

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

### SPECIAL SITTING

Wednesday, 3<sup>rd</sup> June, 2015

The House met at 9.30 a.m.

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

#### PRAYERS

#### QUORUM

**Hon. Speaker:** We do not have quorum. Can you ring the Quorum Bell?

*(The Quorum Bell was rung)*

Order, hon. Members! We now have the requisite quorum.

#### MESSAGES

**Hon. Speaker:** Hon. Members, I have two Messages, one of which is to deliver a letter.

I have a Message from the Senate. It is Message No.14 of 2015.

#### APPROVAL OF MEDIATED VERSION OF THE DIVISION OF REVENUE BILL 2015

Hon. Members, pursuant to Standing Orders 41 (4) and 150 (3), I wish to report that I have received a Message from the Senate conveying the Senate's approval of the Mediated Version of the Division of Revenue Bill, 2015.

Hon. Members, you will notice that the Bill is scheduled for consideration before the House today under Order Number 11. I hope the House will dispense of the business expeditiously bearing in mind the provisions of Article 113 of the Constitution on mediation process. There is need to unlock the budgetary process in the county governments as contemplated under Article 224 of the Constitution, which enables county governments to prepare their budgets.

## PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table:-  
The National Police Service Commission (Promotions) Regulations, 2015 and the Explanatory Memorandum.

The National Police Service Commission (Transfers and Deployment) Regulations, 2015 and the Explanatory Memorandum.

The National Police Service Commission (Discipline) Regulations, 2015 and the Explanatory Memorandum.

Sessional Paper No.3 of 2014 on the National Policy and Action Plan on Human Rights from the Office of the Attorney-General.

The Constituency Development Fund Board Report on Project Approvals and Disbursement Status, April, 2015, including restrictions on constituency accounts.

The Report of the Auditor-General on the Financial Statements of the Kenya Veterinary Board for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Agricultural Information Resource Centre for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Engineers Board of Kenya for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Revenue of Kenya Tsetse and Trypanosomiasis Eradication Council for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

In conclusion, I would like to bring to your notice that we need to tell these agencies to provide Parliament with soft copies of the documents that are laid on the Table so that they can be uploaded on the Parliamentary Website. This will enable both the public and Members of Parliament to access them easily. These are public documents and it is easier for the public to access them from our website rather than sending individuals to Room 8 or our offices for these reports.

Hon. Speaker, we request you to ask these institutions that as much as they will bring hard copy documents for tabling, they should also provide soft copies of the same for the Parliamentary Website so that both the public and Members of Parliament can access them easily.

**Hon. Midiwo:** On a point of order, hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Midiwo?

**Hon. Midiwo:** Hon. Speaker, I support what has been requested by the hon. Leader of the Majority Party. I need a clarification on what this House should do with regulations, because it is not clear in my mind. Are these regulations made by independent bodies for debate or just for records? I think we need to debate them, especially the ones that have to do with the operations of the police, so that we act as per the wishes of Kenyans.

I request for some guidance, hon. Speaker.

**Hon. Speaker:** Anything that is in the name and style of regulations, whether it is meant for the authority of the parent law becomes subject to the provisions of the Statutory Instruments Act which the Tenth Parliament passed. Therefore, they stand committed to the Committee on Delegated Legislation for consideration. They automatically go to that Committee.

The other Reports will stand committed to the Public Investments Committee and Departmental Committees while the Constituency Development Fund Board Report will stand committed to the Select Committee on CDF of the National Assembly.

The request being made by the Leader of the Majority Party is legitimate. I would, therefore, direct the Clerk of the National Assembly to prepare the necessary communication to all the relevant bodies, so that alongside presentation of the hard copies of various reports, soft copies of the same can be availed to the Parliamentary Website for ease of reference by Kenyans and other Members who are IT savvy. I appreciate that there are some Members who would prefer hard copies. I have in mind Hon. Midiwo as one of those who would like to look at the hard copy. It is a valid concern and we should operate that way.

## STATEMENTS

### THE BUDGET AND APPROPRIATIONS COMMITTEE REPORT

**Hon. Musyimi:** Thank you, hon. Speaker. I wish to make a Statement on the progress of the Budget and Appropriations Committee Report.

The Budget and Appropriations Committee has held several meetings with the chairpersons of the Departmental Committees and the Treasury as you had directed. The recommendations from the Departmental Committees were considered by the Budget and Appropriations Committee. We agreed on a few amendments to its Report that was tabled in the House on Tuesday, 26<sup>th</sup> May, 2015.

The amendments to the Budget and Appropriations Committee Report showing the new schedule and recommendations will be included in the Supplementary Order Paper for the afternoon sitting that will be circulated, with your kind permission.

**Hon. Speaker:** Hon. Members, just before the next Order, if the hon. Member for Kitutu Chache North could take his seat as he trots in---

*(Resumption of Messages)*

### NOMINATION OF GOVERNOR/DEPUTY GOVERNOR/ CHAIRPERSON OF CBK

**Hon. Speaker:** As I had indicated earlier, this is the second Message, and it is from the President. It is Message No. 20 of 2015 on the nomination of the Governor, Deputy Governor and Chairperson of the Central Bank of Kenya.

Standing Order No.42 (1) relating to Messages from the President provides:-

“The Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House.”

In this regard, I wish to inform the House that I have received a Message from His Excellency the President regarding the appointment of persons to the Board of the Central Bank of Kenya. The Message conveys that His Excellency the President, in accordance with the provisions of Section 11 of the Central Bank of Kenya Act, 2012, has nominated Mr. Jairus Mohammed Nyaoga to the position of Chairperson of the Board of Directors of Central Bank of Kenya.

Further, pursuant to Section 13(a)(b) of the same Act, the President has nominated Dr. Patrick Ngugi Njoroge and Mrs. Sheila M'Mbijiwe to the positions of Governor and Deputy Governor of the Central Bank of Kenya respectively. The President, therefore, seeks the approval of the National Assembly on the same nominations.

Hon. Members, the above provisions of the Central Bank of Kenya Act require that in making appointments to the offices of the Chairperson of the Board of Directors, the Governor and Deputy Governor of the Central Bank of Kenya (CBK), the appointing authority shall seek parliamentary approval.

Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that:-

“An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly.”

Consequently, proper notification in line with the above provision has been received. Hon. Members, as the CBK Act does not provide specific timelines for the consideration of the nominations, it follows that Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 comes into effect. For the avoidance of doubt, this Section states:-

“Unless otherwise provided in any law, a committee shall consider a nomination and table its report in the relevant House for debate and decision within fourteen days from the date on which the notification of nomination was given in accordance with Section 5.”

In this regard, therefore, the House has 14 days to consider the nominations in accordance with the relevant laws.

Hon. Members, questions may arise as to whether the Chairperson of the CBK Board is subject to the provisions of the Public Appointments (Parliamentary Approval) Act. My reading of Section 11 of the CBK Act confirms that, indeed, the appointment of the Chairperson, Governor, Deputy Governor and other non-executive Directors ought to be approved by the House.

Hon. Members, pursuant to the provisions of Standing Order No. 42(3)(c), I now refer the Message from the President containing the names of the nominees together with their curriculum vitae, the report of the Selection Panel and the score sheets to the Departmental Committee on Finance, Planning and Trade to conduct the approval hearings and table their report on or before June 16, 2015.

The Committee should endeavour to conduct extensive public participation as provided for under Article 118 of the Constitution as well as Section 6(4) of the Public Appointments (Parliamentary Approval) Act.

I thank you.

Let us move on to the next Order.

**BILL***First Reading*

## THE SUPPLEMENTARY APPROPRIATION BILL

*(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)*

*Second Reading*

## THE SUPPLEMENTARY APPROPRIATION BILL

**Hon. Musyimi:** I thank you, hon. Speaker. I beg to move that the Supplementary Appropriation Bill (National Assembly Bill No. 23 of 2015) be now read a Second Time.

It is my assumption that the hon. Members have had opportunity to peruse the contents of the Bill. As hon. Members will know, the Bill makes provision for giving statutory sanction for public expenditure for the year ending 30<sup>th</sup> June, 2015 on the basis of the Supplementary Estimates of Expenditure 2014/2015 (Recurrent) and the Supplementary Estimates of Expenditure 2014/2015 (Development) and for the appropriation of those amounts. The total amount in question is Kshs50,464,000.

This matter is fairly straightforward. I have no doubt that when we come to the Committee stage, the necessary proposed amendments will be tabled and considered by this honourable House.

I, therefore, beg to move and request the Member for the great people of Gatundu North, hon. Kigo, to kindly second the Motion.

I thank you, hon. Speaker.

**Hon. Njenga:** Thank you, hon. Speaker. I rise to second the Supplementary Appropriation Bill, 2015 taking into consideration the fact that we are a State that should be meeting its obligations in time. A lot of this money is being spent on salaries and obligations for goods and services that have been consumed. It is only good that we take care of the liquidity of this country by being a nation that pays for goods and services in time.

I also note that Kshs350 million shall be spent for cash transfers to the least advantaged people in this country. That is something that spreads across all constituencies. The Kshs1.29 billion being spent for emergency interventions, considering the problems that we have in places like Mombasa, is something that also needs to be addressed as quickly as possible.

Hon. Speaker, there is also money for infrastructural development, especially in universities under Vote D139. I would like to point out that Kshs1.193 billion has been allocated to universities to complete ongoing infrastructural projects. Even the Parliamentary Service Commission (PSC) has been allocated Kshs946 million for payment of services offered with regard to ongoing projects.

We are going into elections and the Independent Electoral and Boundaries Commission (IEBC) should act fast to ensure that we have a free and fair election when the time comes. I can see we are spending over Kshs3 billion for payment of tax obligations. I urge this House to consider and approve this Bill to make sure that, as a nation, we are able to pay up our obligations, get services and move Kenya forward.

I second this Bill.

Thank you, hon. Speaker.

*(Question proposed)*

**Hon. Aden:** Thank you very much, hon. Speaker. I rise to support the Supplementary Estimates. Even as I do so, it is important that we emphasise on the need for prudent utilisation of funds. I would like to give an example of the Ministry of State for Defence which is getting Kshs5.5 billion more in addition to the very high amount of money we allocated them for the full year. These are areas whose expenditures are unfortunately not clearly auditable.

Many questions have been asked about this Ministry's utilisation of the funds already allocated to it. Kenyans believe that we have over-budgeted in terms of allocations for the Ministry. We would like that Ministry to be put on the spotlight in terms of its expenditure. We should be cautious that we are allocating an additional Kshs5.5 billion over and above what we had allocated this Ministry before.

Hon. Speaker, additionally, there is Recurrent Expenditure of Kshs6.6 billion towards the Integrated Financial Management Information System (IFMIS). These are huge amounts of money because we know that IFMIS is a system that was developed long time ago. The little we know about computer systems is that costs are incurred at the initial stage when they are being developed. However, once they are developed, all that is needed is to upgrade them and train people. We budgeted for IFMIS in the last financial year.

Being a Member of the Budget and Appropriations Committee in the previous year, I remember we also budgeted for them again. This is a supplementary budgetary allocation requirement for IFMIS. Many questions could be raised about how the IFMIS programme is being run. Why are we allocating so much money to IFMIS when, indeed, we have a lot of other areas that deserve funds or urgently need money that can do much more for Kenyans?

With those few remarks, I want to allow my colleagues time so that they can also give their input. What we have here are very heavy allocations for both IFMIS and the Ministry of Defence. I urge them to be very prudent in the utilisation of the money they have been allocated. As a House, we need to be vigilant to ensure that we hold the relevant Ministries to account in terms of utilisation of these funds in addition to the previous budgetary allocations.

**Hon. Bowen:** Hon. Speaker, I also want to support the Supplementary Appropriation Bill. I want to raise some questions especially on the Kshs6 billion allocated to the Treasury and IFMIS.

For the last 15 years, more than Kshs15 billion has been spent on the development of IFMIS. If a proper audit is done, I am sure we will realise that IFMIS is bigger than the Anglo Leasing scandal or any other financial scandal in this country.

I am a software engineer and I want to inform this House that in software development, systems are only developed once in a lifetime. However, it is like IFMIS is developed every year. If you check the financial books of last year, you will see that IFMIS was allocated more than Kshs1 billion. In the Supplementary Budget, it has again been allocated Kshs1 billion.

I want the Departmental Committee on Finance, Planning and Trade and the Public Accounts Committee (PAC) to scrutinise and audit IFMIS. This is a software and Information and Communication Technology (ICT) system. I do not know why this system is being run and managed at Treasury. It should be under the Ministry of Information, Communication and Technology. I know that the devil hides in the details because most Members do not understand what this system entails. It is supposed to be an Enterprise Resource Planning System (ERPS) for the Government, but you will still find that there is Integrated Payroll and Personnel Database (IPPD) which is different from IFMIS.

