

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 24<sup>th</sup> May, 2017

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### DELEGATION FROM PARLIAMENT OF THE UNITED REPUBLIC OF TANZANIA

**Hon. Speaker:** Hon. Members, I wish to introduce to you a delegation of Members and staff from the Parliament of the United Republic of Tanzania. The delegation is seated at the Speaker's Row and is comprised of the following:

- |                                   |   |                                                 |
|-----------------------------------|---|-------------------------------------------------|
| (i) Hon. Job Yustino Ndugai       | - | Speaker of the National Assembly.               |
| (ii) Hon. Salim Turkey, MP        | - | Member, Parliamentary Service Commission (PSC). |
| (iii) Hon. Mary Chatanda, MP      | - | Member, PSC.                                    |
| (iv) Hon. (Rev.) Peter Msigwa, MP | - | Member, PSC.                                    |
| (v) Mr. Saidi Yakubu              | - | Private Secretary to the Speaker.               |

Hon. Members, the Delegation headed by the Speaker of the National Assembly of the United Republic of Tanzania has been in the country since Monday, 22<sup>nd</sup> May, 2017 on a benchmarking tour with the sole aim of broadening their understanding on the workings of our Parliament and the Parliamentary Service Commission, and sharing legislative experiences. They are scheduled to leave on Friday, 26<sup>th</sup> May 2017. The Delegation has held several crucial meetings with the leadership and other parliamentary offices.

Hon. Members, as the delegation visits our Parliament at this critical time in our regular electoral cycle, you will agree with me that they will have plenty to see, hear and, of course, share experiences with us as part of the East African family just as the *Swahili* saying goes "*mgeni pofu, ingawa ana macho yake.*"

On my own behalf and that of the House, I wish to, once again, welcome them to the National Assembly of the Republic of Kenya and wish them fruitful deliberations during their stay.

I thank you.

*(Applause)*

Order Members! Indeed, the Delegation from the Parliament of the United Republic of Tanzania, and particularly the Speaker, has been invited to join us tomorrow at the Safari Park

Hotel at our Annual National Prayer Breakfast. We welcome them to that occasion as well. Hon. Members, you are all reminded to attend as I communicated last week.

Next Order!

### PAPERS LAID

**Hon. Speaker:** The Majority Party Whip.

**Hon. Washiali:** Thank you, Hon. Speaker. On behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2016, and the certificates therein:

- (i) National Construction Authority;
- (ii) Commission for University Education;
- (iii) National Quality Control Laboratory;
- (iv) National Government Constituencies Development Fund, Moyale Constituency;
- (v) Kenya Utalii College;
- (vi) Technical and Vocational Education and Training Authority (TVETA);
- (vii) National Youth Council; and,
- (viii) Ministry of Energy and Petroleum.

Thank you, Hon. Speaker.

**Hon. Keynan:** Hon. Speaker, I beg to lay the following Paper on the Table of the House, today Wednesday, 24<sup>th</sup> May 2017:

The Special Report on the Implementation of the Tourism Fund Ronald Ngala Utalii College Project in Kilifi County.

Thank you.

**Hon. Speaker:** Next Order!

### NOTICE OF MOTION

#### ADOPTION OF PIC SPECIAL REPORT ON RONALD NGALA UTALII COLLEGE PROJECT

**Hon. Keynan:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Special Report of the Public Investments Committee (PIC) on the implementation of the Tourism Fund Ronald Ngala Utalii College Project in Kilifi County, laid on the Table of the House today, 24<sup>th</sup> May 2017.

### MOTIONS

#### ADOPTION OF PAC REPORT ON SPECIAL AUDIT OF NYS ACCOUNTS

THAT, this House adopts the Report of the Public Accounts Committee (PAC) on the Special Audit Report of May 2016 on the accounts of the National Youth Service (NYS), Volumes I and II, laid on the Table of the House on Thursday, 16<sup>th</sup> March, 2017.

*(Hon. (Eng.) Gumbo on 17.5.2017)*

*(Debate concluded on 18.5.2017)*

**Hon. Speaker:** Take your seats, hon. Members.

Hon. Members, debate on this Motion was concluded on Thursday last week. What remained was for me to put the Question. I have confirmed that there is quorum.

