

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 17th July, 2013

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Order, hon. Senators! We need to determine if we have a quorum.

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir, we have 37 hon. Senators in the House. We have a quorum.

The Speaker (Hon. Ethuro): In that case, let us commence business.

NOTICES OF MOTIONS

APPROVAL OF SENATOR TO MEMBERSHIP OF SENATE COMMITTEE

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

THAT, pursuant to the provisions of Standing Order No.175(3), the Senate approves the nomination by the Rules and Business Committee of Sen. Kennedy Mong'are Okong'o to replace Sen. Janet Ong'era in the Standing Committee on Agriculture, Land and Natural Resources.

RELEASE OF FUNDS TO POLITICAL PARTIES

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

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

THAT, aware that Article 92(f) of the Constitution mandates Parliament to enact legislation to provide for the establishment and management of a political parties fund; acknowledging that this requirement has been met through the enactment of the Political Parties Act, 2011; noting that Section 23 of the Act establishes the Political Parties Fund to be administered by the Registrar of Political Parties; noting further that Section 24 of the same Act states the sources of the Fund as not being less than 0.3 percent of the revenue collected by the national Government as may be provided by Parliament as well as contributions and donations to the Fund from any other lawful source; cognizant of the fact that Section 25 of the Act requires the Registrar to distribute the Fund on a percentage basis, 95% of which is to be distributed proportionately by reference to the total number of votes secured by each political party in the preceding general election; the Senate calls upon the Registrar of Political Parties to immediately release funds to political parties in accordance with the Constitution and the Political Parties Act, 2011.

PROVISION OF COMPUTERS AND ICT TRAINING TO
MEMBERS OF THE COUNTY ASSEMBLIES

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

THAT, appreciating the significance of technology in the development of counties and also acknowledging the important role that Members of the County Assemblies (MCA) perform; determined to increase the efficiency of the legislative process and other parliamentary procedures and consequently save costs for counties; further recognizing that technology in Government fosters innovation and transformation, enhances performance and capacity in delivery of services and leverages support towards good governance; recognizing the important role played by the media in enhancing democracy and accountability, the Senate urges the County Governments to provide offices, computers and ICT training to Members of County Assemblies and to establish network infrastructure as well as a data bank for reference in all county assemblies and to provide a specially equipped media centre in all county Government offices.

The Speaker (Hon. Ethuro): Next Order.

MOTIONS

(The Senate Majority Leader (Sen. (Prof.) Kindiki) stood up in his place)

The Speaker (Hon. Ethuro): Yes, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the Motion, whose notice I have just given, is listed on the Order Paper. That is why I am standing up.

The Speaker (Hon. Ethuro): That is correct. Proceed.

APPROVAL OF SENATOR TO MEMBERSHIP OF SENATE COMMITTEE

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.175(3), the Senate approves the nomination by the Rules and Business Committee of Sen. Kennedy Mong'are Okong'o to replace Sen. Janet Ong'era in the Standing Committee on Agriculture, Land and Natural Resources.

Mr. Speaker, Sir, from time to time, the House and political parties are entitled to re-look at the workload and responsibilities that every hon. Senator has. It is on that context that the request of the Minority to have this adjustment was granted by the Rules and Business Committee.

This is a straight forward matter. It involves replacing Sen. Ong'era, who is the Minority Deputy Chief Whip with an hon. Senator from the same side. So, I do not see a big issue. But, of course, it is up to the hon. Senators in this House to approve the proposal which has been forwarded to the House by the Rules and Business Committee.

Mr. Speaker, Sir, with those remarks, I beg to move this Motion and request Sen. Muthama to second.

Sen. Muthama: Bw. Spika, nasimama kuunga Hoja hii mkono. Mabadiliko kama haya ni ya maana sana. Kazi itafanyika kwa urahisi. Pia itawezesha Maseneta kuwa na nafasi ya kufanya kazi ya Bunge hii inavyofaa.

Bw. Spika, bila kupoteza wakati, naunga Hoja hii mkono.

(Question proposed)

Sen. Khaniri: Mr. Speaker, Sir, I rise to support this move. I urge my colleagues to do the same. In supporting the Motion, I want to take this opportunity to thank Sen. Ong'era for her magnanimity. I am the Vice-Chair of the Committee that she is leaving. I thank her for giving Sen. Okong'o a chance in the spirit of having all hon. Senators participate in committee business.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

I also want to take this opportunity to urge the Senate Majority Leader to reconsider the case of my friend, the Senator for Kakamega County, Sen.(Dr.) Khalwale. He was dropped from the committees that he was serving. We know him as a very energetic and informed hon. Senator. I want to plead that what Sen. Ong'era has done should also be done by the Jubilee side, so that Sen. (Dr.) Khalwale is properly utilized in this House.

I support, Mr. Speaker, Sir.

(Applause)

Sen. Kagwe: Mr. Speaker, Sir, I rise to support the Motion and, indeed, congratulate my colleague in the Committee of Education, Information and Technology, Sen. Mong'are. We know him as a hardworking individual. I am sure he will take the same virtue to the other committee. While doing so, I also urge the administration of the House to alter, very quickly, as per our agreement in the Liaison Committee, that committees be able to meet on weekdays at the rise of the House. With hon. Senators serving in two or three committees at the same time, it becomes very difficult to get quorum in certain committees at certain times.

Mr. Speaker, Sir, I support this change. I urge the administration of the House to consider these challenges in committee meetings.

(The Serjeant-at-Arms circulated a list to hon. Senators)

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

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

Sen. (Dr.) Machage: Mr. Speaker, Sir, this list that is being passed around the House for us to sign is out of order. I find it unfair and unorthodox as parliamentary history dictates. We have always had this done silently by the Serjeant-at-Arms as we enter. Now it is here, we are signing it like "small" students. Is this in order?

Hon. Senators: Why? What is happening?

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

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in fact, the issue being raised by Sen. (Dr.) Machage is very sensitive. We are told that in the morning, when the House was unable to realise a quorum, such a document was circulated, that hon. Senators sign. Under which Standing Order was that made? This Assembly has employed members of staff who clock us in and out. What has become of that responsibility? If there was such a change, why was it not communicated to us formally?

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage and Sen. (Dr.) Khalwale, you are raising in-house issues. Since this time should be used in a better way, that is a matter that I will deal with in my Chambers. Thank you for bringing it to my attention.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Let us proceed with the business on the Order Paper.

I now wish to put the question to the Motion as moved by Sen. (Prof.) Kindiki. Of course, this is not a matter affecting counties. It is only affecting the Senate.

(Question put and agreed to)

ESTABLISHMENT OF NATIONAL YOUTH SERVICE OUTLETS
IN ALL COUNTIES

THAT, aware that unemployment is one of the major causes of insecurity and moral decadence in this country; noting with concern that the youth, who are the backbone of our society, are the most affected and that as a result many of them have become disillusioned and hopeless; noting further that assisting the youth to access employment would contribute towards the attainment of economic and social rights enshrined in Article 43 of the Constitution of Kenya; aware that Section 13 of the National Youth Service Act, Cap 208, Laws of Kenya, vests power in the Minister responsible for the Service to divide the Service into branches, units and sub-units from time to time; the Senate urges the National Government to take measures to establish National Youth Service outlets in all Counties where the youth who have completed secondary level of education and who may wish to enroll for courses offered by the Service could enroll and acquire necessary skills and further that graduates from the Service be given the first priority whenever the two levels of government recruit, in areas where the graduates are qualified to serve.

(Sen. Elachi on 11.7.2013)

(Resumption of Debate interrupted on 16.7.2013)

The Speaker (Hon. Ethuro): Order, hon. Senators. This Motion had been concluded. We just deferred voting to today. I order that the Division Bell be rung. Could we have the names of the tellers?

(The Division Bell was rung)

DIVISION

ROLL CALL VOTING

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

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

AYES: Sen. Abdirahman, Wajir County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kipchumba, Baringo County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen.(Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Kagwe, Nyeri County; Sen. Muthama, Machakos County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and Sen. Wamatangi, Kiambu County

Teller of the Ayes: Sen. Bule

Teller of the Noes: Sen. (Dr.) Zani.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows.

AYES: 36

NOES: Nil

ABSENTIONS: Nil

(Question carried by 36 votes to 0)

You may open the doors. Next Order!

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL

The Senate Majority Leader Sen. (Prof.) Kindiki: Thank you, Mr. Speaker, Sir. I beg to move that the County Allocation of Revenue Bill (Senate Bill No.1 of 2013) be read a second time.

The County Allocation of Revenue Bill of 2013 is the one that deals with the horizontal division of revenue among the counties. The brief history of this Bill is within the full knowledge of Members of this House. As Members know, the Senate of Kenya is

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

in court concerning the predecessor Bill or the progenitor Bill which is the Division of Revenue Bill which is now an Act of Parliament.

As I move this Bill, I am and the House is, fully aware of the delicate balance that the Senate, through the Rules and Business Committee and the leadership of the Senate, has gone through. On one hand, matters of division of revenue, at least, in the practical sense are before the Supreme Court of Kenya. There is a relationship between the vertical allocation of revenue and the horizontal allocation because the figure of the amount of money being divided is critical to the horizontal division.

One of the difficulties that this House has to contend with is the direction and guidance of the Chair in the figure. We do not know what figure counties are supposed to be dividing. The Senate figure is Kshs258 billion. The figure which was passed is Kshs210 billion.

In my own view, I have shared this with a number of other colleagues; the Senate must come out of this matter as an institution that abides by the law of our country. As far as I know and as far as my experience helps me as a lawyer, the Division of Revenue Act is the law of Kenya as we speak. There is no active order of court that has nullified that legislation. The fact that we have contested that Act, in my view, does not give us lawful or legitimate reason not to go ahead with discussing the present Bill. As I have said, there are no orders that nullify or invalidate the Division of Revenue Act of 2013.

We went to court because we believed in the rule of law and if we believed that time and even now that the issue of Division of Revenue Act process was not undertaken according to the law; if that is still our belief, then we must also believe that the Division of Revenue Act is an Act of Parliament and, therefore, in terms of the complexity of the figures, I am afraid – I could be wrong but this is from a legal perspective – that the Kshs210 billion is the law until it is overturned by a court of law.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The Senate Majority Leader has repeatedly said that the Division of Revenue Bill is now an Act of Parliament. It is true that it is an Act of Parliament. I agree with him. If he believes in that, why has he come to the House with a theoretical suggestion instead of moving in line with that Act which provides that the money we will be sharing will be Kshs210 billion? Since members of the public may not be following this “financial English”, let me put it in an African English Language.

If a father in the African sense negotiates for dowry for his daughter, then he dies before it is paid, when this dowry is eventually paid, what the sons share amongst themselves is not what the father agreed upon with the in-laws but what the in-laws brought. So, under the Act, the in-law has brought Kshs210 billion. Why are you limiting us to Kshs198 billion? Is this a scheme by the clever mathematicians of Jubilee Government towards the game of denying counties revenue?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank Mr. Speaker, Sir. At the time when this Bill was published, the amount in question was Kshs198 billion. Members will recall that even the Kshs20 billion was a negotiated settlement. These

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

figures have kept on changing since this Bill was first published. In any case, the Kshs210 billion is not something that can be varied. As I have said, it is the law and is what has been passed. I do not see how this is a theoretical Bill.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I am happy with what the Senate Majority Leader has said. However, for purposes of record so that he does not visit too many clever ideas on us, could he conceive on record that when we go to the Committee Stage, he will be moving away from Kshs198 billion to Kshs210 billion so that we sit on our computers and find out what the entitlement is for our respective counties? Could he make that undertaking?

The Senate Majority Leader Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I am duty bound, because that is the law, to ensure that the necessary amendments are done. The correct figure is about Kshs198 billion plus Kshs20 billion which are conditional grants to the best of my recollection. However, in terms of making sure that whatever the law has provided for is what we are talking about, those are issues that we have no choice but to make sure that we comply with the actual figure.

The challenge, as I have said, for this Senate is that as much as it is a bit difficult to come to terms with the reality that we have to wait a little longer to know whether our position is the one that carries the day or not, we have to continue to apply the law as it is. It is in that context I appeal to hon. Senators to debate this Bill and pass it notwithstanding, perhaps, the expectations that our position may be the one that the courts uphold.

It is only that way that this House can demonstrate that we believe in the rule of law and that we are bound by the law as it is unless it is varied. Otherwise, if we keep on frustrating or impeding the legislative process because we expect certain findings, that will be not only speculative but will also undermine our position as an institution that believes in the rule of law and which is bound by the decisions and positions that are lawful in nature.

As a Senate, we should proceed expeditiously to debate and pass this Bill because counties, up to now, are complaining. Since a week ago, Members may have noticed that there is impatience coming from our counties. Certain functions have been devolved to county governments, according to the Constitution. They have salaries to pay and programmes to run.

What I picked from the media last week is that there are a few people who are saying it is because the Senate has failed to pass the County Allocation of Revenue Bill that things are not moving. We should come out clearly in this matter, in terms of our position in supporting devolution, and in saying that if this is the law, we should comply with it.

If the Division of Revenue Act is invalidated, I am sure that will have consequences on this Act as well. Those are issues we can deal with when and if they happen. Even if we are aware that the courts will grant us our prayers; however, we do not know that because it can go either way.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. As you may notice, the Senate Majority Leader has either intentionally or otherwise refused to refer to the figure of the money that is documented on the Bill that he is moving. Is he in order to move a Bill in his own mind, of Kshs210 billion, when actually the figure on paper is different?