As we approve this Supplementary Appropriation Budget, there is need for the Auditor-General to move to the Treasury with speed and audit the money that the Treasury has been using on IFMIS. As we speak, not all Government agencies are using IFMIS. However, when you ask the officers from the Treasury this question, they tell you that IFMIS is used across Government ministries, departments and agencies.

So, I would like to support this Bill with a parting shot that the Auditor-General of the Republic of Kenya should move to the Treasury. The PAC should also audit IFMIS because a lot of money has been used on it. IFMIS was put in place to check on the loopholes of financial misappropriations. However, since the installation of IFMIS, corruption, especially in the procurement departments in the Government, has been massive than when it was not there. So, IFMIS is being used as a conduit to siphon public money in the name of software.

I support.

**Hon. (Dr.) Simiyu:** Thank you, hon. Speaker for giving this chance to also contribute to this very critical Motion. Indeed, we need to appropriate money to assist various Government functions to continue until the new financial year kicks in. As previous speakers have said, there is something at Treasury that needs to be checked with regard to the IFMIS issue. However, I want to concentrate on the money that we are appropriating to the security systems in this country. That is for both the Ministry of Defence and the Ministry of Interior and Coordination of National Government. The total comes to about Kshs14.5 billion. That is if you add Kshs9 billion to Kshs5.5 billion. This has been a continued investment in the security sector in this country and we hope that the massive appropriation will result in improved security.

Hon. Speaker, you should note that we have had problems with auditing security expenditure in this country. In fact, in the latest Public Audit Act that we just passed, we tried to shield auditing of security expenditure. If we are going to invest massively in security and we do not audit it adequately, then that is a possible conduit for loss of finances.

I will mainly concentrate on the Ministry of Education, Science and Technology. We are appropriating about Kshs1.193billion to this Ministry to complete developments in 24 new university colleges and in primary and secondary schools. I do not know where the developments in the primary schools are because in the neck of the woods that I come from, there is neither infrastructural funding for primary Schools nor secondary Schools. I do not know which secondary and primary schools these are. The worst of it is the universities.

In the last Budget, we appropriated money to the Ministry of Education, Science and Technology for development of universities. However, when you look at how this money was distributed, you will find that universities in the western part of Kenya were totally starved of development funds. In fact, the development funds sent to those universities are so paltry that no development has gone on. Some of those universities are much older than newer universities that have come up. Any infrastructural development there was sort of frozen. So, you will find universities like Masinde Muliro and Maseno are virtually limping; they stopped all infrastructural development. This kind of skewed distribution of national resources must stop. When we were here the other day, one of the things that was noted was, again, further skewed distribution of development funds to universities, including Egerton University. This massive investment in universities which is being channeled to one part of this country is a basis for conflict, and it has to cease forthwith.

The Cabinet Secretary in charge of Education must note that we are watching him. I know we are now appointing a University Funding Board which should have been appointed long time ago. But he conveniently chose not to appoint this Board so that he can continue with his skewed distribution of national resources.

We are watching him and, if he does not change, then we will move a Motion of censure against him.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Mithika Linturi, before you put your card for other things, we are debating the Supplementary Appropriation Bill. Hon. Members, for avoidance of doubt, we shall be dealing with the Estimates of National Revenue in the afternoon.

**Hon. Linturi:** Hon. Speaker, in a short notice, I am sure I can contribute to any Bill before this House.

Thank you for giving me this opportunity to contribute to the Supplementary Appropriation Bill, 2015. Though I support this Bill, it is coming a bit too late. This is because today is 3<sup>rd</sup> June, 2015. The money we are approving today is supposed to be spent before the end of this Financial Year, which is only 27 days away.

If no contracts have been given amounting to this amount of money, I seriously doubt whether the Government has the capacity to absorb Kshs50 billion within the next 27 days.

I suggest that the Supplementary Appropriation Bill should, at least, be getting into this House latest March or April every year, so that those who implement or supervise the utilisation of these funds have adequate time to use the money. The money must be spent as provided by either our Public Procurement Act or the Public Financial Management Act. Next time, the people concerned should act within reasonable time



rather than bring a Bill like this when it is late and very difficult for the implementing agencies to utilise the money.

I support the Bill.

**Hon. Speaker:** Hon. Members, there are hon. Members who have indicated a lot of interest in this debate. Let us be guided by the provisions of Article 223 of the Constitution in debating this Bill.

Article 223 allows the national Government to spend in any financial year, not more than 10 per cent of the total sum appropriated. But the approval of the National Assembly, I emphasize - National Assembly - must be sought within two months, if withdrawals have been made. After that approval, then an Appropriation Bill must be brought to the National Assembly within two months, but if this House, again I emphasize – this House - is not sitting, immediately seven days as soon as the House resumes.

Therefore, even as we debate this Bill, we must remain guided by what is in Article 223, about the place and role of the Supplementary Appropriation Bill.

**Hon. Midiwo:** Thank you, hon. Speaker. I rise to support the debate on this Bill. Thank you for your guidance on the role of the Supplementary Appropriation Bill or the Appropriation Bill.

As I support this Bill, we give these monies willingly and it is the responsibility of the National Assembly - I say that with emphasis because of the debate we shall be having probably this afternoon about the confusion being created--- Really, there is no confusion, but there is an attempt to create confusion about the powers of this House in budget-making. That confusion is intended to incapacitate the Constitution itself because the role of the Senate and the role of this House are very clear.

I wonder where the imagination that the Senate needs to talk about monies which have not been appropriated by this House to go to the counties is coming from. I am defeated where that imagination is coming from because I sat in the Bomas of Kenya. I sat throughout the making of the new Constitution. If we revisit the HANSARD of those debates, we will find that the role of the Senate, if any, in this process is just as it is stipulated in the current Constitution.

It would be nice to make it clear. I know there is a school of thought that says; “Let us have the court interpret.” I am not a lawyer, but it is a no brainer that the roles are clear. Therefore, while the media is hyping, they should also conversely help us in explaining to the ordinary people to understand the law.

Hon. Bowen has spoken about the new mischief, the new thing in corruption called “IFMIS”. In future, this House must not allow a mysterious system to be used; a system we cannot audit should not be used to siphon public funds. I would like to ask the Departmental Committee on Finance, Planning and Trade to unravel the mystery about this IFMIS. The Jubilee Government wants us to use the internet to procure and I think the intention is very noble and good. But imagine a scenario where one person with a source code of a procurement system is the one being seen to play around with the figures on computers.

The reason the CDF has sustained this economy for over ten years is because we do everything publicly. The formula of CDF is the trick and I do not see one that exists on earth that will go around the CDF way. We need to increase the ceiling of the monies we

give as grants to projects so that the public is involved. There is no way you will tell people to go to the internet and stop them from looking for the people who will run that system. The Government is opening a Pandora's Box. You will create billionaires before the end of this year. You will create billionaire clerks before the end of this year!

Even the system at the Kenya Revenue Authority (KRA) is not working. You key in, in Mombasa and you have people waiting in front of the KRA Headquarters to pay somebody. The Import Declaration Fee (IDF) and those other things pass with supersonic speed.

Therefore, whatever intention the Jubilee Government has - I am sure it is noble - they should stand forewarned that they are opening a Pandora's Box. The IFMIS is not going to work for us. The amount of corruption in the counties is such that they have figured out how to use the IFMIS.

*(Applause)*

In Siaya County, it was caught when a few hundreds, I think about Kshs80 million, I am not sure about the figure, was being paid through IFMIS. I have not heard of anybody being jailed, not in the National Treasury and not in Siaya County. The governors have figured out how to use this system. Until we figure out the accounting systems in the counties, let us do this thing transparently please. That so called technology should just wait for a minute. It is mind-boggling when the Senate goes bragging how they have played a role. The role of the Senate would have been to check these governors.

*(Applause)*

The wanton theft which is going on in the counties is because nobody is checking. When you go to the counties where some Members of Parliament who are in this House know their work and criticise that local system there, you find an ignorant Member of the County Assembly (MCA) saying: "You go and oversee Uhuru Kenyatta."

*(Applause)*

That is what they are telling these MPs. You wonder if there is something called "County Corruption" and "Uhuru Kenyatta Corruption." Corruption is corruption, hon. Speaker. The Senate must wake up to its duty. It is not good enough. Just a few months ago, you could hear about the PAC of the Senate. Now they are saying they are in court. There are other ways to play oversight. There are other committees. You can take them to sector committees. I think something is not right with the Senate.

As a country, we need to revisit if we need to spend our money in the manner we are spending it on the Senate. We must because we are spending taxpayer's money. We need to talk to ourselves. We are now saying that the work of checking corruption is for the Ethics and Anti-Corruption Commission (EACC) and yet it does not have the capacity, hon. Members. There is nowhere on earth where there is a parallel body charged with fighting corruption and yet the same country has police.

As we move forward, this House, in its wisdom, must borrow from other experiences. This EACC must be a division of the police so that instead of having some people---

*(Applause)*

The people who are sent, and I do not want to mention names though I know them, are sent to these counties. Not long ago, a governor told me: "I have taken care of EACC and the Director of Public Prosecutions (DPP)." We need to do something. We cannot see this happen. Clear cases have even come before our sister House and you see people getting cleared. If you look at what was happening here in Narok County, you will see that there were real issues. This House is active and experienced and we need to figure out in law how we properly play this oversight role on how these monies are being spent.

If you send one officer to Moyale, for example, what happens if these rogue governors give him or her just a few millions and he or she comes back with a report? What happens? The people from the Office of the Auditor-General (AG) tell you openly that they are the most sought after officers in the provinces and counties. It is not a secret anymore. It is a looting clique. This House has a duty to protect taxpayer's money. We have a duty to protect how it is used. The kind of arrogance you are seeing in the county governments, I can tell you that Kenyans are only supporting county governments. I plead with Kenyans that: "Please support county governments in terms of devolution but let us not support ineptitude and corruption."

Corruption is linked to human beings and I can tell you that it is very sad what is happening. In most parts of the country, even hospitals have no medicine and food despite the pomp that you see. As a public servant, which one will you rather do? Will you open a road or buy medicine? My county does not even have a gynecologist.

**An Hon. Member:** Why?

**Hon. Midiwo:** Because the people there do not matter. We have people with ideas but they are not heard. Even the technocrats employed there are not allowed to work in these county governments. The governors are now the procurement officers. If you have an idea, they call you and tell you: "We know you are making noise because your pockets are empty." We must fight corruption. If this country must move from where it is to the next level, we must fight corruption and this House must figure out how not to give money.

I want to propose to this House that we reconsider the Health Bill. I am not supporting the idea of taking back the health docket to the national Government. This is because we will only be delaying the inevitable because we will then have to change the Constitution. However, we must ring-fence monies. In our next budget cycle, we must ring-fence monies to go to the essential sectors. This is because if we do not, the governors who will be looking forward to vie during the elections will not care. They will not care if people are dying in hospitals or if there are no roads. They will not care. Most of these Members like hon. Duale, hon Gumbo and hon. Linturi will tell you. We were here and we got less than Kshs10 million for our roads. People used to praise me in my

constituency that we have good roads. Now, we gave these monies to the counties and the markets are filthy, the roads are not there and the hospitals are filthy.

*(Applause)*

It is such a sad thing and very embarrassing for us. Instead of celebrating having voted for devolution, we are crying because of a few people who are so ruthless and greedy with money that are trying to bring our hard-earned freedom down.

What is happening is strange. I want to plead with the Budget and Appropriations Committee and the committees that let us be bold and ring-fence every money to the sectors in the coming year. Now that I think about it, I am clear which law this Parliament must initiate. Take the money to the people. People can never steal or rob themselves.

Hon. Speaker, the CDF is working because money is directed to projects. Let us all figure out how to do this because we must accept as a people that opportunities are lacking but most of us are corrupt in nature. We must, therefore, do it in law so that we do not finish our country.

I support, hon. Speaker.

**Hon. Speaker:** Hon. Members, again, if you look at the Order Paper, you will see Order No.11. I hear a lot of these very good ideas, but I am sure they will find pride of place in the business appearing as Order No. 11. Nevertheless, let us hear more of you because I can see there are still quite a number of requests. Let us have hon. Robert Pukose.

**Hon. (Dr) Pukose:** Thank you, hon. Speaker. I rise on Standing Order No.95. I beg to move that the Mover be now called upon to reply. I think we have a general consensus.

**Hon. Speaker:** Do I see that as the mood of the House? Can I put the Question?

**Hon. Members:** Yes!

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

**Hon. Speaker:** Yes, hon. Mutava Musyimi.

**Hon. Musyimi:** Much obliged, hon. Speaker. I rise to thank my honorable colleagues for the views that they have expressed; not least, the point made about the IFMIS and the strong views about corruption, especially in the county governments. I want to assure hon. Members that these are matters that we will take up as, indeed, all the other relevant committees of the House will do as they seek to play their oversight role.

