate answer to is: Do we want Governors to continue to be selected from politicians? All the debate that we have heard here today from my honourable colleagues, about ceremonies that are elaborate and expensive and the wanton spending of money at the county level; sometimes all this is just in the play of politics. For example, how on earth is the Governor for a county like Nairobi expected to take up the role of leading this county, be a politician and balance all the competing political interests? Let us imagine all the Governors in all the metropolitan counties like Nakuru, Kisumu, Mombasa and Kiambu where we have so many communities and competing political interests.

We should ask ourselves, as a country, whether we should continue to pick our Governors from the political class. The question whether they should continue being elected the way we do is one that we have to deal with, so that we can probably attain a threshold where we can have a Governor who can be there just to deliver services professionally, without having to balance political interests or look at political survival. If we have not sorted that question, then we cannot complain that a Governor who brought in women or school children to sing in an occasion. This is because if he does not do that, the Senator will do it. If the Senator does not do it, then the Member of the National Assembly will do it and they have to compete on the same threshold. I think that, that is a very important question that we have to address.

Madam Temporary Speaker, a question has been raised by one of my colleagues here on the matter of whether we, as Senators, should have the facility or power and authority in execution and holding of resources at the county. Should Senators have either

a fund or say at the county level? I partially beg to differ with the contribution by one of my colleagues, the Senator for Nyeri. This is because I believe that there is nothing wrong in a Senator having a say in the responsibility of funds and how development is done. I have witnessed on several occasions that are hosted by Governors and the entire county leadership; that when matters development and what is happening at the county level come to the fore, the Senator is floating and has no place. Things are said and done in the presence of a leader who has been elected in that county, at this stage where we are building our country. I believe that a Senator is equally responsible for discharging those duties.

Madam Temporary Speaker, it is said that if one fails to plan, then you plan to fail. The one thing that very conspicuously lacks at the county level is an elaborate and clear development plan for counties. I am aware that if you go to a county now and ask for those development plans, you will see them. Some of them are just haphazardly put together for the sake of the books and looking like they have been done. But there are no serious plans done to detail, involving public participation, intended to happen and be executed. That is why you will find that most of the expenditures at the counties are knee-jerk. They are just inspired at the spur of the moment and invitations that come from abroad either to travel or by a quickly thought out project.

Madam Temporary Speaker, I want to quickly interject that it is also the responsibility of Senators to ensure that, indeed, we help in the formulation of such a mindset. This will ensure that in future, as we send money after passing the County Allocation of Revenue Bill, we will quickly follow it up with legislation that will ensure that what we stand for, as the Senate, is going to be implemented. It is going to be self-defeating if we stand here and okay the disbursement of Kshs226 billion to the counties, for a repeat show of what has happened for the last year. It behooves this Senate to ensure that, indeed, these allocations will go a long with responsibilities that must be followed, obeyed and respected by the county governments.

Madam Temporary Speaker, I beg to support.

Sen. Mositet: Thank you, Madam Temporary Speaker. I rise to support this Bill and congratulate the authors.

Madam Temporary Speaker, we know very well that devolution came so that development can be achieved at the lowest level of this nation. I truly believe that if we go by the spirit of the Bill, we will achieve a lot. I want to support one of the amendments that one of my brothers, Sen. Mutula Kilonzo Jr., proposed; that we may not really achieve the 60 per cent allocation for development. But, at least, we can improve from the current 30 per cent to about 40 per cent. Let us also note that we are talking of a percentage of some amount. So, the most important thing that this Senate should be asking itself is: How much money are we talking about? This year we are talking about Kshs226 billion, which we are not satisfied with as the Senate. We need to find ways of even addressing the Constitution and making sure that enough funds go to the counties. If

we do that and talk of about 40 per cent of some good amount, which is passed by the Senate, then we will be talking really of---

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. Would I be in order to congratulate the Senator for Kajjado for saying that the Constitution should be amended to increase the funding to counties and therefore by extension supporting the referendum?