The Speaker (Hon. Ethuro): Order, Sen.(Dr.) Machage! Sen.(Dr.) Khalwale challenged the Senate Majority Leader on that matter and I think that he explained himself. He has continued explaining why he has approached it in that particular manner. Unless, he has concluded, then you can say that the total submissions have not reflected the kind of concerns that you are raising.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. As I have said, the figure is Kshs190 billion, plus Kshs20 billion in form of conditional grants, under Article 202 of the Constitution. That figure is in the public knowledge. It is part of the Division of Revenue Act, 2013. So, I do not think that there is any room for mischief by or from anybody. In any case, the particular issue of the figure appearing in this version of the Bill can be handled through an amendment. I think that anybody, including my brother, Sen.(Dr.) Machage, can bring an amendment at an appropriate stage---

Sen. Billow: On a point of information, Mr. Speaker, Sir.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I accept to be informed by Sen. Billow.

The Speaker (Hon. Ethuro): Senate Majority Leader, before I give Sen. Billow the opportunity to inform you, I think that you are contradicting yourself. Dr. Boni persistently, on two occasions, rose on points of order to challenge you, and so, the burden is placed on your shoulders. Now you are transferring the burden to Sen.(Dr.) Machage. If you transfer it to Sen.(Dr.) Machage, then I will have to withdraw the defence that I gave you.

Yes, Sen. Billow!

Sen. Billow: Mr. Speaker, Sir, I would like to inform the Senate Majority Leader that he is moving this Bill with the figures as they are. Whatever amendments that will bring the figures to the Act that was passed, that is, the Division of Revenue Act, 2013, will be done at the Committee stage. I think that is what will happen. We will, at the Committee stage, bring amendments that will bring the figure in line with the Kshs210 billion that was in the Act.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. This is the mother of the Bills. If what the Chair of the Committee on Finance, Commerce and Economic Affairs is saying is going to take place, then for purposes of this House and the general public, especially the people in the counties, it would be nice if the Committee could go out of the way to bring a new matrix, as it will appear if the figure was Kshs210 billion and another matrix as it would appear if the figure was Kshs258 billion. Since we do not

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

know which way the Supreme Court will rule, should it rule in favour of Kshs210 billion, then it will be clear to the leadership in the county governments what it is that they are getting. If it rules that it is Kshs258 billion, then again it will be equally clear, so that we do not have to restart the process, because this is the mother of the Bills.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I just want to clarify to the Senator for Kakamega that procedurally, in accordance with our Standing Orders, we can only move the Bill that was published, which is being moved by the Senate Majority Leader but whatever amendments, including the matrix, will be tabled in accordance with the procedures at the Committee stage. It cannot be done in the Second Reading. I think that is procedural and we will explain as we go forward.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. While the concerns raised by Sen.(Dr.) Khalwale and Sen. (Dr.)Machage are valid, I think that they have been ring-fenced against any mischief. At the Committee Stage, the figures will be done accordingly. What I do not understand – and I stand to be guided – is that I did not hear Sen.(Dr.) Khalwale say that we will pass the Bill in terms of scenarios and say: “If the court rules this way or that way.” That is scenario building, which is an academic exercise.

Mr. Speaker, Sir, I beg that we move with the law as it is. If in future there is a different position that will affect the Division of Revenue Act in terms of figures, then that will be addressed at that stage. In any case, my own understanding of the position that the hon. Senators took on this matter, was more futuristic and long-term than just achieving a figure for this year. We were trying to say that in the future---

Hon. Senators: Present!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Present, but also with an eye on the future, because you can win a battle this year and lose it forever. So, we are rather winning the long-term battle of saying, one, that this is the role of the Senate and when the Senate says something about this Bill, this is what happens. That is the way I understand it – I could be wrong.

An hon. Senator: What is the position of the Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the position of the Leader is as I have said; that I believe that we should proceed with the Bill, with Kshs210 billion in mind, because that is the law at the moment. You cannot create your own law, because you expect the court to give you some ruling.

Mr. Speaker, Sir, other than that contentious aspect of the figure, I think---

The Speaker (Hon. Ethuro): Order, Sen.(Prof.) Kindiki! You may resume your seat. I want to agree with the Senate Majority Leader, just to clarify in the minds of other Senators who are still grappling with which is which.

When we did the First Reading of this Bill, which was on 2nd July, I made a Communication, in order to explain all the issues. That Communication was also as a result of a point of order raised by Sen. (Dr.) Khalwale, on Thursday 27th June. If you can refer to that Communication, then you will be guided accordingly. I think that what the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Senate Majority Leader needs just to clarify is the procedure that was clarified by the Chair of the Committee on Finance, Commerce and Economic Affairs and then, in terms of ownership of the future amendments, including the matrix that Sen. (Dr.) Khalwale would wish to see, you need to indicate to the House that, that will come either from you or the Committee. I think that once the Senators know that, they will know even where to go and interrogate further. That should be able to help us move forward.

Sen. Orenge: On a point of order, Mr. Speaker, Sir. I quite agree with you. I wonder whether the Senate Majority Leader was helping us, because what I understand to be in the court process is not about figures, but the process. But right now we are concerned about figures. So, if in this financial year we are not able to take as much as possible to the counties, we will not have played our role effectively. So, it would help if, as you said, the Senate Majority Leader owned whatever is being propagated by the relevant Committee. This is because we have seen before that without commitment of the leader, when the matter comes to the Committee, things may take quite a different turn. But if on the Floor of the House he can give us the assurance that, that is the position of the leader and, therefore, the Government, then we can take whatever is being done by Sen. Billow and his Committee, as concrete. Otherwise, if he is talking about the future, whereas we are worried about figures now, then I get really worried. This is because we can never tell what is coming in the future.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I will be happy to introduce the amendments as appropriate, but going by the tradition, which has been set by this House in the last few weeks, especially last week when I lost a battle on a different issue, I think that it is only appropriate that the amendments come through the Committee, unless there is any particular reason on this one, we cannot trust the Committees to deliver. It should not be for the Senate Majority Leader to sponsor this amendment, but, definitely, the Government fully supports its own commitments. There is no doubt about that. In any case, the Government is bound to respect the law. So, I do not think that there is the issue of choices or magnanimity here. The Government has to comply with the law as it is and I am willing to bring the amendment. But given the traditions and the way I have seen this House working towards strong Committees which are in charge of their dockets, it is only proper that Sen. Billow's Committee be the one to sponsor these amendments and defend them but you can give direction. We do not want to appear as if we are lazy. We want to do our job.

The Speaker (Hon. Ethuro): Order! Order! I think that what Sen. Orenge wanted was for you to give him and the rest of the Senators comfort; that, first, you are committed to it. I agree with you that in any case, as the Senate Majority Leader, you are in charge of the business, including constituting those Committees. So, for you to confirm to the House that the Committee on Finance, Commerce and Economic Affairs will do it, is good enough. They just wanted that assurance that you read from the same page. On that basis, we will proceed along the lines that you have suggested. The only qualification is that when you start talking about the Government, I wonder whether you are

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

introducing the debate that we had last week. I think that we agreed that those were temporary measures and we will make a definite ruling. You will not just be courting trouble from me, but I wish to warn you that even last week, the Senator for Meru had to challenge you. So, you may not wish to consider being *de facto* for now.

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I confirm to Sen. Orenge and the House that I fully take responsibility to support this position and will ensure that, that is the position that will be taken. We will consult with my colleague, the Chair of Committee on Finance, Commerce and Economic Affairs and the entire Committee. I will take responsibility.

Mr. Speaker, Sir, other than the contentious issue about figures, this Bill has been prepared in accordance with the procedures and parameters which are set out in the Constitution, which are:-

1. Provisions of Article 203 of the Constitution.
2. Revenue allocation criteria approved by Parliament.
3. Cost of running county governments structure.
4. Costing of the ongoing devolved functions.
5. Need to hold harmless the county governments and, therefore, minimize the risks of service disruption.

Mr. Speaker, Sir, let me explain in a very general and brief sense, before I rest my case. First and foremost, the horizontal allocation of revenue must satisfy – and it has satisfied – the principles of Article 203. Article 203 of the Constitution sets out the principles that the financial system must satisfy. So, that has been taken care of. And then there is the criteria which was approved by the National Assembly at that time when it was sitting as both the National Assembly and the Senate.

Mr. Speaker, Sir, maybe this is the right time for the Senate to decide whether we will have to relook at that criteria again, because the application of this criteria – which was suggested by the Commission for Revenue Allocation (CRA) and approved by the National Assembly, which was also doubling as the Senate before January this year – that criteria has had its own challenges. Some schools of thought believe that, that criteria could end up marginalizing already marginalized counties even further. The Constitution says that every five years, this formula shall be reviewed. So, there is an opportunity to look at the current formula so that by 2017, we see whether or not we need to introduce other parameters and other considerations. Because the whole essence of both the vertical and horizontal allocation of resources to counties and among counties is equity, and that brings me to the second point; that this Bill and the allocation of the sharable revenue has taken into consideration, in line with the formula, disparities among counties as well as disadvantaged areas and groups within counties.

Sen. Ong'era: On a point of order, Mr. Speaker, Sir.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Speaker (Hon. Ethuro): What is it, Sen. Ong'era?

Sen. Ong'era: I am sorry, Mr. Speaker, Sir, for interrupting. But I note with a lot of sadness that we have a person with disability here, Sen. Linet, and she cannot read and follow these proceedings because she has not been provided with this Bill in Braille.

(Applause)

I feel very sad, Mr. Speaker, Sir, that she cannot even read the Order Paper for all this time that we have been in this House.

Hon. Senators: Shame! Shame!

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

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

Sen. (Dr.) Kuti: Mr. Speaker, Sir, being a doctor and also the Chair of the Committee that Sen. Linet sits in, we have brought this matter up in almost every meeting that we attend and promises have been made which have not been met. I think we need to have a conclusion on the matter that has just been raised.

Thank you.

The Speaker (Hon. Ethuro): Order, Senators! First, I want to thank the two Senators for bringing this matter to the House. It is an area of grave concern. What I will just be asking from the Senators is a bit of patience. As you are saying, the secretariat is working on it and in the meantime, we have provided assistance of these persons to assist the Senator. But I also want to order the secretariat to make sure that they expedite the services in order to help these Senators to follow the proceedings more effectively.

Thank you.

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): So, Mr. Speaker, Sir, I was talking about economic disparities among counties and I was saying that this Bill, in line with the formula which was approved by Parliament, has taken care of the economic disparities among our counties; although I believe that, that formula should be relooked at in future by this House.

Mr. Speaker, Sir, the other issue about disparities and inequities is that, over and above the figures here, there is an additional Kshs4.3 billion, which is part of the Equalisation Fund; although I also think that this figure is extremely small. Since the Constitution only talks about "at least 0.5 per cent of the national revenue---"

(Hon. Senators consulted loudly)

Mr. Speaker, Sir, I think the levels of concentration are extremely weak. If you could, kindly---

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Speaker (Hon. Ethuro): Order, Senators! This is a very, very important Bill and I---

The Senate Majority Leader (Sen. (Prof.) Kindiki): Precisely! And I know some of the---

The Speaker (Hon. Ethuro): Order, Senate Majority Leader!

(Laughter)

You called for the Speaker's support and then you want to proceed with it!

(Laughter)

Order, Senators! This is a very, very important Bill; it is about monies to the counties, and I think it is important that the Mover of the Bill is actually given adequate attention and time to proceed with it and to raise all the pertinent issues. You may wish to challenge some of the issues during your contributions, but I think for now, let us listen to the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I want to expedite my remarks.

Thank you very much, Mr. Speaker, Sir, and I am sorry for trying to usurp the revered role of the Speaker. There is nothing like *de facto* Speaker; but I think for the Prime Minister, I still retain that title; that one exists!

(Laughter)

Mr. Speaker, Sir, the issue of disparities is so critical because, actually, that is the--

The Speaker (Hon. Ethuro): Take your time, Senate Majority Leader; do not be in a hurry.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. If I were asked the one single reason why this Senate exists and for what purpose, it is to create a balanced and equitable development in our country; period! So, as much as I know there are other issues that, perhaps, you may be interested in and we are asking why we are not involved in, if we discharge this mandate of equalisation of our country in the next so many years, we would be national heroes. You would not even require scavenging for attention from anybody. So, we should be passionate enough that we have a sacred and important duty to ensure that our country enjoys equitable development. One way through this Bill, as I have said, is relooking at that formula in future to see to what extent it promotes equalisation.

Secondly, it is to relook and even engage other stakeholders in the whole issue of the Equalisation Fund, because over and above this revenue, there is Kshs4.3 billion

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

which has been put as the Equalisation Fund, although this is very, very little. The Constitution says that, that amount should be at least 0.5 per cent of the national revenue, but nothing prevents – although I am being told not to say so, I will repeat it – the Jubilee Government, which I represent in this House in one way or the other – without raising controversies – is committed in its manifesto to upping the percentage of the Equalisation Fund progressively to as high as 10 per cent of the national revenue. So, I think for this Senate---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Kindiki! We know you are the Senate Majority Leader representing the majority party forming the Government. Proceed; you can actually talk about Government policies. I think the difficulty in the House was whether you can be the *de facto* Prime Minister; that was the only question.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir, for that assurance and even the question – I hope it is subject to reconsideration in future – nothing is permanent. The Chair is encouraged, in the spirit of building traditions for this House, to relook at that issue at an appropriate point at his discretion.