Hon. Speaker, I beg to reply.

**Hon. Speaker:** Hon. Members, including the hon. Member for Runyenjes---

*(Hon. Ms. Mbarire walked along the gangway)*

Do not do that. Just stay where you are.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House today by leave of the House)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman (Hon. Kajwang') took the Chair]*

### THE SUPPLEMENTARY APPROPRIATION BILL

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order, Members! May you resume your seats and get a little composed to be able to proceed with the business at hand. This is the Committee of the whole House convened to consider the Supplementary Appropriation Bill, National Assembly Bill No.23 of 2015.

May I have the gangway clear off Members.

*(Hon. Gethenji consulted loudly)*

Order! Order, hon. Member for Tetu! Advise your neighbouring Members to also observe order. Now we are composed to be able to consider this Bill. Shall we begin?

*(Clause 2 agreed to)*

*(Clauses 3 and 4 agreed to)*

*(Schedule agreed to)*

#### *Clause 1*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1 be amended by inserting the words "and shall come into force upon publication" at the end thereof.

Hon. Temporary Deputy Chairman, my argument is that, if you look at Article 116(2) under the subtitle "Coming into force of laws", it says:-

“Subject to clause (3), an Act of Parliament comes into force on the fourteenth day after its publication in the Gazette, unless the Act stipulates a different date or time at which it will come into force.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Which Article did you say, Leader of the Majority Party?

**Hon. A.B. Duale:** Article 116(2), hon. Temporary Deputy Chairman. I am doing this because in the Parliamentary Service Commission (PSC) and many sectors within the national and county governments, some people have not even earned salaries and this Supplementary Appropriation Bill is very critical. So, if we do not do this amendment, then, they have to wait for 21 days from the publication period as Article 116(2) says.

So, what I am trying to achieve by proposing this amendment is that once Parliament passes this Bill and the President assents to it this afternoon or tomorrow morning, then the resources will be available to the PSC, the Judiciary and to the national Executive. Basically, I am reducing the publication period of this Bill so that it can come to force immediately after its publication.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I have several requests on my screen and I am unable to decipher who wants to contribute for what. As I understand, many of you want to carry on your requests. I, therefore, ask that the Members who want to debate on this Clause to show by pressing the intervention button right now.

I can see hon. Members for Luanda and Rarieda. Is that the list that I have? Well, hon. Members, can you press your intervention buttons? Yes, now I can see the hon. Member for Igembe South and the hon. Member for Seme. Let us start with the hon. Member for Luanda.

**Hon. Omulele:** Thank you, hon. Temporary Deputy Chairman for this opportunity to support this amendment. It is very important to also bring to the attention of the House that some of our staff members have not been paid. This is particularly, my staff members in Luanda who have not been paid for the past three months. I, therefore, support the Leader of the Majority Party in this quest and I think it will be the proper thing to do so that this Bill can come into effect immediately after its publication.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, the hon. Member for Rarieda.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I also wish to support the proposed amendment by the Leader of the Majority Party. As we speak now, there are a lot of very needy cases that need urgent and immediate funding and I think it is important that we include that amendment so that this funding can be effected immediately to make essential services run in our country.

I support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, the hon. Member for Igembe South.

**Hon. Linturi:** I really do not think there is much to debate about the amendments being proposed by the Leader of the Majority Party. This is because the net effect of this amendment is to make the application of the coming into force of this law immediately after signing by the President. So, rather than wait for 14 days for the law to take effect as provided by Article 116 of the Constitution, we provide a date on which this law should take effect. It will be immediately.

I support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Lastly, let us have the hon. Member for Juja.

**Hon. F.M. Waititu:** Thank you. I support the Leader of the Majority Party. As the Hon. Member for Luanda said, it is true that even in Juja Constituency we have not paid our people for three months. I see why he is saying that because after that we will be able to get funds and utilise them in the right way. This is because 21 days is a long time.

I support.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 1 as amended agreed to)*

*(Title agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Leader of the Majority Party, do I hear you on a motion or an intervention?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Supplementary Appropriation Bill, National Assembly Bill No. 23 of 2015 and its approval thereof with amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE SUPPLEMENTARY APPROPRIATION BILL

**Hon. Kajwang’:** Hon. Speaker, I beg to report that the Committee of the whole House has considered the Supplementary Appropriation (Amendment) Bill, National Assembly Bill No. 23 of 2015 and approved the same with amendment.

**Hon. Speaker:** Mover.

**Hon. Musyimi:** Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I also request Hon. Moses ole Sakuda to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. ole Sakuda** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Musyimi:** Hon Speaker, I beg to move that the Supplementary Appropriation Bill, National Assembly Bill No. 23 of 2015 be now read the Third Time.

I also request Hon. Moses ole Sakuda to second.

**Hon. ole Sakuda** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**Hon. Speaker:** Next Order.

## MOTION

### CONSIDERATION OF THE MEDIATED VERSION OF THE DIVISION OF REVENUE BILL

**Hon. Musyimi:** Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150(3), this House approves the Report of the Mediation Committee on the Division of Revenue Bill, (National Assembly Bill No.11 of 2015), laid on the Table of the House on Wednesday, 27 May, 2015.

The Mediation Committee on the Division of Revenue Bill 2015 was constituted by the Speakers of the two Houses of Parliament on 20<sup>th</sup> April, 2015, pursuant to Articles 112 and 113 of our Constitution and the Standing Orders of the Senate and the National Assembly. The members of that Committee were: Hon. Joseph Kajwang', Hon. Mary Emaase, Hon. Senator Mutahi Kagwe, EGH, Hon. Senator Beatrice Elachi, CBS, Hon. Senator Boni Khalwale and I as the Chairperson of the Mediation Committee. This Committee derives its mandate from the provisions of the Articles that I have just mentioned.

We were constituted to consider Bills on which the Houses did not agree on all or any of the amendments made by either House. We were also constituted to consider Bills on which either House rejected a motion that a Bill which originated in the other House



be read a Second Time or a Third Time, and attempt to develop a version of the Bills that both Houses would pass.

With respect to meetings and methodology, my Committee held five sittings to deliberate on the Division of Revenue Bill 2015 in accordance with the Constitution and relevant provisions of Standing Orders of the Senate and the National Assembly.

I take this early opportunity to thank you and the Speaker of the Senate for your support in this process, and also thank our clerks; I am thankful about the support that we received from the Parliamentary Budget Office and the Treasury. I thank the Controller of Budget who also came in extremely handy and the Office of the Attorney-General. I thank the members of the Budget and Appropriations Committee for the role they have played in shepherding this discussion from where they sit. I also thank my fellow Members of the Mediation Committee for very honest discussions.

Now, it is my pleasant duty and privilege to, on behalf of the Mediation Committee on the Division of Revenue Bill 2015, present and very strongly commend this Report, including an agreed version of the Bill to the Houses for approval as is required by the Constitution. At the outset, having chaired these meetings, and having had the opportunity to go through the HANSARD of the Senate, whose copy I have here in terms of their debate---

Hon. Speaker, I said this was my second mediation team to chair on this matter of Division of Revenue Bill and I am convinced that the real issue here is actually not devolution. The real issue in this mediation was not really whether we want money to go to the counties; the overarching premise and issue is the role of the Senate in budget-making. That I am persuaded lies at the heart of the discussions that we were having; I think it is a matter that I leave to the House to continue discussing.

With respect to the Division of Revenue Bill, this marks the second step in the processing of the Budget matters that are before us, particularly for the county governments. It is wished that this Bill be passed, so that the county governments can access their money and do their budgeting as required by law.

Hon. Speaker, let me say that the options that were before us were basically three. We found ourselves faced with option number one of accepting the Senate proposal - the initial proposal of Kshs7.7 billion from the national share of resources. Option number two was that we revert to the original Bill approved by the National Assembly and the Senate to allocate funds to the counties shareable revenue and this was the preferred view of the Treasury. I want to thank the Treasury because they have been absolutely consistent in appealing to us to maintain fiscal discipline in our negotiations. The third option, which is the option adopted by my Committee, was to prepare a new Bill, dropping the request for the County Emergency Fund and incorporating the requested allocation of Kshs1.67 million shareable revenue and the Kshs1.536 billion allocated to Level 5 hospitals.

Hon. Speaker, my own observation is that this is the second Mediation Committee on matters of division of revenue since the promulgation of the new Constitution, and it will be prudent not to allow a crisis either constitutional or financial by rejecting this Bill. Such an action is likely to trigger, among other things, negative financial operations in the county; possibly somebody could go to court and challenge us with respect to appropriating monies for the national Government. The Committee further observed that

there is need for immense goodwill in these discussions, hence the need for us to discuss these issues in complete good faith. The Committee also observed that the report on the Budget Policy Statement (BPS) was adopted by both Houses. It was thus a bit strange for us in the National Assembly--- The Senate had agreed to support the BPS and then went ahead to come up with amendments. The logic of that was difficult to appreciate.

Hon. Speaker, the Committee acknowledges that a lawful and comprehensive process guided by consultations on the Division of Revenue Bill 2015, with key stakeholders, among others the National Treasury, Controller of Budget, Commission on Revenue Allocation and the Intergovernmental Budget Economic Council (IBEC), had actually taken place. We were at pace to remind ourselves that once the law puts in place an institution then we need to respect the work of that institution. The institution we call IBEC is in Section 187 of the Public Finance Management (PFM) Act. In that law, it is clear that the people who sit around the table are the managers of our resources at levels of Government, the national Government and the county governments. Indeed this forum is chaired by the Deputy President, and I am reliably informed that at some point in the discussion this year, the matter went further and there was an inter-agency council that was chaired by the President himself. So, a lot of negotiations went on between the managers of our resources because that is what the Executive does, managing our resources, not all that well sometimes, but that is their mandate as given to them by the Constitution.

Hon. Speaker as we support the report of the Mediation Committee, it will be very important in future to remind ourselves that if work has been done by others, we need to eat humble pie and find ways of doing our part in a manner that does not set the country adrift to where it is now. I am waiting to see what will happen today, that is whether we shall support this mediation report or not. I plead with the other Chamber to see the need to understand and appreciate the role of IBEC since the governors, committee executive members of finance and the Commission on Revenue Allocation (CRA) sit on it. It is my plea that we all appreciate our mandate.

It is important to accept the mandate given to us by the Constitution. I got the sense that some of us have not quite understood, appreciated or accepted our mandate. In not accepting our mandate, we fail to appreciate the mandate given to others, notwithstanding the fact that we have the discretion given to us by the Constitution to amend what comes to us as Parliament. But even as we do so, we need to be very careful not to cause problems in appropriating resources. I think wisdom demands that we give more respect to the mandates given to other institutions by law.

Hon. Speaker, were we not to support this Motion, we would throw the country into a legal quagmire. Let me make it very clear that unfortunately neither the Constitution nor the enabling statues or our own Standing Orders created a fallback position should the mediation process collapse. I repeat that there is absolutely no fallback position created by either the Constitution, statues or our own Standing Orders. If this Bill is defeated, the consequences will be calamitous. We shall be in uncharted territory, out there in the wilderness without a compass.

Hon. Speaker, I suspect the drafters of our Constitution knowing how crucial the Division of Revenue Bill is, never imagined that it would ever be subjected to the vagaries of politics and mediation. They never imagined the possibility of collapse of this

Bill. I suspect that may be so because they did institute upfront the mechanism to negotiate the numbers; that is what the IBEC is all about. That upfront forum of negotiation is the one that probably made the drafters of our Constitution relax, perhaps naively in the honest understanding that the possibility a Bill collapsing was out of the question. So, we find ourselves where we are today; we must agree with the Mediation team. But I repeat myself that the issue here--

Let us think again about the process we have been through. There are those who are here, perhaps imagining that this report may be opposed and then we make it “they-and-them” debate in terms of our usual politics that they support devolution and we do not support devolution. They support this and we do not support it.

Hon. Speaker, we are the National Assembly. I had my own personal views, I will be frank with you, but I have to set them aside in public interest. I plead with those Members who may have had the views that I did, as indeed my Committee did, because we struggled to support this report as the Budget and Appropriations Committee. We even said that the issue was not even the amount, it was the principle that we would pass a Bill here and then the Senate arrogated itself powers given to it through judicial activism and some advisory to try and get involved in the budget-making process.

*(Applause)*

We were at pains as we discussed that matter but I am here today to plead with hon. Members to support this report. It is in the best interests of this country going forward. We support devolution and I believe all of us do cross to both sides of the aisle. The struggle for this Constitution, for those who perhaps may not know, was a struggle by all of us and all of our people. That struggle was a struggle that was won principally when we put devolution as part of our architecture of Government. I stand here today to plead with the hon. Members. I know that the amounts being requested are high. I hope I can persuade you that we can get that money from somewhere. I will make my humble proposal as I close. Bottom line is that there would be uncertainty and a crisis; the problem of our usual political brinkmanship and positioning, if we do not support this Bill.