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

Sen. Mositet: Madam Temporary Speaker, I think Sen. (Dr.) Khalwale would always want to get supporters but not maybe in the Senate.

I said that and I stand by it. We really need to look at how to make sure we have enough resources going to the counties. If we do that, the issue of 40 per cent or 60 per cent would be something achievable. We would be talking of 40 per cent of good money because we might be talking of 40 per cent of very little money. Suppose you are talking of 40 per cent of Kshs1 billion which goes to Lamu, this is an insignificant amount. So, we support that and I support an amendment where we will stand for 40 per cent for development and 60 per cent for recurrent expenditure.

Madam Temporary Speaker, people have been talking about the way our Members of the County Assemblies (MCA) have been going out to benchmark. I do believe that they have been going to learn so that we can have the best at the counties. I believe that the only thing we can tell them is that they should not be over-excited. Let them just benchmark where necessary. For those who just want rides, they should make sure that the resources go for development instead of visiting other countries.

I am looking at the time when our counties started implementing development projects which are factored in their budgets. I think it is just this year around January or February. Given that they never had structures before, I want to congratulate them. They have already done well if you look at the structures they inherited and they have also gone ahead and employed new people. Because of this, we should congratulate them for performing well. The only other thing we need to look at is the quality of work and the standards. You will find that a lot has been compromised simply because they do not have the expertise. We have some institutions like the Kenya Rural Roads Authority (KeRRA) which are not working with governors. This has really compromised the standards of the county roads which are being done. It is my wish that KeRRA works together with the Governors so that the standards and quality of work can be maintained.

Madam Temporary Speaker, I believe that we need to bring some soberness in the counties. You will find that we have very narrow roads in some areas. Our governors should not put money on such roads. Let them first make sure that the road is widened to about nine metres to achieve the required standards. So, when a road is done, you really see something of good quality.

Madam Temporary Speaker, about the 30 per cent for the youth and women, I know it is achievable but let us go into another issue. The governors should make sure that people working in their counties are from there. Before they accept others from other

counties, let them try as much as possible to promote the people from that county to ensure that we fight poverty. If we do that, a county can achieve development and eradicate poverty. We want to see *mama mboga* turning into a big supplier or somebody who was selling cows changing to be a road constructor. This will enable our people to realize the benefits of our Constitution.

Let me also support the Senator for Nyeri for saying that legislators should know that their work is to oversight and make sure they concentrate on passing laws which can govern the country. The issue of every elected leader thinking that they need some fund to give out as “goodies” so that development can happen should stop. Kenyans need to be educated on this issue. We will be doing good if we suggested that the Ministry of Devolution and Planning should make sure that civic education is carried out to make sure that Kenyans understand that money allocated to counties come from taxpayers, and it has been approved by Senators. So, nobody should just take credit that he or she has done this or that. Let it be known that every person has a role to play instead of looking at it as Constituencies Development Fund (CDF) for Members of Parliament or MCAs. I do not think Senators will want to go that way. If we go that way, the next thing we will say that even the President should have a kitty for every constituency. Let us forget about the issue of funds and play our roles the way we should.

With those few remarks, I beg to support.

The Senator Minority Leader (Sen. Wetangula): Madam Temporary Speaker, I support the Bill. I also join those who wish to bring some amendments. We should work relative to what we see in the national Government. In my view, for the sponsors of the Bill and I can see the young Sen. Sang here, the ratio of 40 per cent to 60 per cent maybe reasonable so that we have 60 per cent going to recurrent expenditure and 40 per cent going to development.

I say this for the simple reason that the philosophy behind devolution was for development to reach areas that were hitherto unreachable in this country. There are many areas in this county that were completely forgotten, ignored and became no-go zones. Politicians from the national level only turned up in such areas to compromise poor villagers and harvest votes. They used to play the ethnic card, the sub-ethnic cards, bring the conglomerates together calling themselves KAMATUSA or *wafugaji* even when they are not *wafugaji*. Immediately after elections, those people are forgotten and they will come back after five years. We devolved to bring money and development down to the grassroots. Today, the level of obscenity and opulence witnessed in the counties is revolting. When you go to the counties, you will find a ward administrator in the village is being paid a higher salary than a DS in the national Government. They have a salary and house allowance even when they are living in their own homes.