Mr. Speaker, Sir, other than that, the other issue that I think, as a House, we need to note is that, in preparing this Bill, there has been regard to the whole issue of ring fencing any shortfalls in the expected revenue because there is a possibility that the expected revenue may not be realized. I think this Bill has been brought in the understanding – and I think there is a relevant provision there that talks about ring fencing – that any shortfalls which may come will be absorbed by the national Government. So, I think counties can be sure that, at least for now provisionally – if I may say so – the Kshs210 billion which is being shared is assured; that is the meaning of ring fencing. So, it does not matter what the revenue inflows look like, the national Government absorbs any shortfalls in revenues as is expected under the Constitution and under the law.

Mr. Speaker, Sir, the other thing which has been put into consideration is the issue of fiscal capacity and efficiency of our counties, and I know this is a matter of great concern. As much as the counties are unable to do some of the things that are expected of them, one of the issues that need to be tackled, not necessarily in this Bill but going forward through legislation and policy, is that we must address the issue of the capacities of our counties and their efficiency to deliver services. That is why if you look at the Constitution, it says that the national Government, when requested, must or shall enable counties build relevant capacities. These capacities are not just in form of human resources, *et cetera*. They are also in the form of fiscal capacities or capacity to generate and use public money well.

At the moment, the issue of how much money a county can generate is not very clear because of the absence of data---

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

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

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, Prof. Kindiki has correctly said that, as provided for in the Constitution, the national Government will wait for the county governments to request for the functions that they would like to be devolved to them. Could the Professor also confirm that he is, therefore, annulling the directive that was given by the President during the meeting of the Summit with the Governors that he was now handing over all the devolved functions to the county governments? Are you now recalling that decision by the President? If you are doing so, we want to congratulate you!

Sen. Murkomen: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! The point of order was directed to the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, before the Senator informs me, I have not said – for the sake of the record – that the Government or anybody is reconsidering the devolution of functions. All that I have said is that the Constitution talks about the obligation – it is even a duty – for the national Government to build the capacity of counties to discharge their constitutional functions. But that has to be done upon request because of the inter-governmental nature; the national Government cannot just say “we think you are wrong here, let us help you this way.” They must engage by---

For your information, Sen. (Dr.) Khalwale, the President did not---

Mr. Speaker, Sir, the supplementary matter which has come from Sen. (Dr.) Khalwale is that, he is asking me whether the President---

Sen. (Dr.) Khalwale: It is procedural!

The Senate Majority Leader (Sen. (Prof.) Kindiki): It is unprocedural because it did not come through the Chair.

The Speaker (Hon. Ethuro): You are supposed to ignore any matter not coming through the Chair, Sen. (Prof.) Kindiki. How come you seem to be pursuing those matters?

(Laughter)

Also, Senate Majority Leader, you can only talk to whomever through the Chair. So, do not look at Sen. (Dr.) Khalwale.

An hon. Senator: With angry eyes!

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): No, no; they are not angry eyes; they are serious!

(Laughter)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Murkomen: On a point of information.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I accept to be informed by Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, when Sen. (Dr.) Khalwale talks about what the President said, he must be referring to media reports. The Constitution says that when the President makes a decision, he puts it in writing. Sen. (Dr.) Khalwale has not tabled in this House anything written by the President which says that all functions shall be decentralized immediately. What we know and what we have been informed by the Cabinet Secretary for Devolution and Planning is that the President expressed his intention and readiness to devolve these functions, even all of them, when and if directed by request from counties or by the relevant institution which is the Transition Authority (TA). So, it is not correct to say that the President said that all functions are going to counties immediately. It is however correct to say that the President has expressed his willingness and intention that all those functions be devolved if the counties request and if the Transition Authority gives an okay.

The Speaker (Hon. Ethuro): Well, that is information because those are details. I also thought the Senate Majority Leader would, in his defence, indicate the venue of that meeting which was a meeting of governors. Sen. (Dr.) Khalwale has not demonstrated that there was no request by the governors.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to thank Sen. Murkomen. Now that he has clarified that it was the media that I was referring to, can you now table in this House the signed statement by the President as pertains to this matter because it is causing a lot of anxiety among Kenyans and among county governments? By the way, even doctors and nurses have already approached the Senate because they are contesting the issue of their Kshs38 billion in form of emoluments being channeled to the county governments. Can you table that here?

Sen. Murkomen: I think again my colleague, Sen. (Dr.) Khalwale, is mixing up issues particularly when it comes to whether or not we can table here a statement that does not exist. If he accepts---

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

The Speaker (Hon. Ethuro): Sen. Murkomen is already on a point of order. He is actually responding to a point of order raised by Sen. (Dr.) Khalwale.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. If Sen. (Dr.) Khalwale accepts and agrees that whatever statement he was referring to was not written in the media reports, why does he want me to table what does not exist unless he is requesting that this House asks the President to put something in writing so that I come and table it?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Sen. Murkomen purported to inform the Senate Majority Leader on a statement from the President. He has been challenged to table that information and now he is saying that the statement does not exist.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! You also need to be accurate with your information. The information provided by Sen. Murkomen was from the Cabinet Secretary. That is what he said.

Sen. (Dr.) Machage: Mr. Speaker, Sir, thank you for the correction. He has said that that statement does not exist. Can he therefore withdraw and apologise to this House?

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir. We have heard both the Senate Majority Leader and Sen. Murkomen affirm that the President made certain statements and, many a times Kenyans, have complained about past governments on issuing policies in form of roadside declarations. Are they in order to tell us that these are statements that cannot be quoted when it is known and is in public domain that the President said that the Government is committed to devolution? He actually said that functions must be devolved fully and now. Are they alluding to the fact that this could be a roadside declaration as opposed to meaningful statements from the highest office?

The Speaker (Hon. Ethuro): The last one by Sen. Ong'era.

Sen. Ong'era: On a point of order, Mr. Speaker, Sir. Is my dear friend, Sen. Murkomen, in order to tell us that unless a written document is tabled from the President when we know that the President can indirectly or directly speak? He need not make any written document in order for the statement to be valid. We clearly saw the President making a submission when he was addressing the Summit where he clearly said that all these functions will be transferred to the counties.

The Speaker (Hon. Ethuro): Even as Sen. Murkomen may wish to clarify further, let me also clarify. I hope nobody is purporting to be discussing the utterances of the President. You can only interrogate the policy outcomes. So, Sen. Murkomen, you are equally advised to restrict yourself to confirmed sources.

Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, the Constitution is very clear. Every time the President wants to do anything, it must be put in writing. If any Member wanted to challenge any decision from the President, he would rather be referring to a particular policy that is written where and when. What I have said here was confirmed by the Cabinet Secretary who came to our joint Committee meeting of Devolved Government and the one for Finance, Commerce and Economic Affairs she stated that what the President said at that point was an indication of willingness to devolve the functions. There are more details in that report of our meeting which shall actually be tabled in the House when the time comes, including an answer to a question which Sen. (Dr.) had Khalwale asked earlier.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! While I appreciate your knowledge of the Constitution and I do not disagree, I wish you could also take the trouble of learning your Standing Orders. You have just clarified that, that message was given to the Committee today. The Standing Orders do not allow you to divulge that information until you have brought a report to the House. It would be much easier for

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

everybody if you just apologized and withdrew. In any case, it was not your baby. You are carrying a burden that was not yours.

Sen. Murkomen: Mr. Speaker, Sir, before your ruling last week, I had been falsely accorded the title of *de facto* Deputy Prime Minister. So, I felt like I was carrying a similar burden. I think I am well informed now that one cannot discuss a committee report before it is tabled. I withdraw the statement and apologise but the day we will table it, I will unwithdraw and apologize.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. You have clearly heard the conditional withdrawing and apology by Sen. Murkomen despite your order as the Chair. Is he in order?

Sen. Murkomen: I withdraw and apologize unconditionally.

The Speaker (Hon. Ethuro): Order, Senators! Sen. (Dr.) Machage, once you have made your point, you do not get any more credit by just over-emphasizing it. In any case, I heard Sen. Murkomen very well. He withdrew, he was a bit reluctant to apologise but with a bit of nagging, he apologized too. He also said that after he presents the report, which means, after he has made the amends, then he can do the other things that he had wished to do from the beginning and I do not see anything wrong with that. In any case, my problem with him was the procedure. He had not followed the proper procedure. Once the procedure is done, he is at liberty to do all those other things he wishes to do. So, let us not flog a dead horse.

Hon. Senators, our broadcast staff are also requesting that you all speak through the microphone so that you can be recorded.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki: Mr. Speaker, Sir, before I make my last point, I just want also to assure this House and the country that the President of Kenya, His Excellency, Hon. Uhuru Kenyatta, does not make roadside declarations. I am saying that because some of colleague Senators have tried to directly or indirectly suggest that the declaration or the statement in question was made in a roadside manner. First of all, there was no road or any sidewalk to stand on. The declaration was made in a properly constituted meeting of the Summit which involves the President and all the county governors of the Republic of Kenya. That is just for clarity and for record.

Mr. Speaker, Sir, the first reason why I introduced or mentioned the issue of fiscal capacity and efficiency is two-fold and I have explained one side of it. One side is; there are many things that counties and governments are unable to do now because of capacity. The Constitution anticipated--- because you cannot just create counties and assume that they have infrastructure, human resource, experience and expertise to make sure that they deliver all their functions. I am repeating that the Constitution envisages that process to be ongoing. That is why the national government has been given an obligation to ensure that, progressively, counties have fiscal capacities among other types of capacities.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The second reason why I introduced or mentioned this point is because, if you look at Article 209 of the Constitution, it empowers counties to levy certain taxes, levies and charges. They have taxation powers under Article 209. It would have been expected and we hope this would be the case for future county allocation of revenue bills of the future, one of the factors that have to be considered and that the Senate must be satisfied as having been considered in the future, is the fact that in the horizontal allocation of monies among counties, the disparities in terms of how much tax each county can collect must be factored also. This is all in a bid to ensure that we do not create more disparities in our country by treating all counties as if they are equal. What I am saying is that for now, there does not exist adequate data and information on the capacities of various counties in terms of how much taxes, fees and charges are projected. They are just trying to figure out but I do not think there is scientific basis. In future, the issue of how much a county can generate by itself must be a factor which must be considered in determining the amount of money allocated to counties in the future.

Mr. Speaker, Sir, in summary, this County Allocation of Revenue Bill has complied with the five parameters that are required by the law namely; Article 203 of the Constitution in terms of broad principles of financial management, Revenue Allocation Criteria approved by the Senate, the cost of running county governments and their structures, costing of the ongoing devolved functions and lastly---

The Speaker (Hon. Ethuro): Order, Senate Majority Leader! Your time is actually up but because of the numerous points of order, I will add you another five minutes to conclude.

The Senate Majority Leader (Sen. (Prof.) Kindiki: Actually, Mr. Speaker, Sir, I needed one minute to conclude but thank you very much for that consideration.

I want to summarize by saying, it is important for this House to discuss and expeditiously pass this Bill. That way, the Senate will be seen as being sensitive to the needs of our counties because that is why we are here. The fact that there are certain outstanding issues should not be a bar and I just want to encourage us to give whatever input we can in this Bill and pass it so that our governors and county governments can start operationalising their budgets. At the moment, the situation is nearly at a crisis point. I have heard it from the Chair of County Governors, we have seen it from the media and the less the Senate is seen as not the one holding the delay key, the better for us in the long-term.

With those few remarks, which were interrupted by many points of orders, I beg to move and ask Sen. Kerrow to second.

The Speaker (Hon. Ethuro): Order, Senate Majority Leader. You may move but you do not move before you have identified the Seconder and you have done so.

Sen. Billow: Mr. Speaker, Sir, I stand to support this Bill. It is a very important Bill because this is the first time that the Senate will be debating the County Allocation of Revenue Bill. Of all the functions that we have, the allocation of revenue among the counties is the most important and the most pronounced. I will not repeat many of the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

issues that the Senate Majority Leader has already mentioned but I want to highlight three items which are important.

First, I want to agree with him that the Committee of Finance, Commerce and Economic Affairs will be bringing amendments at the Committee Stage to raise the total allocation among the counties to Kshs210 billion, including the Kshs20 billion for conditional and Kshs190 billion which is sharable revenue. Those amendments and others will also be coming at the Committee Stage.

Mr. Speaker, Sir, the issue of the functions of the county governments that have been mentioned is a very important thing because we are now aware that the counties did their budgets at the end of June. Those budgets are made up of two things: One, share of the national revenue that is allocated to them; two, is the local revenue that the counties generate from their own counties. As regards the share of the national revenue, the amount that each county shall include in its budget is based on this County Allocation of Revenue Bill. Because of the fact that the Bill is still being debated, it is our view that the budgets that have been done by the county governments to date are provisional.

Mr. Speaker, Sir, the budget that has been approved for the county governments is not the first one. In the last four months, between March and June, there was the Transition County Appropriation Bill which provided for a specific amount of money to allow each of the counties to operate between March and June. That money was supposed to cater for operational expenses and salaries of the county governments for the period up to June.

It has come to our attention that some counties have not paid their employees, particularly those that they took from the county councils and other local authorities for the past three months. It is important to point out that county governments have a responsibility to utilise the money that was allocated to them for the four months between March and June for payment of salaries for the staff they took.