On the way forward as I close, I would suggest that we have an opportunity to take seriously the socio-economic audit that is taking place. I feel very proud to be part of this Assembly that approved and saw the need for a socio-economic audit. Those of us who were chairs of committees or, indeed, Members of the Budget and Appropriations Committee, would know that there are tough wars that have been created by ambiguities in the way some of the mandates were crafted in our Constitution and in our laws. We sat here on Thursday afternoon and we listened and watched those being played out and I will be saying a bit more about that in the afternoon. We need to take the socio-economic audit of the Constitution very seriously; I hope when we come to the issue of the mandate of the Senate *vis-a-vis* the mandate of the National Assembly with respect to budget-making process, that matter will be put to rest once and for all.

Secondly, I wish to say there would be need to review and consider legislation and our own Standing Orders for the future, including realistic timelines in budget-making. Part of the problem that we have today is that enough time has not been factored

into the process of budgeting and it becomes, as I said, very difficult to manage especially when you are chairing this Committee and chairing the other Committee. The timelines are quite simply brutal.

Thirdly, I will be recommending the fast-tracking of the enactment of the proposed Public Finance Management (Amendment) Act, 2015 that incorporates a provision allowing for the disbursement of finances in the event that these Bills are not passed in future.

As I sit, I want to say two things. Let the message go out to our governors that we know what goes on in the counties. We have given the Auditor-General - this afternoon we will be proposing that he gets a bit more money - the mandate to audit our spending agencies, especially the county governments. We have not just devolved resources and power, hon. Members. We have in reality devolved corruption. That is the tragedy. I do not think that this is what the struggle for the new Constitution was about. We have created situations out there in the counties that are very frightening. Any of us - I come from Embu County - who knows what actually goes on, will agree that we have a problem that we need to look into. This money needs to be given to the governors, but let them know that we give it to them constrained by the realities that we know take place. They should use this money well.

I also want to request you to allow the Budget and Appropriations Committee to meet before the afternoon Session after we have transacted business in this particular Motion. Without anticipating debate and assuming that this hon. House will support my strong plea, allow us to meet so that we can look for that Kshs3.3 billion from somewhere, and be able to bring the amendments to the House with respect to the Estimates, because that money must come from the national Government. It must come from the Parliamentary Service Commission (PSC), the Judiciary and the national Executive. I am aware of the fact that there are some monies that we made available to our friends in the hope that they would use that money for monitoring and evaluation. But I think we must also take responsibility, and I hope that I can persuade the Committee and this House so that some of the money also comes from the PSC, or the National Assembly itself; the Senate has to, in all fairness, be prepared to part with that Kshs1 billion.

*(Applause)*

I want to say that the Judiciary itself, through judicial activism, put us in this mess through advisories. We must go there and take out at least Kshs1 billion from the Estimates given to the Judiciary.

*(Applause)*

Finally, the national Government will need to contribute. In all fairness, we too, as Members of the National Assembly, must be seen to be eager to support devolution and mediation. I request you to allow the Budget and Appropriations Committee to meet, so that we can come here in the afternoon with a considered opinion as to how Kshs3.3 billion will be made available.

I thank this hon. House for its robustness, goodwill and commitment to devolution, which is entirely bipartisan.

I now take this opportunity to request my hon. senior, not in years, but in parliamentary protocol, Hon. Duale, Member for Garissa Township and the Leader of the Majority Party to second the Motion.

I thank you.

**Hon. A.B. Duale:** Thank you, hon. Speaker. We are holding this Special Session, among other issues to deal with the report of the mediated version of the Division of Revenue Bill as provided for by Article 113 and Standing Order No.149. On the outset, the framers of the Constitution did not anticipate what would happen when a mediation process collapsed, or when the two Houses disagree. I am sure that is very good food for thought for Members of both House of Parliament; even the Supreme Court in its advisory opinion, which I personally disagree with--- I agree with the dissenting opinion of the only judge, Lady Justice Njoki Ndung'u in as far as the determination of the Division of Revenue Bill impasse that was given by the Supreme Court in an advisory opinion in 2013 is concerned. Devolution is in Chapter 11 of the Constitution and it is there to stay; it does not need the protection of anybody including the Senate and the National Assembly. It is the wish of the people of Kenya.

Again, both levels of Government; namely the national Government and the county governments, and all the money that we appropriate to them, are monies that go to the people of Kenya. The national Government resources go to the people of Kenya and the money that we give to the county governments goes to the people of Kenya.

I want to urge my colleagues this morning, not because we are saving devolution that we offer leadership as the National Assembly and give the county governments the extra Kshs3.3 billion that the mediation team has agreed on, so that Kenyans can reap the fruits of a devolved system of government. In the 2013/2014 Budget, the county governments were given Kshs190 billion. In the 2013/2014, the allocation to the county governments increased to about Kshs238 billion. This year, the counties have been allocated Kshs259 billion, outside the loans and grants expected from our development partners. This is equivalent to about 13.8 per cent increase, thus doubling the 15 per cent provided for in the Constitution. In total, if we give the counties the Kshs3.3 billion – I urge my colleagues that we do so – a total of Kshs286.7 billion will be sent to our counties.

However, this impasse in the Division of Revenue Bill takes me back to what took our friends and colleagues to the Supreme Court in 2013. I hope that the six Supreme Court Judges, minus Hon. Lady Justice Njoki Ndungu who gave a dissenting opinion are listening to the National Assembly deliberations this morning. I want to read out Article 95 (4) of the Constitution for those who are watching these proceedings on television, including the Senate, even though they are on recess. I am sure that they are at home and have television sets in their houses. Article 95 (4) of the Constitution reads as follows:-

“The National Assembly-

- (a) determines the allocation of the national revenue between the levels of government, as provided for in Part 4 of Chapter Twelve---

This particular Article does not mention the Senate. It says the National Assembly is the one that determines the allocation of revenue between the two levels of government. Therefore, my interpretation of this Article is that consideration of the Division of Revenue Bill is the sole mandate of the National Assembly. Article 96(3) provides that the Senate in this case determines the allocation of the national revenue among counties as provided for in Article 217 and exercises oversight over national revenue allocated to county governments. In both the letter and the spirit, the Constitution is very clear that the Division of Revenue Bill is solely within the confines of the National Assembly and the County Allocation Revenue Bill, which determines revenue distribution among the counties, is solely within the confines of the Senate. I am sure that the Budget and Appropriations Committee, headed by Hon. Mutava Musyimi, with great minds like Hon. Mbadia, argued along this line in 2013. However, our colleagues went to the Supreme Court where six of its judges decided to give an opinion. I want to ask our learned friends in the Supreme Court to, please, say it as it is in the Constitution. Just because they did not want to make a determination then, we are now in this problem. The framers of the Constitution did not provide for what happens when a very important Bill like this one collapses at the mediation level.

Second and more fundamentally, the problem that the Budget and Appropriations Committee of the National Assembly faced was not even about the Kshs3.3 billion. It was about the principles because the budget-making process is based on fiscal and financial principles, and on the Public Finance Management Act. The budget-making process begins on the day the Cabinet Secretary of the National Treasury submits to Parliament the Budget Policy Statement (BPS) – which is the fiscal framework of the national Budget – to when both Houses of Parliament debate and approve it. The function of the Senate is to note the BPS, while the National Assembly adopts it. The Senate went ahead and noted the BPS; they never raised the red flag then.

Hon. Speaker, we have a consultative fora provided for by the Constitution and the statutes: the Council of Governors, the National Treasury, the Controller of Budget, the Commission of Revenue Allocation, the Inter-Governmental Budget and Economic Council (IBEC). The Council of Governors met and agreed on a negotiated amount. The National Assembly, in its wisdom, rose to the occasion and said this is a negotiated figure. The National Assembly has the powers to reduce or increase it by Kshs50 billion. Nevertheless, the National Assembly, in their wisdom, decided to respect the Kshs258 billion provided by this team. In order for us to ensure that we do not get into this kind of a quagmire next year, we will ask that the Chairperson of the Budget and Appropriations Committee of the National Assembly and the Chairperson of the Finance Committee of the Senate be incorporated into the IBEC team. Once the two Houses are involved, the Budget and Appropriations Committee of the National Assembly will be saved from this problem. The Chairperson of the Budget and Appropriations Committee of the National Assembly and the Chairperson of the Finance Committee of the Senate should be involved in the negotiations, so that what comes to the Budget and Appropriations Committee of the National Assembly will be a product that will not create acrimony.

Our colleagues in the Senate want to appear to be the defenders of devolution and portray the National Assembly as anti-*ugatuzi*. There is one moral question I want to put to my colleagues in the Senate, starting with my own Senator, Hon. Haji, because I can

only speak to him from the Floor of this House. Article 96(3) says that the Senate must exercise oversight over national revenue allocated to the counties. The biggest corruption today is in both levels of Government. Some of us are not even seeing what the Constitution anticipates, or the import of the statute that says even the money that we send to the counties must be pegged on the functions that have been devolved and gazetted by the Transition Authority in 2013/2014. The Senate has a role to play. There are many issues happening in our country. For example, the Governor of Embu has turned out to be very outrageous and unique, with nine lives. This is a governor who has been impeached by the Senate, but the High Court reinstated him.

Today, the Governor of Embu is sitting in office and riding in a vehicle with a flag. These are some of the outrageous things that happen in this country. You can be taken to court and the court rules that you are not eligible to hold an office because the Senate has impeached you, but you still remain the Governor of Embu.

Hon, Speaker, there are over 20 governors who are facing the Ethics and Anti-Corruption Commission (EACC). We agree with the Senate that as you give Kshs3.3 billion or Kshs258 billion with one hand, please use the other hand to follow up and establish whether the Kshs258 billion will be used prudently. The Senate should not play politics. The function of a legislature is to legislate, oversee and represent. We have taken the best brains to the Senate. I served in the last Parliament. The best brains in the last Parliament are in the Senate. Examples are Senators Kiraitu Murungi, James Orengo, Anyang'-Nyong'o, Billow Kerrow and Mutahi Kagwe. Some of the best brains are also in our House. We are doing serious oversight on the national Government every day through our committees. You have seen Cabinet Secretaries here who sweat when they are called, and they cannot even explain.

We are telling the Senate that Kshs3.3 billion is not a huge amount. We will give it to the county governments. We will defend devolution. We want water, healthcare and roads for our people. We also want empowerment for women and the youth in our counties. Now that they are on recess, I ask our Senators to go to Siaya, Kitui, Garissa, Marsabit, Homa Bay and Murang'a. They should ask themselves if the Kshs190 billion that we gave to the county governments in financial year 2013/2014 and the over Kshs230 billion we gave in the financial year 2014/2015 was felt on the ground. Is there value to the lives of the people of Kenya in the counties?

Some of us from the pastoral communities supported the Constitution of Kenya, 2010 because our people yearned for it, having been marginalised since Independence. However, today we are facing marginalisation from ourselves. We blamed the national Government but today our own people marginalise us. The money that we appropriate does not get to our people.

This afternoon, the Chair of the Budget and Appropriations Committee must tell us how we are going to finance the Kshs3.3 billion. From what I read last night, already there is Kshs1 billion available. There was Kshs1 billion which was to be used for political rallies and town hall meetings. We want that Kshs1 billion to finance the Kshs3.3 financial gap.

Secondly, somebody somewhere gave an advisory opinion that did not help us, and did not follow the Constitution as per Article 95(4), which says that the Division of Revenue Bill belongs to the National Assembly. That person should also donate another

Kshs1 billion to finance the gap. We will raise the other Kshs1 billion as follows: Kshs200 million should come from the Salaries and Remuneration Commission and the remaining Kshs800 million can come from the national Government.

Having provided the Chairman of the Budget and Appropriation Committee with food for thought, I beg to second.

**An hon. Member:** Put the Question!

**Hon. Speaker:** Hon. Members, there are procedures. Some of you are in a hurry to do what hon. A.B. Duale suggested.

*(Question proposed)*

**Hon. Kajwang':** Thank you, hon. Speaker. I rise to support the Bill.

I am so humbled as I sit here and listen to the Chair of the Budget and Appropriations Committee and Member for Mbeere South. Looking at the forthrightness and the honesty with which he has prosecuted this Bill, the reasons and the historical layout that led to the establishment of the Mediation Committee---

Again, I am so humbled by the contribution of the Leader of the Majority Party. On many occasions, he scored his deserved points. Today he has scored the most *bonga points* that he has ever claimed in this House. Several things have been said in support of this Bill, and I will not repeat them. However, I rise here on different principles that make me to support this Motion.

The Constitution has placed a huge burden on us in the National Assembly. To me, it looks like we are the big brother that looks after everybody else in this nation. The roles that are given to us in Articles 93 and 94 are enormous. Article 95 is specific to the National Assembly; it says that we represent the people of constituencies and special interest in the National Assembly. People in constituencies include special needs people who live in those counties. These people who have special interests also include the people who live in counties. The Article then says that we deliberate and resolve issues of concern to the people.