Madam Temporary Speaker, more importantly, the abuses I have been seeing, when you go to the office of the Governor, he has a chief of staff, a personal assistant, communications director, political advisor and an assistant, advisor from every constituency to advice on constituency issues and so on. I see this obscenity and I

shudder. You see small girls hanging round the Governors in their Prado cars and all you see them do is running around with their iPads and taking pictures of the Governor even when he is sneezing.

(Laughter)

Hon. Senators: Shame!

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, these are the obscenities that we must curb. This money goes to the counties for development and we want to see some rationalization. That is why this lady who makes a lot of irrelevant noises called Mrs. Serem; that is the area she should be focusing on instead of dealing with irrelevant issues. When we devolved power and resources, it was expected that the Governor lives in the county where life is cheaper. The people working would be about 80 per cent from the county, where life is cheaper. They would save the money, go and make roads, bring water, schools and everything that the people desire in their counties. But what do we have today? If you go to every county and ask, first of all, about the bloated wage bill, for example, I visited my friend, Governor Oparanya in Kakamega and I was shocked to find out, when he showed me his figures, that he has almost 82 per cent recurrent expenditure. So, he is left with just about 18 per cent or less for development. In such a vast county, the roads are impassable, there is no water, there are no nursery schools, the hospitals have no medicine and yet we have devolved all the medical services. This is where you will now find crooked people supplying chalk as quinine to people; and supplying all manner of contraband in *lieu* of good services to people.

What must we do, Madam Temporary Speaker? First of all, I want to urge my colleagues across the Floor that even if we do not agree on anything else, let us agree to take money to the grassroots for development because we need those tarmacked roads. We need, at least in the 10th year of devolution if not less, to see and it is my dream to see that every household has running water; it is my dream to see that, after 10 years of devolution, nobody is unable to reach home when they want to go home because there is a bad road. Yesterday, a friend of mine invited me to go to Kajiado, where my good friend, Sen. Mositet, comes from. After Ngong, we were to go to a place called Kibiko, Kibicho or whatever they call the place. After five or ten kilometers, we turned back because there is no road; it is a cattle track and no car can pass there! Only lorries going to look for farmyard manure in the valley can climb through that road.

This is, in fact, the second year of devolution and that is a critical road running from Ngong Town to Suswa, then on to Maai Mahiu and back to Magadi and it is impassable. Will those people there appreciate what devolution is all about? Obviously not! In fact, when you go to the villages today and ask *wananchi* what devolution is, they will tell you “Oh, the Governor passes here with a siren, with several cars following and blowing dust. All this is coming from the funds that we voted to take to the counties, yet

when a school roof is blown off by the wind, the Governor turns up and says “*Mimi nimeleta yangu; wapi ya Senator?*” It is as if the Senator has any money to take to projects. Instead of the Governor going there and saying that from the money that the Senator fought and brought here, we have a kitty for emergency; and this is part of the money I have brought, he says *hii ni yangu!* I have seen them say these obscenities and people clap for them because ordinary people do not know that the Governor is not giving this money from his pocket.

In fact, we have devolved corruption as well. If the salary of a Governor is known, unless there is corruption, how would he go giving Kshs2 million every month; in *harambees* and charities? Just count and keep a template. How can he be dropping Kshs100,000 here and Kshs200,000 somewhere else? The other day, I was in a Harambee for a small church and in the middle, somebody called the Governor and said that they had been sent money. They did not say where the money was coming from. At least, I give a cheque from my account where my salary goes and I can account for the money. This money can be put into good use.