Coming back to this Bill, the most important clauses I want to highlight very quickly; one, is Clause 6(1) which says;

“The functions gazetted by the Transition Authority for transfer to county governments in accordance with Section 23 of the Transition to Devolved Government Act shall form the basis for preparing the relevant county government’s estimates of revenue and expenditure for the financial year 2013/2014.”

That is the point I want to make.

I want to point out that the Transition Authority has not gazetted these functions as required by the Transition to Devolved Governments Act. This is the point that was being raised earlier. In spite of the fact that at the Summit, there was an expression for all functions to be devolved, it is our understanding that the Transition to Devolved Governments Act requires that each county should apply for functions to be transferred to them. The Transition Authority will carry out an assessment on their capacity. Based on that assessment, those functions are approved and resources are allocated. In fact, the Act, in Section 23, makes a provision that where a county government is not satisfied,

and where the Transition Authority has indicated their lack of capacity, they can appeal to the Senate to review that decision. In this regard, therefore, it is important to note that, indeed, there is no gazettelement as we speak of functions to be transferred, whether in part or in full by the county governments. This is something we are aware that the Government, through its various Ministries, is trying to address.

The second most important thing I want to mention is on Clause 6(4). This clause says;

“Where functions have not been gazetted for transfer by the Transition Authority in accordance with Section 23 of the Transition to Devolved Government Act, the budget estimates for such functions shall be included in the budget estimates of the national Government and shall be submitted to Parliament for approval.”

This means that for those functions that have not been expressly transferred to a county Government, it is the responsibility of the national Government to provide and pay for those services. This is important. We know that when we try to debate and increase the amount allocated to the county governments; from Kshs210 billion to Kshs258 billion, we are aware that there is a likelihood that the money that has been approved for the county governments may not be adequate to ensure that all services are paid for.

In this regard, we want to bring an amendment in line with Clause 6(4) so that the national Government will pay for any shortfall that will arise in the county governments in the resources that will be allocated to them. If a function is transferred but the resources allocated are not adequate, we want to make an amendment to require the national Government to provide additional resources. This is provided for, in fact, in terms of the law. The same Clause 6(6) provides that;

“The national Government may allocate part of its share of revenue raised nationally to provide additional resources to county governments as a conditional or an unconditional allocation as contemplated in Article 202(2) of the Constitution.”

In other words, there is a window allowing the national Government to give more money to a particular county should there be a shortfall. We want to strengthen it through other amendments.

I want to bring to the attention of Members clauses 8, 9 and 10. These clause specifically deal with the national treasury and the county treasuries. Of concern are the county treasuries. Our concern is the county treasury and how it should record all the transitions and revenues that they receive, to maintain proper books of accounts and to record all their expenditures.

In this regard, as a Committee of Finance, Commerce and Economic Affairs, we indicated that we will be visiting some counties to assess their capacities, how they are recording their transactions and their ability to account for all their revenue and expenditures. More importantly, we also intend, through the Committee, to invite County

Executives in charge of finance before the Committees to explain whether they are complying.

What is important is Clause 10(3) where they are required to submit a quarterly and an annual report under the Public Finance Management Act (PFMA). We have, indeed, been advised by the Controller of Budget that the period between March up to June this year, when they were given the first batch, the audit is already being done. Once that is complete, the quarterly report plus the audit will be submitted to this House so that we see how the counties have performed. Therefore, it is important to ensure that we enhance the capacities within the counties to do accounting and submit reports quarterly and annually to Parliament.

Again, I want to draw the attention of Members to the provisions of Clause 12 which is important. This one reads;

“Despite the provisions of any other law, any serious or persistent non-compliance with the provisions of this Act shall constitute a financial misconduct under the Public Finance Management Act.”

It is very clear that non-compliance with the provisions of this Act is an offence which is punishable. Therefore, it is important that county governments get the right people in their finance departments. They have structures that have been provided. They can engage or employ chief finance officers, county treasurer, revenue officers and people who have the competence to maintain all their records and ensure that they comply with the law; particularly, if you need someone who can comply with the PFMA, you must get the right people. County governments are advised to get the right people so that they do not run into problems.

Lastly, in this Bill, we are also required to conduct public hearings and to receive views from the public. We intend to do that on Tuesday next week. We will be visiting some counties outside Nairobi to get their views and to see what the public thinks about the allocations that are being made to the county governments.

I want to urge all Members to support this Bill so that we can proceed with its enactment.

Thank you.

(Sen. Billow walked to his seat while the Speaker was on his feet)

The Speaker (Hon. Ethuro): Order, Sen. Billow! You have to freeze! Do not move.

(Question proposed)

Sen. Musila: Thank you Mr. Speaker, Sir for this opportunity to debate on the first Bill since this Senate came into being. I start by saying that I support this Bill with some misgivings.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Senate Majority Leader explained how this House went through the process of trying to increase the amount that had been allocated to counties. It is a shame that after laboring and adding money to the counties, the National Assembly went ahead and reduced the figure. This, again, is a matter that needs to be addressed. I am sure that in due course, it will be addressed particularly because it leads to conditional allocation.

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

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

If you look at Column “D”, the conditional allocations, you will find that the counties that are already marginalized are being further marginalized by these allocations.

Madam Temporary Speaker, let me start with the counties in North Eastern Province. You will find that the counties in North Eastern Province combined, under that column, will only have Kshs1.3 billion. Look at the three counties in Lower Eastern. They also have Kshs1.5 billion. Look at some other counties in the Central region. They have been allocated Kshs12.5 billion. I have an issue with this allocation. The Senate Majority Leader said clearly that the idea of devolution is to equalize or provide equitable distribution of resources, but some counties which have already been marginalized are being marginalized further by this particular Column “D” in allocating the resources. My comfort, perhaps, is that this is going to be a one-off allocation and in future, this Column “D” will not be there anymore. I say this because if you look at the services that those funds are supposed to provide, they deal with things like hospitals which are lacking in the already marginalized counties. My issue is that the history of marginalized counties is being carried forward through these allocations, when in fact the idea of us being here is to provide equitable distribution of resources.

Madam Temporary Speaker, I have also an issue with the Equalisation Fund. In May this year, I raised the issue of the Equalisation Fund and these matters were referred to the joint Chairs of the Committee on Devolution and Committee on Finance. The idea of devolution is very clear. It was meant to provide funds to the marginalized counties, to bring them at a certain level with the already advanced counties. The Commission for Revenue Allocation (CRA) went ahead and identified 21 counties as marginalized and, therefore, qualified to benefit from the Equalisation Fund. The same Commission went ahead, against the Constitution, because the Constitution says that the Fund shall be distributed to marginalized counties - The Commission went ahead and identified 21 counties to benefit from this Fund. But, again, it went ahead to slash this figure of 21 counties and came up with 14 counties. This is against the Constitution because it does not say “some marginalized counties.” The marginalized counties were identified are 21 and, therefore, the Commission cannot go ahead and use other criteria to reduce the marginalized counties to 14. I say this because Kitui County was actually number 15 in

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

that list. By drawing a line at 14, it meant that Kitui County, which I represent, was removed from that list that was going to benefit from the Equalisation Fund contrary to the Constitution. It is scary because this Fund is supposed to run for 20 years. Are we saying that this marginalization of these six or seven counties is going to run for 20 years? What are we doing here if we are going to allow this to happen? We, as Senators, are here to ensure---

Sen. Murkomen: On a point of order, Madam Temporary Speaker. Is it in order for Sen. Musila to refer to a non-existing constitutional provision; that counties which shall be identified for allocation of the Equalisation Fund shall receive those funds for 20 years when, indeed, the Fund is for 20 years, but every three years, we will review the beneficiaries?

The Temporary Speaker (Sen. Ongoro): Sen. Musila, which article were you referring to in the Constitution?

Sen. Musila: Madam Temporary Speaker, I do not have the benefit of the Constitution right here and I stand guided by my friend, Sen. Murkomen. But, indeed, even if we have to wait for three years, if you have already been pinched and told to persevere being pinched for an additional three years, that is unacceptable and unfair. Even if it is one, three or 20 years, it is still bad for a county that has been marginalized for decades.

Madam Temporary Speaker, I am appealing to the Committee on Devolution and the Committee on Finance, Commerce and Economic Affairs as directed by the Chair since May, to review the matter and bring it to this Senate for debate. Up to now, they have not heeded the advice or instructions of the Speaker. I urge and plead with them to bring that report here, so that we can ventilate. It is not about Kitui County, but seven other marginalized counties of this Republic. It is our duty to ensure that funds are equitably distributed.

Madam Temporary Speaker, the last issue which I want to raise is the central Government staff who have been seconded to the counties. I do not know whether this has only happened to Kitui County, but we have received over 2,000 staff from the national Government who are supposed to be paid by counties. For Kitui County alone, the budget for these 2,000 staff is Kshs1.6 billion. So, out of this money that is being allocated to Kitui County, Kshs1.6 billion is already taken by staff who have been sent there. To make the matter worse, these are not even quality staff. They are staff who have been rejected on account of discipline by the national Government and are being offloaded to counties, to make room.

Sen. Okong'o: On a point of order, Madam Temporary Speaker. I have heard my colleague, Sen. Musila, speak about rejected officers. As far as I am concerned, officers who have been working in the Public Service have been working for the Government of Kenya. Unless and until maybe he tables a document saying that these officers have been rejected from various departments, he should rather withdraw and proceed with his contribution.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Temporary Speaker (Sen. Ongoro): Sen. Musila, can you substantiate?

Sen. Musila: Madam Temporary Speaker, there is no way I will withdraw that because this young Senator should know that in the Civil Service, there are public officers who have discipline problems. Even within the Government, whenever they are unable to perform, they are transferred from Station A to Station B. What has happened has been happening. If you want substantiation, go to Kitui and you will find files of officers who have---

(Sen. Okong'o stood up in his place)

The Temporary Speaker (Sen. Ongoro): Hon. Senator, why are you upstanding and not saying anything?

Sen. Okong'o: I am rising on a point of order.

The Temporary Speaker (Sen. Ongoro): But you have to speak!

Proceed.

Sen. Okong'o: On a point of order, Madam Temporary Speaker. Did you hear the Senator say "this young Senator?" I may be young but I am well versed in Government operations. On the same note, Sen. Musila has been in the Civil Service for a long time. Is he insinuating that maybe his calibre also in the civil service was wanting? When a Senator makes an allegation in this House, he should substantiate and table documents to support the same.

The Temporary Speaker (Sen. Ongoro): Point noted, Senator!

Sen. Musila, do not make unsubstantiated comments which you cannot support.

Sen. Musila: Madam Temporary Speaker, I do not want to argue with my colleague, the Senator. I never mentioned about his---

Sen. Murkomen: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Do you wish to be informed by Sen. Murkomen?

Sen. Musila: Yes, Madam Temporary Speaker.

Sen. Murkomen: Madam Temporary Speaker, I just want to inform Sen. Musila that those of us who served in the Taskforce on Devolved Government, including his governor, Dr. Malombe, when we went round, were told that marginalized counties like Kitui, Elgeyo-Marakwet, Turkana, Wajir, Mandera and Tana River have suffered because when there is a disciplinary problem in the Public Service, those who have indiscipline cases are transferred to the marginalized counties. So, I believe that what Sen. Musila is saying is possibly happening in the Public Service.

The Temporary Speaker (Sen. Ongoro): Senator, while you are supporting Sen. Musila, and you could be in order, we have to make reference to Standing Order No.92 which requires that a Senator shall be responsible for the accuracy of any facts which the Senator alleges to be true and maybe required to substantiate any such facts instantly.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Murkomen: Madam Temporary Speaker, that information is contained in the Report of the Taskforce on Devolved Government, 2011, and it is a public document.

An hon. Senator: Table it!

Sen. Murkomen: Madam Temporary Speaker, I can table it in a week's time. But I do not need to table it because it is a public document. You can buy it from the printers, because it is expensive.

Sen. Musila: Madam Temporary Speaker, I seek your indulgence that I continue, because as my friend, Sen. Murkomen has said, it is in public knowledge and that report exists. In any case, I talked about 2,000 members of staff seconded to Kitui County and there is no way I can table 2,000 files here. Therefore, I seek your indulgence that I continue.

The Temporary Speaker (Sen. Ongoro): Senator, let me read Standing Order No.92 (2) for the avoidance of doubt. It states:-

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 108 (*Disorderly conduct*) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

I, therefore, direct that while you proceed with your allegations, you should table those documents and the next sitting day is tomorrow afternoon.

Sen. Musila: Madam Temporary Speaker, I will provide the Report on the Devolved Government, which states that the staff who do not perform are posted to marginalized counties as punishment. I will lay that Report on the Table of the House.

The Temporary Speaker (Sen. Ongoro): Very well!

Proceed.

Sen. Musila: Madam Temporary Speaker, I will continue and still insist that if we are to get these counties that have not been performing to move forward and perform, these are some of the things that we must not do. We must not offload staff whose credibility is unknown to counties. But above all, where is the money to pay these staff going to come from, because, already, counties have taken over staff from the county authorities, that is, county councils and town councils within their areas of jurisdiction? Where is the money going to come from to pay all these staff? Why are the counties now being given additional staff from the central Government which they have not asked for? That will definitely bloat their payroll. All this money we are allocating here will end up paying salaries. You may say it is Kshs4 billion, but if it all goes to salaries, when are the people we represent in this Senate going to get the much needed services? This money is inadequate. We must ensure that we get more money to allocate our counties, so that they can provide services. We do not want all this money to remain in the national Government. We want monies to go to the county governments so that services can be rendered to members of the public.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Anyang’Nyong’o.