I therefore consider that the responsibility placed on us goes beyond what we would have wished to do in accordance with Article 218 of the Constitution. As has been said by the Chairman of the Budget and Appropriations Committee, and as has been espoused by the Leader of the Majority Party, in accordance with the Constitution, the Senate has completely no role in the budgeting process. This is because Article 95 (4) (a) says that the National Assembly determines allocation of national revenue between the levels of government. That is very clear as provided for in Part IV of Chapter 12. There is no sanction or caveat, in the Constitution. Article 96, which follows 95, means that the framers of the Constitution were alive to Article 95(3), they use the same language used in Sub-Article (4), and says that the Senate will determine allocation of national revenue amongst the counties. Nothing could be clearer.

I know that there has been advisory from the Supreme Court. However, today I rise to say that we came to the National Assembly to defend the Constitution. We took the oath of office to defend the Constitution. We are going to defend it. If there are any advisories, whether by the Supreme Court or any other organ, if the Constitution itself is clear, then it means we should defy any advisory that seems to have another

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interpretation of the Constitution; that is our constitutional responsibility. The Senate should know that, perhaps for the reasons we are going to explain here, this is the last time we are doing it this way. They should be well advised that there is no Supreme Court, which will make us defy the Constitution.

If our reading of the Constitution is clear and, if you are able to interpret the Constitution, we will hold on to Articles 95(4) and 96(3) of the Constitution. Allow me to change tact and say that there are more reasons why we need to let this Bill pass. In the recent past, we have had a mediation process. The Mediation Committee is an institution of the Constitution and it is the first time it has come in the dispensation of the new Constitution.

We passed the Division of Revenue Bill 2013, 2014 and now we are considering the same in 2015 on mediation processes. We passed the County Governments (Amendment) Bill, the Environmental Management and Co-ordination (Amendment) Bill and the Public Audit Bill, 2014, which all went to mediation. It seems to me that the National Assembly has now charted a consistent way of strengthening institutions in our Constitution. In all the mediation we have had, we have never differed. Before the critics of the Constitution used to say that mediation processes will always fail, and we will get into a constitutional quagmire. We have shown leadership nearly in all areas that we have mediated on; we have had a way forward to strengthen the institution. I want to tell my colleagues that by passing this Bill this morning, we will be strengthening the Mediation Committee and Parliament, so that people will know that we have a Parliament that works. For that reason, I will urge that we be consistent with what we have set out and pass this mediation version.

Hon. Speaker, the first proposal we had for the National Assembly was for Kshs258 billion. The increase now brings it to Kshs259 billion, an increase of Kshs1.7 billion in the county equitable share revenue. We passed Kshs1.5 billion for Level 5 hospitals. Now we have an increase of Kshs1.5 billion, giving Kshs3.6 billion to Level 5 hospitals. The only relief I have in the Kshs3.2 billion or Kshs3.3 billion, is that Kshs1.5 billion of it is conditional allocation which goes directly to the Level 5 hospitals. It cannot be in the hands of any governor or in the hands of any county assembly or the Senate. It must go to the 11 Level 5 hospitals which we have in the country.

We do not have Level 5 hospitals in all the counties. But wherever they are, they assist people in the neighborhood. Our people will go to those hospitals and get some medication. We know that people are not going to die. This is the only relief I see in giving money that goes directly to our people, considering that we deliberate on things concerning them. There is Kshs1.7 billion which the Salaries and Remuneration Commission (SRC) decided to increase salaries of county executives. The amount of Kshs1.7 billion which has been mentioned by the Leader of the Majority Party must come from that SRC because they knew what they were doing. They are the ones who increased those salaries. We must get that money from the Senate and give them because they effected the increases.

Therefore, Kshs3.2 billion can come from somewhere; it directly goes to our people. I plead with hon. Members to show that we are the bigger brothers and we are able to get the counties going. Under Article 224 of the Constitution, they are unable to do their budgeting, unless these things go on well. We know very well that if this Bill is

defeated, it is not going to come to the Floor of this House until after six months. For six months, there will be nothing happening in the counties. There will be riots in the counties; there will be no service delivery and all contracts shall be stopped. It is expedient to have these things go on.

The last thing I want to say is that this money should not come from the Parliamentary Service Commission. Let this money not come from the National Assembly. We have done what we must. Let this money come from the people who brought it up in the first place, so that next time they start early. They should know that the Intergovernmental Budget and Economic Council (IBEC) is the place to go. All we are asking is that we strengthen institutions.

**Hon. Kimaru:** Thank you, hon. Speaker. I stand to support the mediated version of the Division of Revenue Bill.

First, it shows that Members of Parliament are able to resolve problems that surround us. We cannot hold this country to ransom. We cannot make this country come to a standstill. We cannot allow counties to be disabled or stopped from performing their functions. I would like to hail the people who sat in the Mediation Committee; for one reason or another they came up with a mediated solution.

As leaders, we always have the burden of making decisions; some difficult and some easy. This was one of the most difficult decisions to be made by Parliament in general. I am glad Parliament has found a solution. In this solution, we shall find some players; in this case the Senate will cede some ground. When you mediate, you have to meet somewhere in the middle. Everybody has to give ground.

In this particular situation, the Senate must cede ground, especially in the allocation given to the Senate for monitoring and evaluation. The Senate was allocated Kshs1 billion for monitoring and evaluation. This translated to about Kshs22 million per Senator. This was not money that was going to any particular project. This was money that was given to the Senators to move around counties and finance meetings. I would imagine this was not meant to give people money to attend meetings, because that is not at all helpful to this nation. Compared to what is given to the Constituencies Development Fund (CDF), on average every constituency gets about Kshs100 million of CDF money. This money goes directly to projects. It was, indeed, a great injustice to allocate to each Senator Kshs22 million just to move around in counties holding meetings and spending money as they will wish. Indeed, that money is better when it is given to the county governments.

The only problem here is that county governments have not been the best managers of resources. All over the country, we have seen money allocated to counties not being used well. I have one instance where counties were given money each to employ about 84 medical staff in every county. I have had a chance to consult the Committee on Implementation that went round the country to find out whether any county employed any of this staff with the money that was allocated in the Budget of 2013/2014. None of the counties employed staff.

The finding is that none of them did. Although they were given that conditional grant to employ additional members of staff in the medical field, none of them did that. Money has been given continuously to support those members of staff who are supposed

to be on contract from that time onwards. It only means that this money must have been put to use other than what it was intended for.

In my county, I can cite several instances of misappropriation of funds. For instance, 10 boreholes were supposed to have been sunk in my constituency and money was given for sinking of those boreholes. The governor, in his address on the state of the county, indicated that those projects had been done and were complete, whereas on the ground there was nothing at all. When we complained about that, the governor had the guts to say that the three Members of Parliament in his county had no mandate whatsoever to question how he spends his money. I am tempted to invoke the words of the Leader of the Majority Party in the National Assembly, if I may be allowed, *na niulize kama hiyo pesa---* I will not finish because I might be out of order.

So, when he said that Members of Parliament had no right to ask how money had been spent and only Senators could ask how that money had been spent, he missed the mark by a wide margin. Again, a lot of money was set aside for constructing fish ponds in schools and nothing has been done. When a county government buys five dogs for Kshs3 million and the dogs even to date do not have a home--- They have been accommodated in a foster home at Ol Pejeta Conservancy. The county government bought dogs and did not know where to put them in the first place; it could not transport them from Nakuru to Nanyuki, and now they have to be accommodated in foster homes. This shows that, indeed, the priorities of county governments are upside down.

Last year, the county government set aside Kshs30 million for an investment conference.

**Hon. Speaker:** Hon. Kimaru, did I hear you correctly? Are you saying that your county government decided to buy dogs and they have no home?

**Hon. Kimaru:** Yes; it bought dogs that do not have homes to date.

*(Laughter)*

They have to be accommodated in Ol Pejeta Conservancy, because the county does not have kennels for them and cannot afford to maintain them. Kshs3 million has been used on five dogs. I hear one is called Twitter. I do not know whether the other one is Facebook. We have five German Shepherds that have cost the County Government over Kshs5 million and are of no use to anybody. Kshs30 million was set aside for an investment conference that was supposed to be held last year. The whole of that Kshs30 million was used and no investment conference ever took place in that year. When we ask, we are told we have no right to ask. This year a dilapidated, old and dysfunctional grader was bought at Kshs34 million. This old and dilapidated grader was repaired at the county parking yard. It was repainted. It was only after we asked questions that the grader was returned to the sender. If no questions had been asked, this would have been allowed to pass without anybody asking questions.

When you compare the performance of the county governments to the performance of the Constituencies Development Fund (CDF), for example, I can state this without fear of contradiction, the CDF has done more work in my constituency than what the county government has done. For instance, the CDF has constructed four dispensaries whereas the County Government has not constructed a single dispensary in

my constituency. The county government has responsibility to put staff in the dispensaries that we have constructed. The four facilities do not have staff or medicine.

If the county government was awake, then 84 or so medical staff who were to be employed in the Financial Year 2013/2014 would have been deployed in those dispensaries and would be working. We have constructed more polytechnics with CDF money than the county government has done. We have done more Early Childhood Development and Education Centres (ECDEs) than the county government. The Kenya Rural Roads Authority (KeRRA) has done more roads with only Kshs15 million a year than what the county government has done in my constituency. So, even as they seek to get more money, let them be accountable. Mechanisms must be put in place to make the county governments accountable.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. Ng'ongo:** Thank you, hon. Speaker. I wanted to start by first saying that I have not been able to attend most of the Budget and Appropriations Committee meetings, which were deliberating this issue, largely because I was feeling unwell. Sometimes the physical body refuses to respond. However, I attended yesterday's meeting---

**An Hon. Member:** *Okoa* your body.

**Hon. Ng'ongo:** *Okoa* my body.

On this debate, as I support the mediated version of the Division of Revenue Bill, I go back to 2013 when we just came in and I sought your ruling on the same. You made an elaborate ruling on this matter, a ruling that many people faulted, especially those who felt they should be enemies of the National Assembly. Without any basis, we were bashed for undermining the Senate. However, we had genuine concerns.

My colleagues have read Article 95 of the Constitution and I want to repeat it for record. Article 95(4) talks about the role of the National Assembly and Article 96(3) talks about the role of the Senate. I was asking myself why the framers of the Constitution were very particular on these two Articles of the Constitution. Article 95(4) talks about the National Assembly determining the allocation of national revenue between the two levels of government. The determination of national revenue between those two levels of government is through the Division of Revenue Bill, under which we divide the national revenue between the national Government and the county governments. Then Article 96(3) is very specific that:

“The Senate determines the allocation of national revenue among counties---”

I ask myself: If Kenyans wanted both Houses to determine the revenue between the two levels of government, why did they not see it fit to repeat the provision under Article 95(4) in Article 96? It would have been very easy. What the Supreme Court did, and sadly so, was to write a new Constitution. I am convinced beyond any doubt that what the Supreme Court calls an advisory opinion was an attempt to amend the Constitution and provide for something that Kenyans did not fight for.

*(Applause)*

Kenyans and more so the experts, could not be careless to make such an important Bill a subject of mediation without safeguards on what happens next in the event there is a failure. Look at a lesser Bill in terms of weight, the County Allocation of Revenue Bill. There is a provision on how it can be transacted once there is a failure to agree. It is very simple that the National Assembly can only override the Senate by a two-thirds majority vote. Once we garner the two-thirds majority, we override them and then it becomes the law. If we fail to get the two-thirds majority, then what the Senate passes becomes the law. However, the Supreme Court is telling us that we can leave the Division of Revenue Bill to mediation and if it fails it is defeated. I do not think Kenyans could be that careless to put such careless provisions in the Constitution.

I want to add that at least, for now – I will repeat saying this - we are lucky for those of us who are in Opposition. We are not happy about it. However, Jubilee controls the two Houses of Parliament. Supposing one coalition controlled one House of Parliament, you would be in trouble in this country because one coalition can just decide to sabotage the Government and there is nothing you can do about it.

**Hon. Musyimi:** On a point of information, hon. Speaker.

**Hon. Ng'ongo:** I accept the information from my Chairman.

**Hon. Speaker:** Hon. Mutava Musyimi, what is your information?

**Hon. Musyimi:** I just wanted to inform the hon. Member of the great people of Suba that Jubilee controls the National Assembly and Coalition for Reforms and Democracy (CORD) controls the Senate. Thank you.