The 60 per cent is too high. I do not think that there is any Government that can afford that. However, we can afford between 40 and 45 per cent. It will be incumbent upon all county governments to rationalize and tell us whether a Governor needs ten people working and knocking each other around the offices, milling up and down in the corridors purveying corruption and all manner of transactions. In fact, these people are supposed to be helping the counties.

Most of them are just brokers and people who have stood for elections and failed. You will find that since a person campaigned for the Governor, he is made a ward administrator. Another person who is a cousin to a cousin of the Governor who also campaigned for the Governor is also given something. This is not the devolution we were dreaming of. The devolution we were dreaming of is to get nightingales or foot soldiers walking up and down the villages to find out what people want.

Governors should not be going round with sirens and kicking *boda boda* boys out of the roads as if they are not human beings. These are people who earn small amounts of money as a source of livelihood. They should not be spilling water on women by the road side and doing all manner of things. This obscenity and opulence must be checked. Who will check this? Senators will have to check this. You are the custodians of the interests of the counties. You are the protectors of counties. You are the protectors of devolution. You are the engineers of development arising out of devolution. It is not enough to vote for money and go back to the countryside and tell *wananchi kazi yangu ni kuleta pesa;* and, that you have struggled and brought Kshs7 billion then you pocket and walk away. That is not the end of your job. We have a duty and that is why I supported Sang’s Bill. The duty of a Senator is also to go and say that he will not participate in micromanaging a project. We must ensure that we have water, a road, schools and hospitals.

If you go to the counties, you will see that many facilities that Members of Parliament started constructing with the CDF have been abandoned. There are many

abandoned health facilities. Some of our colleagues are coming up with new projects instead of finishing what was there. The CDF amount is handsome. The minimum that each constituency is getting is Kshs100 million which is a lot of money. Most of the facilities have been devolved. Health has been devolved and the Early Childhood Education (ECD) has been devolved. Environmental matters have also been devolved and the CDF is exclusively going into education and nowhere else.

However, you will still see endless numbers of young disadvantaged children running to Senators asking for money for school fees. When you ask them why they do not go to their Members of Parliament, they tell you that the Member of Parliament said that since his family did not support his political campaign, then he cannot get bursary. The management of public resources in this country needs a rethink. It needs a redirection and it needs to be looked at.

Recently, we supported the release of certificates. However, when you talk to the Chairman of the Committee on Education here, you will hear him asking how schools will mitigate the burden of debt that crooked parents who can afford to pay have never paid.

Article 135 of the Constitution is very clear. The President and his Deputy are actually violating the Constitution by giving roadside pronouncements on matters of policy. The Constitution says that matters of policy must be in writing, signed and must be sealed.

Sen. Sang: Madam Temporary Speaker, is the Senate Minority Leader in order to mislead this House that the President and the Deputy President have given roadside declarations while the truth is that they were giving advice to heads of schools based on the law? The Kenya National Examinations Council (KNEC) Act provides for the same. Is he in order?

The Temporary Speaker (Sen. Ongoro): Minority Leader, what exactly did you mean?

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, if my distinguished colleague from Nandi cared to read Article 135, he would see that it states as follows: "A decision of the President on the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President."

A matter as momentum as directing the release of certificates costing Kshs14 billion cannot be a roadside pronouncement. It cannot be pronounced in a funeral. It cannot be pronounced in a Harambee. They have to sit and as Cabinet make a decision, sign, and seal and send it out for obedience or for challenge. I am sure, as a good lawyer, he knows this.

Let me go back to the point I was addressing about development. If we do not check the levels of development that devolution brings, we will be playing into the hands of the enemies of devolution. After ten years, nothing will be seen. The enemies of

devolution will tell us; we told you that this thing does not work. We have just created an eating class in the village.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Senate Minority Leader, you have a balance of 45 minutes. So, you can proceed when we next have this Motion.

It is now 6.30 pm. The Senate, therefore, stands adjourned to tomorrow, Wednesday, 23rd July, 2014 at 2.30 pm.

The Senate rose at 6.30 p.m.