Sen. (Prof.) Anyang’-Nyong’o: Madam Temporary Speaker, I equally stand to support this Motion and congratulate the Mover and the Seconder, my colleague Sen. Musila, who has contributed to the Motion.

Madam Temporary Speaker, I want to begin by cautioning ourselves and the national Government regarding the budget that we are talking about currently. You will notice that the manner in which county governments developed their budgets and, finally, presented them to the Treasury; and the manner in which they are finally reaching the Senate, is actually something which is not quite procedural. But we can excuse it, because this was the first time it was being done. However, I think it is full of uncertainties and things that we may have to deal with as a Senate to rescue the operation.

Madam Temporary Speaker, the counties developed their budgets without any kind of policy passed by the county assemblies. There is no policy on the basis of which these budgets were developed. Secondly, county assemblies were more or less ambushed by their executives to pass these budgets in double quick time to meet certain deadlines set by law. These deadlines were beyond their control. You will find that these county budgets reached their so-called final destination without the knowledge of this Senate. The Senate discussed the County Allocation of Revenue Bill without any knowledge whatsoever on the basis on which this Bill was being developed as far as county budgets were concerned.

Madam Temporary Speaker, you realize that we are in a situation I call a “false start.” In the meantime, certain other good things have happened in county governments. For example, the executive and the legislatures of the county governments have been established. We can, at least, say that the process of devolution has started, but with a very shaky financial basis. The previous speakers have already said that the monies going to the county governments will be mainly spend on recurrent and not development expenditure. This is itself a problem because it means that county governments may turn themselves into more of pay offices for civil servants. Now, the very nature in which the county governments have been formed is that they have inherited civil servants of previous local authorities. This matter should not be underplayed. Sen. Musila was trying to make it, but I think that the discussion was kind-of overtaken by the statement he made; that, non-performing or civil servants’ disciplinary cases have been transferred to hardship areas - read marginalized counties - for punishment. Therefore, they have reduced the performance therein. But I will to go further and say that it is not just the marginalized counties. Having been the Chairman of the Public Investments Committee (PIC) in the mid 1990s, I know for certain that local governments had a lot of problems auditing their accounts. I know that this situation did not improve even after the time that the county governments were inheriting these local authorities.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Madam Temporary Speaker, we, in the Committee on Devolution, requested the Transition Authority (TA) to put before us an audit of the assets and liabilities of counties. The Chairman will concur with me that we do not really have a comprehensive report to that effect. More so, we in the Committee on Finance, Commerce and Economic Affairs, do not have a comprehensive report of audited accounts of all these county governments before they took over or before they receive this money that we are talking about. So, we are putting money in a receptacle that may not be very steady in receiving or using this money. These are realities that we must talk about to see what is going to happen in county governments in the next couple of months. The Bill, on page 10, paragraph 2, talks about economic disparities among counties as well as disadvantaged areas and groups within counties. I want to read it to hon. Senators because it is very important for all of us to understand. Part of it says:-

“This fund will be used to finance development programmes that aim to reduce regional disparities among counties. It is also expected that the establishment of county governments should facilitate the compilation of official data on economic disparities within counties, as well as disadvantaged areas and groups within counties.”

Madam Temporary Speaker, I would like to be enlightened on whether there is any county which has compiled data on economic disparities. This is the basis upon which they will use this fund to finance those disparities which will reduce inequalities among them. I am quite sure that a lot of counties will receive this money and they will say: “Well, we need to build market stalls,” even if they will not reduce inequalities or disparities. Or they will say: “Fine, we need to put up houses for county officials.” In other words, I am not quite sure whether this operationalization is realistic or possible. Yet it is so important that if money will be allocated to reduce inequalities, there must be data. For example, we can say in Kitui County, these are the kind of sectors in which if money is spent, it will reduce inequalities drastically and it will be like Murang’a County. In other words, due to the inequalities that exist, the money should be used for specifically targeting those inequalities.

Madam Temporary Speaker, I am quite sure that this kind of work has not been done. In any case, since counties have just been there for a few months, to expect them to have established official data on economic disparities, is asking too much from them. We could say that this official data should come from the Transition Authority (TA). Did the TA make available to counties data like this? They should advise them, when they get this Equalization Fund where to spend it. Did the Ministry of Devolution do so? Somebody should have done it, because we are voting money to do that. In the Bill, we are saying: “This is how money should be spent,” and yet we have not established the basis for spending that money. I am afraid in this first budget, there will be tremendous ‘mis-expenditure,’ if there is any such word in the English language, of monies voted to counties, especially to reduce this very important issue called inequalities and disparities. We must remember that one of the very fundamental reasons for devolution was to improve equity and the equitable distribution of resources and equitable expenditure of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

the national revenue at the county level and so on. Therefore, the reduction of disparities by using this money allocated to the Equalisation Fund in a targeted manner is extremely important. I hope that we, in the Senate, will be in a position to intervene at that level and make sure that things are done properly. The problem is that even the line of intervention by the Senate is not very clear.

My proposal is that even if this first experience has not been that optimum, in future, as we begin to prepare for the next budget, the Senate should be involved in the process of budget making at the county level much earlier. It is important that as we structure the interaction between the Senate and county assemblies, since in our Standing Orders, Senators have the right and the obligation to address county assemblies every now and again--- This is one of the discussions that I think we should have with our county assemblies in the process of budget making, so that in the next budget, the counties will be better informed.

Madam Temporary Speaker, in this past experience, again, let me talk about something which was a general tendency. Budgets in the counties were originating from the executive. The executive thought out what the budget was and handed it to the county assemblies. I am not quite sure whether the county assemblies were very well prepared to discuss these budgets. Under the new Constitution, budget making is something which should be more the responsibility of the legislature than the executive. The executive proposes, but the legislature allocates to the executive. If the process begins by overly being dominated by the executive, and then the legislature is given a very short time to interrogate it, the issue of accountability of the executive to the legislature on this budget becomes a problem.

Madam Temporary Speaker, I think the mistake that has been done this time, because of problems of time and so on, should not be repeated in future. The budget making capacity of county assemblies must, definitely be built. The oversight role of county assemblies over the executive must definitely be developed. At the moment, I am afraid that just reading generally in the newspapers and seeing what is going on, it does not look, to me, as if the county governments emerge as a government established with two branches; one, the legislature, which is the county assembly; and the other one is the executive, which is the governor's team. At the moment, there seems to be an over focus on the executive at the county and, rather a diminished attention on the county assemblies. This will be a disaster because the county assembly is where the representatives of the people at the local level congregate to debate on the policies and, therefore, the development of the county. The governor and his or her team are there to propose his or her programmes and to be approved and be given mandate by the county assembly in a manner that makes sense of being represented by a parliamentary democracy.

Now one last thing, Madam Temporary Speaker, which is extremely important, is that county governments should not devolve bad manners of the national Government to the local level. You saw recently that Kenya was rated the fourth most corrupt country in

the world. If corruption is going to be devolved to the county governments lock, stock and barrel, then devolution would be more of a problem than a solution to our problems of development. If nepotism will be devolved to the county governments and if clannism will also be devolved to the county governments, then we will have our problems compounded 47 times in this nation.

Therefore, a clean, an efficient and a transparent government close to the people is a fundamental condition in order for devolution to work. At the moment, just looking at how county assemblies dealt with certain proposals in their budgets proposed by the executive, I got the feeling, and a very bad feeling that we may be devolving bad manners to the county governments. This would be a tragedy. This possibility must be arrested very early. It is this Senate, which is historically placed to ensure that the devolution of bad manners does not occur.

Sen. Karaba: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Yes, Sen. Karaba! What is out of order?

Sen. Karaba: On a point of order, Madam Temporary Speaker. Our learned professor is telling us about bad manners. I think it is important to define some of these things, even if they look obvious. How does he assess the bad manners that he is trying to attribute to counties?

Sen. (Prof) Anyang'-Nyong'o: Madam Temporary Speaker, I did not mean "bad manners" in the normal day to day meaning. However, these are things that we should not do in the government. In the government we should not be corrupt if we are going to develop. We should not practice nepotism, tribalism and things like that, if we are going to develop. You know that these things have been the bane of our society for a long time. You need not look further than the HANSARD. You need not look further than the reports of the Public Investments Committee (PIC) and the Public Accounts Committee (PAC) of Parliament. They are in our libraries, on the internet and so on. I am just saying that these are the things that should not happen at the local level because at that level, you want to encourage the confidence of the people that this new policy of devolution is going to improve their lives and not add burdens to their lives. The people of Kenya are going to be so disappointed if devolved governments do not perform than the government they are used to since Independence. I am not saying that everything has been bad. However, I am just saying that those bad things that have happened have really been a big disservice to the development of our nation.

Therefore, I am appealing to the Senate that as we debate the monies and approve them for counties, we should know that these monies are going to be used in a political context. This money is going to be used by human beings running institutions. It is going to be used in a sense that the purpose of running those institutions to meet certain goals and objectives corresponds with what is written in the Constitution. If you read the section on devolved government, the spirit of the Constitution is that these governments are being taken closer to the people, so that better services can be delivered. There is

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

going to be more participation by the people in the government and so on. I would say, without risking to be wrong at all, that the level of popular participation in devolved government today is extremely low. If Senators themselves are ignorant of what is going on in their own counties in terms of what is happening in the executive branch and the county assembly, what about the ordinary citizens? Are there any fora for discussing this? Were the budgets that were approved and passed presented to the public? I know that previously, municipalities and local authorities were holding public fora and explaining their budgets. Were these ones presented to the various publics in various counties? I would say, no.

(Loud consultations)

The Temporary Speaker (Sen. Ongoro): Hon. Senators, please, consult quietly.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, this is one of the things that I think we should really be conscious of. Since the Government is now close to the people, it must be seen to be interacting with the people and explaining to them what is happening. It must not be seen as if there is a new chief in town called a governor, whose word when he speaks comes out *ex cathedra*. He must be a people's person who knows what is in the interest of the people and promotes development. So, we must build politics into these Bills; when we realize that if implemented in a political context where democracy, participation, accountability and transparency exist, then of course, they will meet the noble goals in our Constitution.

So, I am appealing to our fellow Senators, as we very soon go into recess, to engage our county assembly men and women, particularly on their role in making sure devolution works. These things should not be overly focused in the county executives, but should be spread to the representatives of the people at the local level, who should know what a Bill like this means. They should know how their budgets are made and be involved on how the next budget will be made so that we improve on what we have had at the moment which, to me, is full of false starts.

Notwithstanding all that, I wish to support.

Sen. Kagwe: Madam Temporary Speaker, I rise to support the Motion, again, with expected amendments. If I take the discussion from where my former professor left, Prof. Anyang'-Nyong'o, I want to say that, perhaps, the reason it was not even necessary for this particular budget to be informed from a policy perspective is, probably, because there was nothing to do with policy. In my view, this particular budget in this first year of a devolved government is a method of teaching people how to devolve, but not really devolving because when you start a process upside down--- You start it by asking people how much they want to spend and then later tell them that this is the only money they have to spend. In other words, you start with a wish list and set for yourself all the things you would like to do. In real terms, it is only now after this debate is over that the county governments will really know how much money they have to spend. That is why I am

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

saying that this budget is simply a process by which we build confusion, learn from confusion and then eventually become people who can budget. My view is that the training about the budget process should start now in the counties so that in the next twelve months, by the time we get down to another budget, we will have perfected the art and skill of building a budget rather than the terrible confusion that currently exists.

Madam Temporary Speaker, even some of the issues we are attacking our governors about are actually out of ignorance. I would like to imagine that there is no real governor worth his salt who would like to put in 12 or 13 vehicles for county executives if they were aware that they could not do that. The reason they are doing it is because, in utmost good faith, they believe that they can do it. They believe that the central Government will approve it. Of course, we are aware that these are budgets in futility because when they are sent to one Agnes Odhiambo, the Controller of Budget in this country, she will not agree to have the money spent in the manner that the county governments want.

Madam Temporary Speaker, having said that, there is also need for capacity building as my colleagues have alluded to, in the county governments by way of serious training. This particular Bill has very serious issues that have to be dealt with at the amendment level when we go to the Committee of the Whole. Of particular concern to me is deficit financing. This deficit financing is in two levels. First, there is deficit financing in terms of the “wish list” I have just mentioned and what the county governments have given as a budget and delivered. Secondly, there is deficit in terms of what they are doing to get - the real money they have. How will the deficit be met, given that they do not have the capacity to borrow as we speak?

The second dimension of deficit financing envisioned in this Bill is the one that is being transferred from the central government to the devolved governments. The logic behind the deficit being passed to some counties is akin to reverse racism.

Sen. Murkomen: On a point of order, Madam Temporary Speaker. My good friend, Sen. Kagwe, in his very eloquent presentation has consistently used the words “central Government.” Where is this central Government he is referring to?

The Temporary Speaker (Sen. Ongoro): Sen. Kagwe, could you elaborate? Are you referring to the national Government?

Sen. Kagwe: Madam Temporary Speaker, I want to tell my good friend that my reference to the central Government is what he refers to as the national Government. It is one and the same thing. However, for the interest of---

Sen. Murkomen: On a point of order, Madam Temporary Speaker. Whereas Sen. Kagwe has elevated me to a very enviable position where he is equating me to the Constitution, I would like to ask whether it is in order for him to think that when the Constitution talks about the national Government, that is my own creation?