**Hon. Ng'ongo:** Hon. Speaker, I think that Hon. Mutava Musyimi has got his facts wrong *kidogo*. This is because I know that we are supposed to have majority of governors, but we have a minority of one Senator - If I am not wrong. Anyway, that is besides the point. The budget-making process is a long process. It starts from August and ends around this time which is end of June. Both National Assembly and the Senate need to appreciate that this is a long process. If you have issues, you need to raise them at the beginning, rather than wait until the end then you try to undo what has been done over the years. Budget-making process affects the economic fundamentals of a country. It affects the fiscal progress of a country. It is not a matter of just taking one figure from one vote and putting to another. It must be informed by serious debate and discourse. That is why public participation was built in our Constitution. Even the Executive, before they come up with the figures, there is need for them to engage with members of the public and conduct intersectoral discussions. The Government also needs to consult with the Intergovernmental Budget and Economic Council (IBEC) before the issues are finally brought to Parliament. So, for me, Kshs3.3billion may not be so significant in a Budget of Kshs2trillion.

However, I agree with my colleagues that the principle is wrong. We need not to allow ourselves to play politics with budget-making process of a country. If you play politics with the Budget of a country, you distort the economic stability of that country and the effects and results will be disastrous. If you distort the economic stability and the fiscal discipline of the country, you may even end up with inflation which affects even the poorest of the society. I want to ask our colleagues in the Senate that they should be careful. Let them not try to depict National Assembly as fighting devolution. Many of us want devolution. We know that devolution is the only way through which our areas can

develop. Even as we do that, we must also be alive to the fact that there are things that need to be corrected beginning with the two Houses working for the better interest of the country and in line with Article 201 of the Constitution on the principles of public finance. I was asking myself that suppose this Bill is defeated, then what next? It is really a challenge

Yesterday, we had a very heated debate with the Solicitor-General. I want to repeat for record that it was not for nothing that Article 218 came before Article 221. Article 218 is with regard to Division of Revenue Bill. Therefore, the Constitution provides that we should first of all transact the Division of Revenue Bill before we embark on serious considerations of the estimates. So, I was asking myself, because this debate was very interesting, that suppose we do not have the Division of Revenue Bill, can we continue to appropriate as National Assembly? There are two schools of thought. For me, it is difficult for us to appropriate because before you divide the national revenue between the two levels of Government, then what are you going to appropriate to the national Government? That question I was asking and I continue to ask. Therefore, I believe that we need to first dispose of the Division of the Revenue Bill. Let it be an Act of Parliament and then we can now embark on the exercise of considering the estimates and approving appropriations. I want to conclude by saying that unfortunately for the Senate - I see the mood of the House and where we are heading - the amount that was provided to them of Kshs 1 billion is likely to go. That will go because they have no role in consideration of the Supplementary Appropriation Bill. It is unfortunate, but we have to do that so that we pass a message that when we engage in discussions, consultations and negotiations, we are not just doing it for public relations. We are doing it because we mean business. I want to support and ask the House to support this mediated version of the Bill.

**Hon. Langat:** Thank you very much, hon. Speaker for giving me this opportunity to contribute to this Bill. I want to thank the Budget and Appropriations Committee and especially the team that was mediating on behalf of the National Assembly for realising the importance of this Bill. It has the potential of shutting down the Government if we were to lose it because there is nowhere else which provides for what happens in the event that it is lost. So, I want to thank the team that mediated, led by our Chairman here, for standing down their positions in public interests. That shows great leadership.

The Constitution is very clear also that you cannot propose an increment without proposing where the money is coming from. I do not know whether Senate is also facilitated like the National Assembly for the purposes of legal counsel and Constitution interpretation. I know that you are the Chairman of the Parliamentary Service Commission, but I do not know whether you give the same facilities to both Senate and National Assembly so that these people should know that you cannot propose an increment without proposing where the money is coming from. The Judiciary and the Constitution should have a provision like the one we have in our Standing Order No.1 so that if it is expressly provided for by the Constitution, then there is no room for interpretation. We should have a provision that where an issue is expressly provided for by the Constitution, like the case we have now then there is no room for interpretation. Otherwise, Judiciary is allocating itself the power to amend the Constitution and yet they do not have that power. I want to agree with my good friend, Hon. Mbadi, that that

advisory is an allocation of power by Judiciary to amend the Constitution through the back door. That is very sad for this country. We expect all the constitutional institutions to do their job in good faith and not to try to punish others. Judiciary should help this country to move forward. They should not do the job which Kenyans did not give them. Even this House, we have tried as much as possible to respect it, but sometimes it gets somewhere and you are cornered.

I remember one time when Jesus Christ was in a synagogue. Jesus Christ saved us. He was good enough that he saved all of us. While he was coming out, he found some people who were selling cabbages, tomatoes and clothes outside the synagogue. I remember the action which Jesus took at that time and he is our Jesus Christ. He actually removed a stick and chased all those people outside the synagogue for misbehaviour. It gets a time when we must remove a stick and do what Jesus did to those people who were misbehaving. In this case, we must get a way of dealing with this Judiciary. Activism is wrong for Judiciary. Let us leave that to Non-Governmental Organisations (NGOs). If you are a Government institution it is expected that your ruling is accepted. So, it is wrong to turn into an activist.

I was there when we approved the appointments of some of those people in the Judiciary. It is very sad that this House has allowed activists to enter into our Judiciary. It is time we looked back.

Hon. Speaker, there is one ambassador who said that decisions or choices have consequences. The people who have brought us to the mess where we are today must bear some consequence. I agree with some of the proposals which have been raised.

Hon. T.J. Kajwang' said that we are the bigger brother. What do you do when your younger brother is misbehaving? You have to deal with him. We are now supposed to do something. We must do something to the younger brother. I agree that the people who brought us into this mess or to where we are must suffer the consequences.

At the risk of anticipating debate, I will agree that the proposal we had for the Senate should fund that deficit. We must agree that the Kshs1 billion should fund the deficit. The balance will be financed by the other people such as the Judiciary who made the advisory. We are also playing our constitutional mandate. Sometimes we have been forced to act in bad faith because people are acting in bad faith. The Judiciary must suffer a bit to help us manage the decision they made.

We must make it a rule that any time there is mediation on the Division of Revenue Bill, or any time we have such a stalemate, then any deficit which is required should come from the people who brought the mess, until it is corrected. That proposal should be a standing rule in this House so that people can behave in good faith and lead this country the way we want it to be led. It is wrong to be an activist and say that Parliament is anti-devolution.

People should also know that the additional money does not fall from nowhere. It comes from taxes of the people of Kenya. If we were to say that we do not reduce what we have already funded, then the next thing we will propose through the Finance Bill is to increase the Value Added Tax (VAT) or to increase the Income Tax to fund the deficit.

I propose that we strongly go by my proposal that decisions and choices have consequences. The people who brought us to where we are must lead from the front to help us find a solution.

Articles 95 and 96 of the Constitution are very clear. Nobody should try to do what the Constitution has not given them. In fact, I am happy that the National Assembly has never at any given time attempted to do what the Constitution has not given us to do. Going forward, the rule of law must prevail and we must act in good faith.

With those few remarks, I support.

**Hon. Speaker:** The Leader of the Minority Party.

*(Laughter)*

**Hon. Nyenze:** Thank you, hon. Speaker. I stand to support this Motion. At the outset, I am happy that Government activities both at the county and National levels will not go on because the standoff is over. I support what my colleagues who have spoken before me said that those people who caused this suffering should pay for it. When there is a delay, many things come to a standstill. I must thank Hon. (Rev.) Mutava Musyimi for listening to us and consulting the Departmental Committee Chairs since last week so that we reach a conclusion.

If this country is to develop faster and realize a double digit growth, we have to invest more money in agriculture. Through the Budget and Appropriations Committee what we appropriate is what is passed. I request that in the next Budget, the Budget and Appropriations Committee put more money in agriculture. They have done well to put so much money in transport, infrastructural development and in many other sectors to spur economic growth.

**Hon. Speaker:** Order, hon. Nyenze! Hon. Musyimi is on a point of order.

**Hon. Musyimi:** On a point of order, hon. Speaker. I have the highest regard for the hon. Leader of Minority Party. But I am just wondering whether he is speaking to the Motion before the House now or to the one we shall prosecute in the afternoon.

**Hon. Speaker:** Hon. Leader of Minority Party, the Motion is Adoption of the Mediated Version of the Division of Revenue Bill.

**Hon. Nyenze:** Thank you, hon. Speaker for pointing out that. In our tradition, we pass through the periphery so that when we hit the point it is driven home safely.

*(Applause)*

Coming from where I come from, I am sure Hon. Musyimi understands that I am addressing the nation.

I support these changes because where I come from there has been suffering because the county government could not pay for water for two weeks. I could see everything come to a standstill. But, I am very happy that through these negotiations and arbitration this will be a thing of the past.

The Budget and Appropriations Committee has done a good job to come back to the House and listen to us instead of listening to Cabinet Secretaries. This Budget is the biggest that has ever been proposed. It is close to Kshs2 trillion. The Government plans to increase the Budget by 23 per cent to Kshs1.99 trillion, which is almost Kshs2 trillion. The only worry I have is how to fund the deficit. It will force the Government to do domestic borrowing which will raise interest rates. Businesses will find them very high



and it may kill the Small and Medium Enterprises (SMEs) and micro businesses. The rest of the deficit may be through borrowing and that will put a lot of strain on Kenyans.

We have said time and again that any time there is a stalemate between the National Assembly and the Senate, especially on money bills which, according to the Constitution should originate from the National Assembly--- The Senate has fought us and have always gone to court and got a ruling. When we passed this Constitution, we said that 80 per cent is good whilst 20 per cent is bad.

We said that let us pass it and we correct that one when it is there. For us to be seen not to be fighting with the Senate, the law should be made very clear that money Bills have nothing to do with the Senate. It is the National Assembly. Unless we do this, we will always be causing a delay in budget implementation and Kenyans will be suffering because interpretation of this Constitution of Kenya 2010 will be done in whichever way the Judiciary feels fit. However, money Bills have to always originate from the National Assembly and not the Senate. Our roles are very clearly stipulated.

Hon. Speaker, the transport sector has been allocated a lot of money, Kshs42 billion and Kshs58 billion and in total Kshs132 billion. Because of the Standard Gauge Railway (SGR), the infrastructure developments in Lamu Port and all the other infrastructure developments will spur economic growth. They are good things to do. However, if you look at the---

**Hon. Speaker:** Hon. Leader of the Minority Party, I will want you to look at the Report which we are debating. What you are debating will be there in the afternoon. This is the Report we are debating and it does not have the things you are talking about now.

**Hon. Nyenze:** Let me stick to that.

**Hon. Speaker:** I am constrained and I do not want to tell you that you are now out of order. However, just look at the Report. What you are looking at is the wrong one and you see you have priority in speaking.

**Hon. Nyenze:** Thank you for that correction, hon. Speaker. In fact, we are looking at the same thing.

**Hon. Speaker:** No.

**Hon. Nyenze:** However, let me say that I do support. Thank you.

**Hon. Speaker:** Hon. Lelelit Lati.

**Hon. Lati:** Thank you for this opportunity, hon. Speaker. Before I get into this Bill, there are serious questions that we need to answer or think about on this Mediation Committee now that we will be having mediation committees as contemplated by the Constitution. With the disagreements coming from the Senate, we know we will be having these committees more than what we have had now.

Under Article 113 of the Constitution, you and the hon. Speaker of the Senate are given powers to nominate Members to be in the mediation committee once the two Houses disagree on these Bills particularly the Division of Revenue Bill now. The Constitution does not say the number of Members to be nominated to these mediation committees but it talks of "an equal number." Since you and the hon. Speaker of the Senate had agreed on the three, we can take that as fair because the Constitution does not say the number. The question that I want to raise here is: Are members of this committee supposed to go into mediation as individual Members or as delegations of the two Houses? That question is very fundamental because if you look at Article 113(4), it says

that this Bill can fail or go through two means. If Mediation Committee disagrees, then that Bill fails. If one of the Houses disagrees with the Report of the Mediation Committee, then that Bill fails. My understanding here is that the Mediation Committee goes in as a delegation of the Houses and not as individual Members. If the Constitution contemplated individual Members being in that Committee and standing as individual Members, then it would have provided us with an opportunity to vote. In my opinion, the voting carried out by the Mediation Committee is their invention. They were supposed to go there as delegations from the Houses. That is why the Constitution did not provide for voting of the Mediation Committee. It assumed that the delegations will sit down and agree or disagree. In this aspect and instance, in my opinion and I think that is what the Constitution implied here is that the Mediation Committee's delegates disagreed. So, this Bill failed at the mediation level and we should not be debating it now.

Hon. Speaker, you need to guide us there because I truly believe that if the Constitution contemplated that Members go to the Mediation Committee as individual Members, then it should have provided a way of voting so that if they vote one way or the other then they disagree or agree. However, it only provided for delegations to agree or disagree. In this instance, the delegation of the National Assembly by majority disagreed with the Senate. Hon. Kajwang', with all due respect, went into that mediation representing the National Assembly and not on his own as Hon. Kajwang'. Otherwise, this is something that we already passed in the House where Kajwang' was representing as a Member. Hon. Kajwang' cannot be presented as a Member in the House and in the Mediation Committee as well. He represents the House as a Member but when he gets into the Mediation Committee, he represents as a whole delegate of the House of the National Assembly. So, he can only vote as a delegate.

Hon. Speaker, if we go by the Constitution, I think we are debating something that has already failed Article 113(4) of the Constitution. Having said that, I will wait for your ruling because I think we are debating something that already failed at the mediation level.

We all know that the Division of Revenue Bill, even if it is not official underwent a very lengthy process and some compromises were made and agreed upon. If you look at the Report of the Intergovernmental Budget and Economic Council (IBEC) where the governors are represented, they agreed with the national Government on the Division of Revenue Bill. For the governors whom we know want money to agree with the national Government that they have got enough, I find it very difficult. The Senate with no information on implementation of funds in these counties seems to be better informed than the governors. There is something malicious here. The Senate was trying to disagree with the National Assembly for reasons that are malicious.

If you look at constitutions the world over, interpretations are for areas that are not explicit. In our Constitution - although I am not a lawyer but I can read English - it is explicit under Article 95(4)(a) of the Constitution that the National Assembly determines allocation of national revenue between the levels of Government. Under Article 96(3), the Senate determines allocation of national revenue among counties. There are only two key words there; "between" and "among" and there is nothing that the Senate is supposed to do as far as the word "between" is concerned. It is only supposed to do "among" counties. As hon. Langat said, we have a Judiciary that is being an activist. We have an

activist Judiciary that is not trying to interpret those parts that are implied by the Constitution but actually trying to amend the Constitution by interpreting things that are explicitly expressed. I also think we failed as a House because when the Senate went to the Judiciary, that is the Supreme Court and got an advisory opinion, we should have appealed for the world to see that the Judiciary is, for once, wrong and that it is being an activist on the interpretation of our Constitution.

If we decide that what we are doing here is right and what I am trying to propose that Kajwang's vote does not count because we went there as a House or delegation, then I want to agree with Hon. Duale that in the Budget and Appropriations Committee which I sit in, the Cabinet Secretary for Treasury had a presentation. He made it very clear that the Kshs.1 billion which was allocated to the Senate, I do not know by who and why, does not really have a place. The Senators want to be covered in areas that are already covered by mileage. I am paid mileage every week to get to my constituency. Why would a Senator require double mileage to get into the county to do inspections? In fact, it is illegal to fund one item twice using money from our people.

Secondly, what they want to do with this Kshs.1 billion is to open offices. The Parliamentary Service Commission (PSC) already provides me and the Senator money for my office at home and it also provides money for me to travel and go home.

Hon. Speaker, you are the Chairman of PSC. This money was misplaced. We share the PSC with the Senate. This is because how would you give Senators money for mileage and yet you have already provided for it? How would you give him extra money for office when you have already given the money under the offices that we have in our constituencies? I think the Treasury had a good point that it was unnecessary to fund those areas unless Senators become creative and tell us what they want to do with this money. Other than that, I do not think it has any place. Now that we are here, we might take what they have decided as the Mediation Committee of the Senate and as a House. I think that money is now free because we do not have a framework as Treasury said for this money to be used. We have Kshs1 billion already.

For Judiciary to misinterpret the Constitution, they need to pay Kshs1 billion as well. Now that we do not have anybody else, we go to the national Government and get the other Kshs1 billion. I still ask whether we are debating something here that is correct under Article 113(4).

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, in ordinary parliamentary language, agreement is only reached one way. A resolution of a House is one way an agreement or disagreement. How you arrive at the resolutions of the House is a matter that I will leave to each one of us to try and interpret so as to appreciate the point made by hon. Lati with regard to the wording in Article 113(4). An important point that you may be drawing is Article 95(4). I advised you Members last year to cross- reference it with Article 218(1)(a). Article 95(4) is on National Assembly determining the allocation between the levels of Government and Article 218(1)(a) is on introduction before Parliament the Division of Revenue Bill. Article 96(3) is with regard to Senate distribution and determining how resources are distributed among counties read together with 218(1)(b). That is why the sub-heading of Article 218 is "Annual Division and Allocation of Revenue Bills". It is a matter that was talked about by hon. Kajwang' and hon. Mbadi and just like you are saying hon. Lati, it is

a matter that we need to perhaps, ask the Mutava Musyimi's group that is doing the socio- economic audit to look at. Look at those two provisions of the Constitution. Look at Article 95(4) read together with Article 218(1)(a) and Article 96(3) read together with Article 218(1)(b) so that we can see whether we can reduce these areas of conflict. It is not in the interest of anybody that we should have these kinds of stalemates and standoffs.

**Hon. Wakhungu:** Thank you, hon. Speaker. At the outset I want to say I support this mediated version of the Division of Revenue Bill. Before that, I want to thank the Committee on Mediation under the chairmanship of my friend hon. Rev. Mutava Musyimi. Indeed, it was not an easy task. In the spirit of mediation, the spirit of win-win and give and take is very critical. That is why they managed to come up with something. It is very surprising that there is no provision in law in case of collapse of these talks. I tend to believe that maybe this is so because when you read Article 95 of the Constitution, it is actually expressed that when it comes to the division of revenue between the national Government and the county government, it is actually the National Assembly and not a matter of the Senate.

I know we go to court for the interpretation of the law and I know the Senate had gone to the Supreme Court for this advisory. We tend to wonder, an advisory is an opinion and not a guarantee that we should go that way. In this case, the fact of the matter when the ruling came, it was not unanimous. Hon. Njoki Ndung'u had dissented on it. For us, on the way forward, we need to think further and see what kind of amendments we need to bring so that we do not have this issue in future.

I was listening keenly to the Chairperson of the Budget and Appropriations Committee, Rev. Mutava Musyimi and he had talked of a quagmire. For us to avoid this quagmire in future, we need to speak as a team. I know there is a provision for IBEC, that is the Intergovernmental Budget Economic Council which is headed by the Deputy President. It is important that we look for a way so that the Budget and Appropriations Committee Chairperson and the Chairperson of the Finance Committee from the other side are incorporated into this IBEC, so that after resolutions have been passed, we do not come again and differ. It is both a waste of time and resources to differ. Again, it creates a situation whereby we do not have teamwork. We want to avoid the issue of supremacy between the National Assembly and the Senate. If you look critically at these amendments that were brought by the Senate, really it is not about money going to the county levels; it is actually to do with the issue of supremacy. I am saying this because the Senate seems to be--- Looking at their mandate, they have been looking at the impeachment of governors. I think they are a frustrated House. They tried to impeach Wambora yet he is still there. I think the Senate is frustrated. They tried to summon the governors, but they could not make it because they went to court. So, it is a frustrated House. Therefore, it is not good for them to bring their frustration to the National Assembly. We are calling upon teamwork. It is good to respect what this House is bringing on board.

Even for simple Bills, we are going for mediation. Indeed, it is wastage of time. Look at the Kshs1 billion that the Senate was given for monitoring and evaluation and for purposes of playing oversight role. The National Assembly oversees the national Government. We are not given any money to use when it comes to oversight. This is

because oversight is being done through the committees. So, we fail to understand why they want the Kshs1 billion. In budget-making, we make use of a dichotomous approach. If you are saying that this is the expense, you must know where the revenue is coming from. For them to have come up with this Kshs7.7 billion, they should have made it very clear. Where are we getting the Kshs7.7 billion? It goes without saying that the Kshs1 billion that we had already awarded them is going to cover the Kshs3.3 billion that they agreed on.

Hon. Speaker, it is high time we worked as a team and this is a challenge to the Chairperson of the Budget and Appropriations, Committee Rev. Mutava Musyimi. You have just done a report on the socio-economic impact of the Constitution. I do not know whether you considered all the legal issues and whether you looked at the impact and the gaps existing for purposes of addressing the confusion facing the division of revenue. This is because when you look at the impact, we have the social, economic and the legal aspect. It will be nice to look at that report and recommendations so that we can advise on it.

Unless you have some information that you want to give, you can inform me. I will gladly appreciate that.

**Hon. Speaker:** What is your point of information?

**Hon. Musyimi:** Thank you. Let me inform Hon. (Dr.) Chris Wamalwa that all we have is an interim report. It is still work in progress and we have the opportunity to input. Thank you.

**Hon. Speaker:** Hon. Wakhungu, please proceed.

**Hon Wakhungu:** Thank you. It is good to know that it is still at the interim stage, but it is critically important that we do not just have to look at the social and economic aspect, but the legal aspect is very critical. We tend to agree that the Division of Revenue Bill should just remain at the National Assembly level. Maybe that is why the makers of the Constitution did not give a provision in case of collapse because they are aware that it is going to remain in the National Assembly. As I said earlier, maybe we do not have a provision because there is the Intergovernmental Budget and Economic Council. It is provided for in the Public Finance Management (PFM) Act, that in future we must involve the Budget and Appropriations Committee and the Departmental Committee on Finance, Planning and Trade.

The Budget Policy Statement (BPS) was brought to this House and we passed it. It was also approved in the Senate. This BPS provides the key priority areas. There is some synergy and if at all the Senate had approved, there must be some connection between the BPS and the Division of Revenue Bill. So, it is indeed taking us backwards if you agreed on the BPS but you disagree when it comes to the Division of Revenue Bill. There must be consistency.

I want our governors to know that the National Assembly is here to support devolution. Over the weekend I was in a function somewhere and one governor said that he has already done the budget but he is not sure whether the money is coming. The principles of PFM are such that you cannot do a budget and yet you do not know how much money you will have. So, it is completely out of order for those governors who have gone ahead to do budget provisions not to know how much is coming to their counties. It is a critical prerequisite that the Division of Revenue Bill must be passed

before you know how much is going to come to you and before you go to the budget-making process.

We know very well that as we devolve resources, we also devolve corruption. When I was talking to some hon. Members here, some are reluctant to pass this extra Kshs3.3 billion. It is my suggestion that we pass this because we do not want counties to be in problems. We want the governors to know that under Article 226 of the Constitution, whatever mess they are creating they are not off the hook. This is because the Constitution is very clear that in case you use money in an illegal manner, even if you get out of that office you will be surcharged. Their days are numbered. We know about the 40 days for a thief. So, not everything is lost. I want to request hon. Members to show that we are committed to devolution.

We do not want people to say that the National Assembly is against devolution. We are not against devolution. We support it and we are requesting hon. Members to approve the Kshs3.3 billion. We do support it because it is statistically insignificant compared to the total revenue that we are supposed to collect. We support that and we ask them to use that money objectively. We will not spare them. For your information, we are assured that the Kshs.1 billion is there. Get another Kshs.1 billion from the Salaries and Remuneration Commission (SRC) and another Kshs.1 billion from the Judiciary to cover the deficit.

Thank you and I support.

**Hon. Speaker:** Let us have Hon. Francis Njenga.

**Hon. Njenga:** Thank you. Informed by Article 113(2), we will have to vote either to approve or reject this. Much as we know two wrongs do not make a right, the Senators are still fighting for their supremacy. I am very sure they had got an opportunity to show the country that they are superior to us and that unlike us, they support devolution. However, in accounting it is so clear that every debit must have a credit. We should agree that this Kshs 3.3 billion which is going to be debited should also be credited somewhere.

First, the Senators are to receive a whopping Kshs1.45 billion which the Budget and Appropriations Committee had to some extent agreed to. But because everything has a cost, I believe that this money should now be surrendered to be part of the money that is going to support devolution which they claim to be supporting. When I look at how this money would have been used, I am sure in my mind that this money would have done us no better. This money was opening windows for Senators to team up with governors.

They are supposed to oversee the county governments. Which county government except the one for Embu has been brought to book? Much as we know that we support devolution, part of this money should be got from that amount of money for the Senators.

You remember last year the Judicial Service Commission (JSC) wanted to buy helicopters. The other day they wanted to build courts. In the Budget and Appropriations Committee, a certain court was going to cost Kshs 800 million and another one Kshs600 million and our Chairman queried this.

The Judiciary has enough money. So, we should get another Kshs.1 billion from the Judiciary so that we stop making them wasteful. The other day the JSC wasted our money on public information. Once we get Kshs 2.5 billion, then we can get the balance from the Treasury. I believe the Integrated Financial Management Information System

(IFMIS) is also well funded and we can get that balance. With that therefore, we shall not put this country into a crisis. We shall put this country where it should be. We shall have it running.

The county governments are going forward. I know there are remedies to such a situation. I know we even have a window where we can give 50 per cent of their budget and they can draw on Vote on Account but since two wrongs do not make a right, let us move it forward.