The Temporary Speaker (Sen. Ongoro): Sen. Kagwe, you are out of order! That is enshrined in the Constitution. It is not a creation of Sen. Murkomen.

Sen. Kagwe: Madam Temporary Speaker, I stand guided in this. Thank you, Sen. Murkomen.

The national Government is, in whatever name, devolving deficits into counties. I said that we must be very careful in deficit financing. We must realise very consciously that we will not develop the marginalized areas by way of bringing down the counties that appear, in our terms - because we are a non-developed country anyway - developed. This is an illusion anyway because we are not developed.

Two weeks ago, I went round with the Committee on Education, Information and Technology. I was surprised because the people we were travelling with around Nyeri, Laikipia and Kirinyaga had not been to that region. They were shocked at the kind of poverty they saw in that region. They wondered whether that was really Nyeri, Kirinyaga and, in general, the Central Province they are told about. We do not really know our country. Consequently, when we see some of these things, we think that, probably, we should remove funds from here and take them there. This is not an issue of either removing funds from one government or the so-called developed counties or taking them to marginalized counties. This is about providing funds, so that the ones that are doing well can continue doing well. Those that are not doing well can be enhanced to do much better and, hopefully, catch up with the others.

We must also appreciate that devolution is not an event. It does not happen at a certain instance in time and then stops. Devolution is a process by which our nation has developed faster than it has been growing. Secondly, it is a process by which counties that have been disadvantaged in the past can also develop at a much faster rate than the so-called developed so that with time, there is a level of equity and development. Therefore, it is important for the Cheserem Commission to appreciate that it is not enough to say that we will remove the financing that should make counties "harmless." I have a few examples here. The New Nyanza General Hospital, for example, caters for a large area, including some parts of Uganda. When you say that money that should be devolved to the New Nyanza General Hospital and managed by the Kisumu County is a lot and, therefore, since we want to equalize Kisumu and Nyeri counties, this money should be divided amongst the other counties, what does that mean?

The effect is as follows. It is either;

(a) that the hon. Senator from Kisumu with his Governor will eventually agree to close the New Nyanza General Hospital because unless they can pay the staff at the hospital, then they will not operate it;

(b) they can also go to the national Government and ask for funds according to Section 6 and, therefore, provide extra funding that is not within the Kshs210 billion to finance that hospital or,

(c) they can also decide not to devolve that function. It can stay with the national Government until such a time when it can be devolved with the commensurate funding for the responsibility.

I heard the Senate Majority Leader say that we are keeping in tune with Article 203. I want to draw to the attention of the Senate to Article 203(b) which talks about the need to ensure that county governments are able to perform functions allocated to them. This is the same one that lists out the items that we are supposed to be thinking about when we are devolving funds to these counties. I am aware that there will be an amendment to give effect to that particular Article, 203(d). However, it is not enough for us to keep on fighting about these Articles. I think the national Government should be aware of some of these things. They should not wait for us to go and start fighting. I can imagine that there will be quarrels that will start, effective, the day we pass this Bill. There will be arguments that will start between certain counties, like the counties of Mombasa, Nyeri and others that will be in deficit effective that time.

As I finish, I want to say that the structure of the county budgets ought to be the same as the country budgets. In other words, the votes that we see in the county budgets should be the same as in the country governments. The reason I say this because it becomes easier to make reference. In addition to that, there is easy comparison and accountability. The current budget you read in the counties talks about vehicles among others things. These are itemized in terms of the activities rather than in the area of allocation. That is not proper accounting. Finally, I think, we, as a Senate, should encourage our county governments to look within. We should think in terms of a balance sheet. We must ask ourselves: This is the money that we want to spend and these are all the wishes that we have in developing our counties, but to balance that, as Luca Pacioli determined many years ago, where is this money coming from? Some money will come from the national Government. However, we cannot rely on the national Government to be the engine which is going to develop our counties.

Madam Temporary Speaker, one of the key reasons we devolved this Government is to be able to refocus a little bit more on the resources and opportunities that exist in our counties. For example, yesterday, I was talking to my good friend, the Senator from Baringo. He told me that in Baringo, they are looking at exploiting gas. There is a lot of gas there because of all the steam that comes out. Therefore it is possible to bring a lot of geothermal power. This is not new because geothermal power has been around for a long time, but an elected county Governor and Senator can refocus their energy to exploit that facility more than somebody sitting in Nairobi. But in order to do so, I will, once again, allude to something that Sen. (Prof.) Anyang'-Nyong'o talked about. That is the issue of focusing so internally in terms of skills that you become unable to move forward.

Madam Temporary Speaker, this nation has developed partially because we have got a lot of expatriates who have worked in Kenya from far parts of the world. Let us not shy away from getting skills from any part of this country and on earth. There might be need to do so, in order to develop these skills. I would rather have a Canadian working in Nyeri County and create 1,000 jobs, than a Nyerian, working in Nyeri, who is able to create only two jobs.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. (Prof.) Anyang'-Nyong'o: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Do you wish to be informed by Professor?

Sen. Kagwe: Yes, Madam Temporary Speaker.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, the current issue of *Times Magazine* is very interesting in the sense that it shows that the people who have actually moved the economy of the United States (US), if you talk of Google or whatever, are actually children of immigrants.

Sen. Kagwe: Thank you very much, Prof. Anyang'-Nyong'o.

Madam Temporary Speaker, as I said, Prof. Anyang'-Nyong'o was my professor at the university. As you can see, he has never believed that I graduated. He is still continuing to inform and educate me. But, Prof. Anyang'-Nyong'o, you can continue doing so with gratitude.

Madam Temporary Speaker, indeed, that is my point, because currently what is happening in the County of Nyeri is that if the Governor proposes that there is a consultant from Kisumu, Isiolo or Mombasa who is better versed in imparting skills to our people than somebody else from Nyeri, they think that, that is the worst thing in the world that a Governor can possibly do. We must run away from that and realize that the potential that we are trying to create in terms of skills building is the base on which counties can develop. If we do not have skilled manpower, it does not matter what resources we have. If you have coal and do not have somebody in Kitui County who is able to manage, give advice and exploit it, it does not matter how much of it lies beneath there. Therefore, I advise the counties and Senators here that this is a paradigm shift that we must cultivate in our minds and educate our people at the county level, so that they can begin to hire skills. For example, if I had my way, I would hire Dr. Bitange Ndemo to be the Information Communication Technology (ICT) boss of Nyeri County. This is because I know that he can create thousands of jobs in Nyeri. But if the people of Nyeri insist that he cannot work in Nyeri because he is from Kisii, at whose loss is it? Is it Dr. Ndemo or the people of Nyeri who will be losing? It is the Nyeri people inevitably.

Madam Temporary Speaker, therefore, let us get skilled people who can manage money. Let us have consultants. Let the counties spend money on ways and means of ensuring that this is the last year that we are going to have this kind of mess and budgets that we would not wish our people to have.

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

Sen. Murkomen: Thank you, Madam Temporary Speaker. I would like to support this very important Bill.

This a very important Bill in terms of operationalization of our counties. It is the first Bill that is being passed by this House in terms of contributing to our responsibility under Article 96; to protect county governments.

Madam Temporary Speaker, it is important for us to capture the history of this Bill. This Bill could not have been what it is today, had it not been for the history that we went through in the few weeks. First of all, we know very well that this House sat here and debated the Division of Revenue Bill. We discussed the importance of financing the counties. Sen. Kagwe was on another duty outside the country when the discussion was very hot, but you can see that part of his contributions are very critical in terms of reasons why, at that time, we made certain contributions or changes to the Division of Revenue Bill.

Madam Temporary Speaker, there has been a misconception in this nation that monies that are going to the counties are a mere token from the national Government. Basically, it is there to be given out at the whims and desires of one level of Government against the other. It is important for all of us to keep going back to Article 6 to remind ourselves that the county governments and national Government are distinct, although they are interdependent. They can only conduct their mutual relations on the principle of consultation and co-operation, so that there is no one level of Government that is a prefect of the other. In fact, I would like to request my colleagues, the Senators that it is important that everytime we refer to the national Government, we do not do it as though the counties are walking to the national Government with a begging bowl. It is important for me to read Article 203 (2) of the Constitution. It says:-

“For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.”

Madam Temporary Speaker, there has been a particular debate that is demeaning that county governments are just begging for the money coming from the national Government. It is not from the national Government. Article 203 (2) is very clear that it is revenue raised nationally. That is taxes collected from Kiambu, Nyeri and Elgeyo-Marakwet counties through a national process, which includes the contribution of the Kenya Revenue Authority (KRA). In fact, I remember that we were discussing this issue of finances. This debate should still go on; whether the KRA should basically become an entity as it is, or we should reform and give it a clear structure that will demonstrate that it is an inter-governmental body which is responsible for protecting both the counties and the national Government. This is important so that many do not just think that the money that is given every year using the County Allocation of Revenue Bill and the Division of Revenue Bill, are mere resources being given to counties as a token.

We must always appreciate that it is the money that we have all collected. We are asking ourselves; in furtherance of development of our country, how much money should we give to counties to run the projects based on their functions? How much money should we give to the national Government to run their functions? We must look at the two levels of Government as partners. It must not be counties against the national Government, but counties working together with the national Government. That relationship must be fostered if we are to work in a good relationship as Parliament, that

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

is both the National Assembly and the Senate. That is why it is very sad that we went through the process that we went through, and we are now in court. It is also important to note that we and our friends and brothers in the National Assembly have not demonstrated the kind of patriotism that looks at this House, the National Assembly and the county governments as entities that are all providing leadership as Parliament; whether in terms of checks and balances or guidance. Therefore, it is very unfortunate that we are here discussing a Bill that will ultimately tell us that Kshs210 billion is going to counties.

If you read this Bill, there is the question of conditional grants and conditional allocations to the counties in section five which is very important. It is important that we must ensure that counties receive resources that are necessary to ensure that services that were ongoing are ongoing. But the question I am asking myself, because when officials from Treasury came to our Committee of Devolved Government and the Committee on Finance, Commerce and Economic Affairs, at that time when we were discussing the Division of Revenue Bill, which was basically the report which was tabled in this House; one of the things they said was: “ The reason we are giving conditional grants to Nyeri County is for them to run what was called Nyeri Provincial Hospital.”

But the question I am asking myself is; then why give them the money as conditional grants? If the function is for Nyeri County, then you give the money for them to run the hospital. It has nothing to do with being called “conditional grants” because anything that is conditional means that, at some point, it will be taken away. It means that they are not entitled to it. It cannot be conditional grants when the Fourth Schedule of the Constitution has allocated that function to that level of government. It can only be, therefore, pointing to another problem. That is the problem of functional analysis, the problem of costing of functions and the problem of unbundling of functions. I want to address each one of them.

First of all, Madam Temporary Speaker, Paragraph 15(1) of the Sixth Schedule of Constitution says:-

“Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments, of the functions assigned to them under Article 185.”

Then Section 15(2) says:-

“The legislation referred to in subsection (1) shall—

(a) provide for the way in which the national government shall—

(i) facilitate the devolution of power;

(ii) assist county governments in building their capacity to govern effectively and provide the services for which they are responsible;
and

- (iii) support county governments;
- (b) establish criteria that must be met before particular functions are devolved to county governments to ensure that those governments are not given functions which they cannot perform;
- (c) permit the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform;”

Now, in furtherance to this provision of the Constitution, Parliament sitting as both the National Assembly and the Senate last year passed the Transition to County Government Act, where it requires that the Transition Authority (TA) will perform the function of analyzing these functions, costing them, transferring these functions in a phased manner based on assessment of capacity of functions. If you read Section 6(2) of the Bill, you will find that it says:-

“The allocations set out in the Schedule comprise the allocations for the performance of all devolved functions which shall be implemented by the national or county governments, as the case may be.”

Now, I wonder how, then, what functions, because this Bill is not clear as to which functions are being devolved to counties for them to run, so that it can match with whether those resources are going to be given in the Schedule column “a” or is it column “b” or “c” or “d”. Because that should have been very clear whether there are functions that are devolved in nature in terms of the Fourth Schedule, but not yet given to the counties, but there are monies being set aside under this Bill, so that that money can still be managed by the national Government, but ensuring that, that function is performed at the local level. That is not clear from the Bill in the four columns that are provided here. There is no clarity as to whether these functions have been costed; whether we are going to go for phased transfer of functions or one transfer of functions. In fact, the confusion is worsened by the policy adopted by the Ministry of Finance or the Treasury, that all the functions of counties should be given out at once, because that would be unconstitutional under Paragraph 15 of the Constitution because what is important to us is the capacity and resources going to counties. The disconnect between the allocation of resources and the costing of functions may lead to a situation of confusion.

I want to give some examples. For example, do we continue having Kenya Rural Roads Authority (KERRA) – and the Senator for Marsabit will tell you, because he is an expert in that area of the roads. The Constitution only divides roads into two; national trunk roads and county roads. Should we, therefore, continue having Kenya Urban Roads Authority (KURA)? Should we have a budget or resources for KURA? Should we continue giving money to KERRA? If those functions have been devolved, did we analyze and cost how much money is needed to build roads in Nairobi as urban roads and, therefore, we give the money to the Government of Nairobi? That disconnection will

lead to a situation where there will be more than two people doing the same work; work that would have been done by one person. You have KERRA in the counties saying “These are our roads; we are going to do them” and we have the county governments saying “These are county roads, we need to do them;” but when they want to construct those roads, they do not have the resources because KURA is going to perform that function.