However, we have a problem. We devolved funds down there but we did not devolve checks and balances. If you look at every county there is a cry. In my county which is Kiambu, they are buying 72 vehicles. These are Land Rovers being bought by a county which will call for drivers, fuel, repairs, maintenance and insurance. Governors do not consult, they do not read what happens and the auditors are not getting them. I think it is high time we told the Senate that they are sleeping on their job. They should wake up and check the counties and ensure that they spend their money for the purpose of improving living standards of Kenyans.

The audit services in the counties are not bearing any fruits. This is because any time we hear of any complaints from counties they just end up there. If you look at the resources that we are giving the counties, an example is Kiambu County which has got about Kshs20 billion which is about 10 per cent of the ordinary revenue of the year 2002, it is a lot. However, you do not find this money right on the ground at the doorstep of people.

Therefore, let us not allow the people we represent not to get value for their money. Let us ensure that anytime such an issue comes up we have a *Kamukunji* on time. I believe that if we had a *Kamukunji* and discussed this issue and resolved it, Hon. Kajwang' would not have voted the way he did. He should have voted with the mood of the House.

Anytime we do anything in this House, we should be doing it as a team. How I wish we can implement the social audit which has been done. The social audit has a solution to the problems brought about by this Constitution. In fact, one time I dreamt that this House had agreed that it is high time all of us sat down as the CORD and Jubilee coalitions and come up with a way where we audit and review this Constitution as one team once and for all, not caring about the *Okoa* Kenya and side of the coalition you are from but rather work as one team to review and come up with a revised Constitution where we can talk to our people. Even if it means going to a referendum, it should be one driven by Members of Parliament of the Republic of Kenya and accepted by the 290 constituencies to solve these problems that are coming up every day. So, Members of Parliament, we must fight for a common goal. We represent the people of Kenya. We do not represent political interests. We represent us and the image presented of Parliament is never presented as CORD or Jubilee but it is the image of the National Assembly.

Hon. Speaker, as we do our budgetary process, I feel it is high time we get an institutionalized budget where money for development is captured, allowed to go to institutions where they are supposed to implement projects. Otherwise, we are leaving so many windows through our poor system for governors to spend our money the way they want. Even this Kshs3.3 billion we are allocating to them, I can assure you that come next year, you will still find it misappropriated, misallocated or not utilized but for the

sake of this nation, we should let it go but the Senators need to pay for this. In future they must know that the role of making the Budget is ours.

I support the Mediation Report and ask every Member in this House to let the Senators know that the budgetary role is ours.

**Hon. Musyimi:** On a point of order, hon. Speaker.

**Hon. Speaker:** The Chairman of the Budget and Appropriations Committee, what is your intervention?

**Hon. Musyimi:** Hon. Speaker, much obliged. Reading the mood of the House, it is as if we would be required---

*(Hon. (Eng.) Gumbo raised his hand)*

**Hon. Speaker:** Hon. Members, why are some of you raising hands like you are in a primary school? Listen to what the Chairman of the Budget and Appropriations Committee is about to say before you raise hands.

**Hon. Musyimi:** Thank you, hon. Speaker. I was just going to reiterate my request earlier that if you will be so kind as to allow the Budget and Appropriations Committee to meet at 1.00 p.m. and without wishing to anticipate debate, I can read the mood of the House, we should have the opportunity to give leadership in the afternoon when we come to deal with the Estimates as to where the Kshs3.3 billion will come from. Clearly, the House is saying that Kshs1.1 billion has to come from the Senate, Kshs1.1 billion from Judiciary and we must get some money from the Salaries and Remuneration Commission (SRC).

*(Applause)*

Hon. Speaker, it will be proper because this is a Committee of your House and I do not just want to bring an amendment to the Estimates signed by myself. I need the authority of the Committee of this House. So, if you will be so kind as to consider giving us permission to meet at 1.00 p.m. and then the debate continues.

Thank you, hon. Speaker.

**Hon. Speaker:** Very well. I think you can see your actions were inchoate, they were premature. The Chairman of the Budget and Appropriations Committee is making a very valid request that his Committee does meet at the rise of the House so that this debate can continue because I have 24 requests. That is a very legitimate request and the authority is hereby given: The Budget and Appropriations Committee to meet.

Hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker for giving me an opportunity to contribute to this important debate. I rise to support the Motion that we accept the Mediation Report on the new version of the Division of Revenue Bill. And I do that for a number of reasons: One, it is a noble principle that once you agree to sit in mediation and send a team to mediation, it is only proper that when that report comes, you accept it. It would actually be wrong to sit in a mediation and reject the report of that mediation because that would mean you did not go to mediate but you went there to press your



point. On that basis, I thank the whole House for the mood I am seeing that we accept that report.

Two, every often we really have to look at the interest of the country. Knowing the legal situation that would otherwise prevail if we do not accept this report, the interest of the country and the interests of the counties must take consideration and therefore, it is important to accept this report. If we do not, we must remember that even the Appropriations Bill for the national Government and the county allocation of revenue report cannot go on according to the Constitution. So it is important that we accept this report.

Further, it is important that the report has indicated exactly where the funds we want to add to the counties will be utilized. This is conditional Fund that will go to the Level 5 hospitals. I think there has been a big issue with Level 5 hospitals and other health institutions and if we do that, it is something we need to support. I do appreciate the fear of corruption in the counties that everybody is talking about but in my own view, I take the philosophy that if there is a chicken thief in the village, the village does not stop rearing chicken. What the village does is to catch the thief and continue rearing chicken. So, I do not think we can use that argument to say we cannot give money. Moreover, when an important issue is at stake and when the welfare of the State is at stake, I think philosophically the stronger person should take the upper moral position by conceding and therefore, Parliament has done the right thing.

The real issue we have in this country in many of the matters that come before us regarding devolution, we as the country, particularly the National Assembly and the Senate, have taken an adversarial stance on every issue that comes. In my view, what we need to do is, considering that we devolved precipitately and did not follow administratively the structures we put in place through the transition to devolve the Government Act, from time to time, there will come a time that we will need to sit down and look at the issues and find the best way forward. In this situation, we had no option but to accept this because doing otherwise would have precipitated a major crisis for the country. The other issue is that it appears that the same Constitution did not give the Senate as much power as people in the Senate themselves anticipated. If you look at the issue of the division of revenue, the Constitution is very clear starting with Article 202 which says how the division is done and Article 203 which gives the criteria. Article 217 gives the Senate the powers to look at how the revenue for the county is divided after it has been divided. Article 224 gives how this money will be divided at the county but the role of the Senate in division of revenue is not as clear as people are saying. And when our courts, the Judiciary, were given the opportunity to make a decision, in my view, they acted like a council of elders and did not go by the technical provisions of the law and this has left us where we were before and unless something is done, every year we are likely to have this stalemate.

Hon. Speaker, all of us have said that Article 95(4) provides very clearly what should be done as far as the National Assembly is concerned in the division of revenue. Article 96(3) states clearly what should be done with the county revenue. As you had indicated, Article 218 then brings those two together. Therefore, we have to find a way of going round it. As indicated in the Budget and Appropriations Committee where we sit, we have noticed that the real issue is the process. The Public Finance Management

(PFM) Act in sections 187, 189 and 190 seeks to correct this. It creates the Intergovernmental Budget and Economic Council (IBEC) but the membership has people from the county. The governors and the county executives are there. It is also clear in section 190 on the process that should be followed in the PFM Act sections 187, 189 and 190. Under section 190, it says that whatever comes from those where the governor has been represented will go to the National Assembly and will also go to the Senate. From then it is not clear what the Senate will do with that document until the division of revenue is done whereas for the National Assembly, it is clear what needs to be done.

In my mind, this is the point we should pay attention to. Therefore, before the Budget Policy Statement (BPS) comes, it is my view that we should put in a better process that brings information from the counties as far as their needs are concerned. This way Senators can get an idea and it goes back to the National Treasury. When it comes to the National Assembly for the division of revenue which is preceded by the BPS, then we have a very good idea, the Senate may have put an input at the beginning of what the counties need. As it is now, the BPS gives a pretty good idea of what the national Government needs but gives nothing to this Parliament as to what the county needs are except going by the Commission of Revenue Allocation (CRA) criteria and also the provision of the Article of not less than 15 per cent. In other words, the division of revenue is done by us in darkness as far as the county needs are concerned. Therefore, we are looking at a way of bringing that so that by the time we have the BPS we also have some information from the counties as regards their needs. That is something we must do. For me, that is the key. If we get that into place, then we do not need---I know we are all looking at what we can do if there is a stalemate. Again that is not provided. I can see we are looking for amendment in that area but I think prevention is going through the suggestion as made. As far as the source of funding for the extra money we need is concerned, I will go by the principle that everybody has said that choices have consequences.

Thank you.

**Hon. (Ms.) Oticho:** Thank you, hon. Speaker, for the opportunity. I join my colleagues in supporting the mediated version though I must admit that initially I did not support it for reasons which have already been mentioned. I now rescind my earlier position and I want to support this mediated version of the Bill because Kenya is bigger and larger and I would want to see this money going to the counties.

It must be noted that going forward, I want to support the proposal that Senators must be involved and engaged in the entire process early in advance. They need to raise their concerns at the right time because as we are all aware, there are institutions that were involved in this process and we must respect institutions because they are a creation of the Constitution. The following were involved: the IBEC and we know its composition, Senators themselves were involved, Controller of Budget and the National Treasury. A lot of consultations and efforts went into the process together with our Budget and Appropriations Committee and so for the Senate to come later on and allege to add more funds, we were at pain to accept this position because we had already given Kshs2 billion for Level 5 hospitals and we had given so many other additional funds to the county governments.

In supporting this Motion, I would like to mention that the additional funds to the counties must come from the Parliamentary Service Commission. Some of that money must come from the Senate. I differ with my colleagues who hold the view that more money should be removed from the Judiciary. It would be unfair to the Judiciary because the Justice and Legal Affairs Committee has already reduced the budget of the Judiciary by Kshs502 million. We are all aware that in the last financial year, the Judiciary had a number of administrative challenges. They were unable to implement most of their development projects. However, the Judiciary is now ready to take off. They have ongoing development projects like the construction of court houses. They are also in the process of rolling out new courts, for which court houses are to be constructed across the country. Therefore, reducing the budget of the Judiciary further by another Kshs1 billion would be unfair; it would be denial of justice to Kenyans. I am not going to support such a move even in the Budget and Appropriations Committee. Let us take some money from the Executive. We have given too much money to the Integrated Financial Management Information System (IFMIS). There are so many other areas where we can get that money from. However, we cannot reduce a further Kshs1 billion from the Judiciary because doing so would be unfair to them.

With those remarks, I support.

**Hon. Speaker:** Hon. Nicolas Gumbo!

**Hon. (Eng.) Gumbo:** Thank you, hon. Speaker for giving me the opportunity to contribute to the mediated version of the Division of Revenue Bill. Even as I contribute, the matter of the misunderstandings between the Senate and the National Assembly is of concern. It is a matter that we really must sort out. The Constitution is clear. I do not think there is any ambiguity. The Division of Revenue Bill has to be a National Assembly function. Having said that, I have no problem with more funds going to the counties. Indeed, as CORD, we want more funds taken to the counties. Even as we direct more funds to the counties, the concern is that in some counties, public funds are now being used with a more reckless attitude than the spending habits of those who have won a jackpot. Unless something is done, the noble intentions of devolution will be washed down the drain. The other day I was listening to a debate on radio where in my own county some of the Members of County Assembly (MCAs) were saying that they had allocated Kshs36 million for tea in the Governor's office. When you hear such statements in a county where the main mortuary cannot even preserve bodies and bodies which are taken there are eaten by rats, then you must question the priority that some of our counties have set before them.

As I conclude, a lot of this stalemate has come about because of a very primary institution of governance in our country, which is the Supreme Court. As a country, we have now reached a point where we must ask how much the Supreme Court, with its exalted position, is adding to the improvement of governance systems in our country. I say this because on the few occasions that the Supreme Court has got an opportunity to be a neutral arbiter in a matter that is of public concern, they have opted to be a player. Even the stalemate that we have on the two-third gender rule came about because the Judiciary opted to be a player in a matter where they ought to be a neutral arbiter. The same applies to the Division of Revenue Bill. It is very disheartening because this is the

Supreme organ for judicial functions in our country. However, when we see it dispensing their decisions with a lot of activism, then that is a cause for concern.

So, even as we discuss this matter and identify areas from which to get the extra money to allocate the counties, it is important that we have to look at the provisions that we already have in our Constitution, so that we genuinely and candidly make a decision as to what we would want to do with some of these institutions which, instead of helping us to move our country forward, become a stumbling block. I hope that we will reach a consensus and move our country forward.

With those few remarks, I beg to support.

### ADJOURNMENT

**Hon. Speaker:** Hon. Members, it is now time to interrupt the business of the House. Therefore, the House is adjourned until this afternoon at 2.30 pm.

The House rose at 1.00 p.m.