Initially before we came up with the new Constitution, the central Government used to use the provincial administration, which involved districts in terms of execution of these functions. In those districts, there used to be the District Development Committees (DDCs). The Member of Parliament and the District Commissioner were sitting in DDCs. Now, the question I am asking myself is that these are the people who are organizing KERRA and KURA functions, where necessary; they were organizing electricity functions, and so forth. Now, shall we continue having situations where, in a district, the DDC is planning development in a constituency? At the same time, the county government is planning development at the county. This parallelism has not been made very clear. If all functions are being devolved to the counties, it must be very clear that these functions shall be planned and resources given after being costed. The institutions that used to perform these functions must tell us that they are winding up and, at what time period, so that we do not have an engineer reporting to KERRA instead of reporting to the county government. If you come to health, it is the same.

I have noted that this Bill talks about all resources being allocated to the counties and that they are going to perform all functions for the counties. However, if you look at the Finance Bill that was passed by the National Assembly and which has the budget for the national Government, you will still find considerable amounts of resources for hiring doctors, nurses; for equipping hospitals and for supply of medicines still being budgeted at the national level. So, that confusion is basically what led us to saying that for effective running of functions at the county, we needed to increase the amount going to counties to Kshs258 million.

Madam Temporary Speaker, I think this policy position must be made clear. It is this House that must give direction through its relevant Committees as to how we will move forward. This is for the record, even after we pass this County Allocation of Revenue Bill, there shall be a crisis out there. The crisis will be whether competence and capacity for counties was assessed. For example, already doctors and nurses are saying: “We cannot be paid by county governments.” The other day, I met another doctor and he told me “Can you imagine me being paid by the county government?” The perception they had was that, as a doctor in Elgeyo-Marakwet County---

I must confess here that in my county, we do not have a single hospital that is run by the national Government. This means that every health officer there is an officer of the county government. All health facilities in Elgeyo-Marakwet are for the county government. So, anyone who will be hired to work in that county shall be paid by my county. However, I can tell you that the county has no capacity today to pay doctors or

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

nurses. The illusion being created here is that all the functions have been transferred to the county government. They can now think about how to pay doctors and nurses without assessing the competences of these counties. So, as much as this Bill is very important, it does not solve the confusion that is there in terms of the process. Worse still is about the reports we hear that there is no capacity in the Transition Authority (TA). If there are no resources being given to TA to do costing, allocation and unbundling of functions, then how shall we unlock this confusion? How shall we solve this problem and yet, we are in the process of starting the next financial year's budget? It is important that these issues are addressed and the TA is given the necessary resources to do its work. Next year, we want to have a neat document that has a schedule and clear costing of functions.

Treasury told us in the Committee when we were looking at the Division of Revenue Bill that what they meant by costing of functions was historical costing of functions. They went to Elgeyo-Marakwet County or Marakwet East Constituency and asked themselves how many doctors or engineers were there and how much they were being paid. But in Article 174, devolution was supposed to bring proper development. The reason we went for devolution is because of marginalization. If you tell me that we will use historical costing, that is, whatever money was in Elgeyo-Marakwet we keep it that way, we are actually not doing devolution at all, but maintaining. No wonder in some counties like Nairobi, Mombasa, Kisumu and others, the resources they get might end up just making the governors to be payroll masters because we did not do costing of functions. We did not do unbundling of functions. We did not transfer these functions based on capacity understanding. When we say these things, it is because we want to help the nation move forward.

Therefore, this Bill is good for the time being in order to give the counties the illusion that they have a lot of money, but actually they do not have. This money is very little. Look at Elgeyo-Marakwet County, you are giving us a total of Kshs2.6 billion. We only have control over Kshs1.9 billion, but this county does not have tarmacked roads. We only have one or two roads connecting us to another county. If you want to connect the county to the rest of the markets, there are no good roads. If you go to our neighbours Pokot, our connection to that county is terrible. If you go to our other neighbours on the other side, Baringo County, we are unable to connect and do trade. But if we want to do development, this kind of money, is just giving the governor the illusion that he has money and to look good, but does not lead to proper devolution or proper development.

Madam Temporary Speaker, I proposed this in our Committee of Devolved Government that, perhaps, this House, the Committee on Finance and other Committees interested to do this work and working with the Clerk, we engage a consultant and look for development partners who are willing. Some of them have expressed interest to our Committee to do proper costing of functions. In the meantime, when the national government is telling us that this is the only amount good for the counties, the Senate in its capacity should be able to assist counties, will table a proper researched document that

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

tells us the real cost of functions. I have confidence that the courts will find it proper to rule in the right manner that this House---

The Temporary Speaker (Sen. Ongoro): Order, Senator! You cannot preempt the court ruling because that might actually jeopardize our position. Stick to the debate and withdraw.

Sen. Murkomen: I withdraw, but I have said I have confidence in the Supreme Court.

The Temporary Speaker (Sen. Ongoro): You were trying to preempt. So, do not minimize our chances by debating that.

Sen. Murkomen: Thank you, Madam Temporary Speaker. Let me put it this way: I have confidence that next year when we will be looking at the Division of Revenue Bill, we shall have the opportunity to give proper allocation to the counties after looking at the costing of functions. These are the things that we want to look at.

Madam Temporary Speaker, Section 10 of the Bill provides that each county Treasury shall reflect all transfers by the national Government in its books of account; the Finance Bill of each county shall reflect the total allocation from the national Government separately and so on. I want to say that whereas these wonderful provisions are provided for in this Bill, we have a serious problem on the ground. Although Schedule Six, paragraph 15 gives the national Government the power to build the capacity of counties, very few counties have qualified financial budgeting officers that can assist them to do a proper budget. Very few county assembly members have ever, in their lifetime, done any budget. In fact, in the few counties that have former members of National Assembly, those members are merely speakers. For example, the Speaker of Tana River County Assembly and the Speaker of Makueni County Assembly, if I am not wrong and I stand to be corrected.

Madam Temporary Speaker, we need to ensure that the counties have the capacity to do these things. It is not tomorrow, but today because the budgeting process will start again by October. In their duty to build the capacity of counties, Treasury should even go ahead and come up with a document on how to do budgeting in the Kiswahili language. I have a reason for saying so. The other day, it was reported that some county assemblies are completely unable to debate anything in the English language. It was reported in the newspaper that there was a particular county where the county assembly members, I do not want to mention it because it is not good for purposes of protecting the image, were asking their speaker whether they should not disregard the standing orders because it is disturbing them. They just wanted to talk freely. That is the level of incapacity that we have at the county level. We are just talking about normal debating. I must confess that until I came to this House, I did not know how to draft a Motion. I had to go to the Clerk's office to be assisted. So, how worse is it at the local level when you talk about them doing budgets, Motions and Bills, among others? It is important that the national Government or the Treasury comes up with a document in Kiswahili that translates the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

budget into Kiswahili language. It might be called *Jinsi ya Kutengeneza Bajeti*, giving specifics in Kiswahili.

The Temporary Speaker (Sen. Ongoro): *Ongea Kiswahili sanifu.*

Sen. Murkomen: Madam Temporary Speaker, you know I am not allowed to change and debate in Kiswahili language, but what I am saying is that Treasury has to come up with a proper framework as part of capacity building to enable the county assemblies to understand the budgetary process. The other problem is that it is important for county assemblies to realize that although more money has been put---

Sen. Okong'o: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Yes, Sen. Okong'o, what is your point of order?

Sen. Okong'o: Madam Temporary Speaker, I am wondering how much time my colleague is supposed to use in contributing.

The Temporary Speaker (Sen. Ongoro): It is 30 minutes, Senator, as provided for in the Standing Orders.

Sen. Murkomen: Thank you, Madam Temporary Speaker. I did not know that my colleague would easily get tired of listening to this very important exposé on this issue.

The capacity of the counties must be built by coming up with proper frameworks to assist them. In fact, the County Assembly Budget Office must be quickly established and be allowed to hire enough staff to allow the county assemblies to do proper budgets as we go to the 2014/2015 Financial Year. Lastly, one of the things that must be done at the local level is to show county assemblies that they are not competing with county executives in terms of allocations. Some reports from some counties indicate that some county assembly members have been telling governors that they must share the money 50-50. The county assemblies should get 50 per cent and the county executives 50 per cent.

In one county, county assembly members came up with particular budgeting lines that said that they would create some CDF for county assembly members and the money would be wired to the accounts of every county assembly member. This money will be used to take care of elders and persons with disabilities, so that if they go round the counties and see an old man, they give them something small. The capacities for these counties to carry out these budgets must appreciate.

A lot of blame has been put on county Governors. People are blaming Governors saying that they have mis-budgeted and that they are the worst Governors. However, budgeting is a function of the county assemblies. However, these assemblies have no capacity. We must build that capacity. We must always understand that we cannot allocate all the money to recurrent expenditure. It must also go to development expenditure. Development is not about building houses for county assembly officers. Development is about creating activities that people of a county will benefit from in terms of roads, hospitals, housing and addressing unemployment, among others.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

With all those many remarks, I support.

The Temporary Speaker (Sen. Ongoro): Before we proceed, Sen. Okong'o, please, make reference to Standing Order No.98 (4). There is 30 minutes provided for you to make your contribution. However, if you speak for two minutes, that is still okay.

Sen. Bule: Thank you, Madam Temporary Speaker. I am glad to stand before you and to contribute to this fantastic Bill. It revolves around a lot of controversies and many good things. We had a problem with it and today, we accept it. Mine is to support it since it is a starting point. This Bill is very controversial. We all know devolution is something that is gradual. We cannot say that we will change everything today and turn around the counties at once. So, we need to accept it. I, therefore, accept it and support the Bill.

The Committee on Finance, Commerce and Economic Affairs has to bring some amendments. With regard to the people in Tana River, the Bill does not favour us at all. It only worsens our problems. If we are given this money, but are not given capacity, it will be mismanaged by Governors. Governors have more powers more than our Executive at the national level. So, Governors can mismanage this money if no provision is put in place to oversee its usage. Senators must pull up their socks and come up with a solution, so that the money is closely monitored with regard to how it is utilized down there.

Governors have not been informing us what they are doing down there. These Governors are just moving up and down. Since the Senate is there to act as the Prime Minister of the counties; since we represent our counties and the county assembly members are our partners, we have to liaise with the county assemblies and come up with Finance Oversight Officers. We want the Senate to come up with a Finance Oversight Committee which will be going round to see what is happening out there.

I beg support.

Sen. (Dr.) Kuti: Thank you, Madam Temporary Speaker. I think we should all follow the Senator for Tana River in being brief and precise.

I stand to support this Bill. This is the first and crucial Bill we are discussing. It is what will set the pace for the counties to do what they have planned and budgeted to do. I would like to echo everybody's concerns regarding the fact that loading counties with functions and responsibilities without accompanying these with funding is setting them up for failure. Also, loading counties with functions and responsibilities without the accompanying function assessment and capacity building is also setting them up for failure.

Being a medical person and the Chairman of the Health, Labour and Social Welfare Committee, I would like to speak to two issues about loading responsibilities to counties without giving funds and without assisting them in terms of capacity in relation to health. We summoned the Cabinet Secretary for Health to come before us and to tell us what challenges he and his team are facing at the national level in terms of devolving the health functions. This is the only Ministry that has been devolved at a go before assessing the capacities on the ground. He wrote back to us. We realized that the health sector

would be in chaos if the orders of devolving functions to the counties would be implemented at one go.

With regard to the issue of procurement of medicine, Kenya Medical Supplies Agency (KEMSA), which is still the national body that procures medicine on behalf of the Government; be they vaccines, condoms or other medical equipment, has already purchased equipment and medicine worth Kshs4 billion which is good to go for two years. This has already been purchased. All the money for medicine and equipment and everything else has been sent to the counties. However, counties are already negotiating with suppliers. They have already put advertisements in newspapers and asked for companies to be prequalified to supply medicines, vaccines, gloves and other equipment. Now we have a situation where we have Kshs4 billion worth of medicine lying in the stores of KEMSA. However, money is now being sent to the counties. Obviously, the counties are of the opinion that they will buy what they want from who they want. This is now already a major crisis in our hands.

Madam Temporary Speaker, secondly, there is the issue of donor funds. The donors have signed agreements with Treasury. There is the memorandum of understanding or some form of agreement done at Treasury. We know that health is financed to the tune of almost 70 per cent by donors. These donors have very specific areas that they are targeting, whether it is the HIV/AIDS scourge, Tuberculosis programmes or mosquitoes and malaria control. This money has been bundled together and sent to the counties. The Governors and health secretaries are going to use it according to the plans that they have, disregarding that memorandum of understanding that has already been signed between Treasury and donors.

Madam Temporary Speaker, all the referral hospitals, like the ones in Nyeri, Kisumu, Nakuru and Mombasa, are within the counties. Anything below Level 5, has been devolved. The hospitals in Mombasa, Eldoret and Kenyatta National Hospital are Level 5. All the other provincial hospitals have now been devolved to the counties. They used to serve various districts which now have become counties. Now, the counties have only their money. How does this facility continue serving this region, yet it is supposed to be financed by only the county in which it is standing? For example, I am sure that Nyeri Provincial Hospital in Nyeri County serves people all the way up to almost Isiolo and Marsabit. Now, Nyeri County is supposed to fund the Nyeri Provincial Hospital. How will that be?

Madam Temporary Speaker, the issue of doctors is very critical. Doctors will now be under the Governor. The doctor-patient relationship nationwide is always to the extent that the Director of Medical Services (DMS) is the one who posts doctors, to make sure that even the rural and far remote areas are staffed with doctors. I may be only the third doctor in Isiolo County and have become a politician. I think that the other one has also become a politician. Now, the command for these doctors will be from the Governor. Everybody would like to go maybe to their counties. How do you now rationalize the staffing of facilities by specialized doctors, since the command has moved from the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

DMS? There will be a major crisis in the health sector because the capacities were not assessed before the functions were devolved. I think the health sector will really suffer because of that.

Madam Temporary Speaker, finally, there is the issue of the payroll. All the salaries have been moved to the counties. How will a county that is just starting have a payroll for doctors and nurses? In fact, what about the loans that they had before and the promotions that they were about to get? Do you now split all the arrangements that have been there and sent them to 47 different areas and make sure that these people continue to get the services and payments that they used to get? How do you ensure continuity without having planned, trained and made sure that by the time you devolve this function, there is a smooth transition? So, we are setting up the counties for failure, in fact, the whole country for chaos, especially in the field of health, because of not assessing the capacity. I do not know what the TA did to advise the Executive to especially devolve the health sector. Therefore, we are loading the counties with functions and responsibilities without enough funding and capacity building and assessment.

Madam Temporary Speaker, the other thing that I would also like to add is the issue of budgeting at the county level. I really support those who have said that budgeting for the counties and assessing their capacities to do budgets should start right now. Budget offices should be opened in the counties right now. The county assemblies have to be quickly brought up to speed, to let them know that they are another arm of Government within the county. Right now, there is a whole confusion where even the county assemblies and their speakers are looking up to the Governor. Therefore, there will be those who want to please the Governor. We will go back to the 1980s, where the National Assembly used to wait for everything from the Office of the President. I think that the Parliamentary Service Commission (PSC) has brought up to speed the Parliament in Kenya, to the extent that it is now capable of managing its affairs as another arm of the Government and not an appendage of the Executive.

What will happen now is that the county assemblies are going to be appendages of the Executive at the county level unless we build their capacities. I fully agree that in some counties, even the mention of the word "budget" is just way above the thinking of the county assembly members. I fully support Sen. Murkomen's idea that budgeting in some counties should be done in the Kiswahili language, so that they can actually understand it. A budget office should be there to train and build capacity, because we are going to see a scenario where a Governor will come up with a budget, and just because maybe something has been catered for or someone has been employed in your ward, he will do as he wishes with the rest of the budgeting. That becomes a major problem.

Madam Temporary Speaker, I support this Bill because this is the beginning. In every beginning, there have to be teething problems, but I think that if we allow too many teething problems, then it will cause chaos and confusion. So, we quickly need to now use this experience. This money that will go out there is too little because most of it is for

paying salaries. In fact, there is a very small amount that will be doing projects here and there.

Madam Temporary Speaker, I do not think that we need to be wrestling about the issue of marginalization. When you listen to everybody saying “marginalized” and I look at their allocation, it is always two or three times more than that of Isiolo, because of the Kshs2 billion that was given to Isiolo, with Kshs185 million as the conditional grant. This conditional fund is upside down; it is given to the bigger people and the marginalized. It is like it is following the Bible, which says: “For those who have, more will be added; and for those who do not have, even the little they have will be taken away.” This is the formula that this conditional fund seems to be following from the Bible. So, I think we need to bring the Quran, so that it says that, to those who are very poor, you give *Sadaka*; or those who do not have, you give more. But the Bible reverses everything. This conditional fund is following the rule of the Bible.

The Temporary Speaker (Sen. Ongoro): Order, Senator! Do not introduce very, very extreme religious comparisons.

Sen. (Dr.) Kuti: Madam Temporary Speaker, it is with a light touch. Well, the hope is that the poor will go to heaven, let us hope so. But I hope heaven will not also follow the same law.

Madam Temporary Speaker, I stand here to say that there are projects in which I think the national Government has been left with 85 per cent of the money. Of course, we know through the budgets where it will go. This money being allocated right now is very little. A lot of it, will go to pay salaries, with very little of it to do projects. Therefore, it is important that the national Government actually utilizes this 85 per cent to do one major project that is in the heart of the county to ensure that there is some balancing. For example, if a major dam is done in Isiolo – of which I know one is being done right now – and a similar project is done elsewhere like that, then I think we will feel that, besides the small money from the county governments, we are also developing and benefitting from the national Governments’ funds.

Madam Temporary Speaker, with those few remarks, and in order to also give other Senators some time to speak, I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. Janet Ong’era.

Sen. Ong’era: Thank you, Madam Temporary Speaker, for giving me this opportunity. I rise to support this Bill. Let me, first of all, congratulate the Mover and the Seconder of this Bill for bringing it to the House.

Madam Temporary Speaker, today the Senate is caught between a rock and a hard place due to the unprocedural activities that were carried out by the Lower House. As you know, this matter eventually led us to the Supreme Court; a matter that I would not go into to discuss its merits and demerits because of the principle of *sub judice*.

However, Madam Temporary Speaker, it behooves this Senate to rise above all this and exercise real wisdom when looking at this Bill. It is not the might of the tyranny of numbers or the might of the stroke of the pen that determines real wisdom. Real

wisdom can be exercised by this Senate in debating and allocating funds through this Bill because we represent the aspirations of the people in the counties. As a result of that, we shall be showing that, indeed, we are the mothers and fathers of our baby which we are nurturing, which is devolution.

Madam Temporary Speaker, I rise because we want to support this Bill and because we do not want to have disruption of services in the counties. As we support the allocation of revenue through this Bill, I do hope that the money we are allocating will not be misused. We hope that it will be spent by the county governments in ensuring that there is delivery of services, especially in agriculture and in county health services. We hope that this money shall ensure that there is good infrastructure that we so dearly need in our counties. We know that the state of our roads in the counties is in deplorable conditions. We hope that there will be proper improvement of programmes that deal with early childhood learning. We do also hope that there will be programmes that will deal with exploitation and exploration of natural resources.

Madam Temporary Speaker, before I sit down, I do hope that the Committee on Finance, Commerce and Economic Affairs will look at column “d,” which is conditional allocations; I do not understand this column. I do not understand, for example, why my county, Kisii, is being allocated only Kshs1 billion while Kisumu is being given Kshs1.9 billion and Nyeri County is being given Kshs3.6 billion. I really hope that the Committee will explain when it eventually brings its report to us for adoption. We would like to know the basis of these allocations.

Madam Temporary Speaker, I would also want to understand why the marginalized communities and counties, for example, Tana River, Wajir and West Pokot counties, have been given very little; may be under Kshs500,00. I do hope that this column “d” is not an allocation of funds that will be given on the basis that there will be other hidden budgets. This Government has been in the habit of putting hidden budgets in their allocations which will only go to support issues that are political. Therefore, it will be very prudent that we know what the Kshs43.9 billion on the additional conditional allocations is being given for. I realize it was not even approved by the Commission for Revenue Allocation (CRA).

Madam Temporary Speaker, as I sit down, finally, I would like to talk about an issue that Sen. Kuti talked about. Indeed, it is true that, as we load these functions, we look at the loading of functions and the money that is being given. We do not load services that we are not very sure that the county governments are in a position to carry them out. If you recall, we told this Jubilee Government that it was not yet time in this country, because we did not have sufficient capacity in implementing maternal health care. Today, if you visit the hospitals, they are in a deplorable condition. Many mothers are lying outside; some are delivering by the gates. I even read somewhere in the newspapers where mothers are not able to deliver. Some are even losing their babies as a result---

Sen. Kagwe: On a point of order, Madam Temporary Speaker.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Temporary Speaker (Sen. Ongoro): What is out of order, Sen. Kagwe?

Sen. Kagwe: Madam Temporary Speaker, I have just heard – correct me if I am wrong – the hon. Senator say that as a result of the fact that the Jubilee Government has waived maternity fees, there are a lot of children now being delivered all over the place? This was only said a few months ago; the last time I checked, it took nine months to actually get a child. How has the Jubilee Government announcement suddenly brought so many children all over the country?

(Laughter)

The Temporary Speaker (Sen. Ongoro): Sen. Ong'era, what exactly did you mean?

Sen. Ong'era: Thank you, Madam Temporary Speaker. Because of poor policy guidelines and lack of proper planning and ensuring that there is sufficient capacity, this problem has arisen. Because of this, we know that there are so many problems. In fact, the hon. Senator knows that in his county, this is where all this mess is occurring because there are no sufficient nurses and labour wards to deliver these babies. As a result, this is what we are talking about. Let us not load functions to the counties without being clear in our minds that, indeed, we have sufficient resources to do so.

With those few remarks, Madam Temporary Speaker, I beg to support the Bill.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, I know there is a lot of interest in this Bill, but we will continue with this debate tomorrow. So, we shall have one last speaker. Sen. Karaba has really been on his feet.

Senator for Kirinyaga County.

Sen. Karaba: Madam Temporary Speaker, I am happy I have finally caught your eyes. That has really touched me.

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, proceed with your debate.

Sen. Karaba: Madam Temporary Speaker, I would wish to bring to the attention of majority of the Senators here, as they try to wonder why some counties are getting more on Column "B" as opposed to others a few facts. Out of the percentage that is supposed to be devolved to the counties, that is, 15 per cent, 85 per cent is left to the national Government for its own national projects. What is important for us to understand is that revenue in this country is generated within the counties. The counties that generate more, should be supported, so that they can continue generating more. If you abandon a county which produces a commodity that brings in a lot of revenue, then you are denying the county the chance to generate that revenue which, later on, is shared with the other counties.

What I am trying to say is that when you talk about marginalized counties and others which are advantaged, there is nothing wrong there. It just happened that 12 per cent of Kenya is advantaged. So, about 80 per cent is disadvantaged for one or two reasons. So, when people start talking about advantaged, disadvantaged and all the other

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

adjectives attributed to poverty, to me, that is running away from reality. We need to appreciate the fact that even those counties which have a lot to share and give to other counties should be appreciated. The only way we can appreciate this is by way of supporting those counties which are productive, so that they can continue generating more. They should be encouraged to continue selling more and continue marketing whatever commodities they have, so that more revenue is generated. It is this same revenue that will be, later on, given to those disadvantaged counties. Therefore, it is important for the advantaged counties to be appreciated.

My County is Kirinyaga. You should be proud of where you come from because there is nothing you can change. You are from there, so the most important thing to do is to improve your county by using what we call opportunity cost and trying to make sure that you are making your county better than how you found it.

Madam Temporary Speaker, I would like to challenge the Senators not to always be evasive from the point. If you come from a region like Wajir, which is considered marginalized be proud of it because, the other day, we learnt of a discovery of oil. Therefore, very soon, they will generate more revenue that will be shared by other counties. So, if everybody from marginalized areas will come here lamenting, nothing will change. The status will remain.

Sen. Elachi: On a point of order, Madam Temporary Speaker. Is the Senator for Kirinyaga in order to tell the House that the Government has given an incentive to counties to generate revenue and denied marginalized counties while he knows that the Bill we are debating on will give very new allocations? This is very different from what he is debating on.

Sen. Karaba: Madam Temporary Speaker, I did not say that. I said it is clear that counties such as Kirinyaga, where I come from, which had been given Kshs2.7 billion will need a billion more. The money that will be given to such counties will go into production and multiplication of more money. Using the multiplier effect, more money will be generated from such productive counties. The Government should continue to give more to those counties.

I am trying to justify the fact that counties that are endowed geographically and environmentally should not be left behind. As some Senators have argued counties such as Meru and Kirinyaga; owing to their geographical position of being at the Equator, since they are located on the windward side and not on the leeward side, continue to receive more rainfall than others. That is a geographical fact. You cannot run away from that. That is what I am saying.

Counties like Kirinyaga and Nyeri need to be given more money because they will generate more revenue. We have rice which we grow. That rice fetches a lot of money. This money is what is divided to other counties. I think I am right in justifying my point. We need to have roads in Kirinyaga which lead to the Mwea Settlement Scheme.

Sen. (Prof.) Lonyangapuo: On a point of order, Madam Temporary Speaker. Is the Senator for Kirinyaga in order to imply that some counties should be given more money just because they are used to getting more money than others and that other counties that have not been producing any money and contributing any revenue to the national kitty should be left out?

Is he in order to imagine that it is only rice from Kirinyaga that generates revenue that can be shared equally by all other counties?

Sen. Karaba: Madam Temporary Speaker, it is not only rice that grows in Kirinyaga. We have a lot of other cash crops. We have tea, coffee, forestry and even *miraa*.

Sen. Ong'era: On a point of order, Madam Temporary Speaker. Is the hon. Senator from Kirinyaga in order to tell this honourable House that since some counties exist around the Equator - if I got him right - deserve to get more allocations? Is he also in order to tell us that because his county in particular and other counties within that area and jurisdiction supply more items like rice and trees, among others, deserve to get more money?

This Bill is about revenue allocation to all counties on equitable basis. Is he in order?

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, you have 20 minutes left. If you wish to continue with your interesting contribution, you will do so tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 18th July, 2013 at 2.30 pm.

The Senate rose at 6.30 p.m.