*(Question put and agreed to)*

SPECIAL REPORT ON THE DUTY FREE SHOPS CONTRACTS  
AT JOMO KENYATTA AND MOI INTERNATIONAL AIRPORTS

THAT, this House adopts the Special Report of the Public Investments Committee on Kenya Airports Authority Duty Free Shops contracts at Jomo Kenyatta and Moi International Airports: 1989 to 2015, laid on the Table of the House on Tuesday, December 01, 2015.

*(Hon. Wamunyinyi on 2.3.2017)*

*(Debate concluded on 18.5.2017)*

**Hon. Speaker:** You can take the seat close to you, Hon. Lusweti.

Hon. Members, once again, debate on this Motion was concluded last Thursday.

*(Hon. Ferdinand Waititu consulted loudly)*

Order, Member for Kabete! You are just about to exit the august House to go to some other place, and you cannot allow us to transact business. For the few remaining days, obey the rules of this House.

*(Laughter)*

*(Question put and negatived)*

*(Loud consultations)*

**Hon. Speaker:** Order! Order! Hon. Members, there shall be order in this House. Before we proceed with the next business, allow me to recognise students who are seated in the Speaker's Gallery and the Public Gallery. We have students from Kathiani Girls High School from Kathiani Constituency, Machakos County; Kabaa High School from Mwala Constituency, Machakos County; and Grace Garden High School from Ruaraka Constituency, Nairobi County. They are all welcome to observe the proceedings of the National Assembly this afternoon.

Next Order!

**BILL***Second Reading*

## THE DIVISION OF REVENUE BILL

**Hon. Musyimi:** Hon. Speaker. I beg to move that the Division of Revenue Bill (No. 2) Bill (National Assembly Bill No. 22 of 2017) be read a Second Time.

Hon. Speaker, as I stand here in this honourable House to move this Motion for the Division of Revenue Bill (No. 2) (National Assembly Bill No. 22 of 2017) to be read a Second Time, I must confess that I am at pains. It is because – as you may recall - this honourable House passed the Budget Policy Statement (BPS) 2017 which made a resolution that we needed to reduce the fiscal deficit. This was done on account of what the Budget and Appropriations Committee had anticipated. As we are seeing, a good example is the current rise in the cost of living which will obviously affect the revenues. It is a widely accepted fact that a higher fiscal deficit is a major contributor to high inflation and leads to higher cost of living - which is the worst enemy of our people.

During the processing of the BPS, this principle was well expounded and supported by the team that advises our Parliament on the Budget and economic matters - the Parliamentary Budget Office (PBO). In this regard, my Committee recommended to this honourable House that we reduce the overall Budget by Kshs80 billion. This reduction was to be borne by both the national Government and county governments. In making this proposal, my Committee and this honourable House had our people's interests at heart. The Division of Revenue (No. 2) Bill (National Assembly Bill No. 22 of 2017) that we have republished has the same figures that this House approved. Let me explain why this is the case. First and foremost, the authorities had projected a higher growth of our economy, while under-estimating the impact of risks such as the prolonged drought, the wait-and-see attitude of investors on account of the upcoming general elections and such other factors which may dismantle the macro-economic fiscal framework of our country. I am aware that, recently, for example, reputed institutions such as the World Bank have revised downwards the country's gross figures for calendar year 2017 from 5.6 per cent to 5.3 per cent. This must imply that the current fiscal framework is somehow distorted and needs to be revised within the coming Financial Year.

The process of sharing resources must be guided by expected outputs and outcomes that will lead to favourable growth. If you look at the available statistics, for example between the years 2000 and 2011 – a span of 11 years - you will realise that there was a fiscal space to shift resources to infrastructure, development, agriculture, social obligations, among other needs of the Government of the day. However, between 2012 and 2017, you will notice that the fiscal space has shrank as resources in excess of Kshs1 trillion have been curved out from the national kitty and transferred to establish the county governments - 47 of them across the country. That reality has not been appreciated by many of us. To divert that kind of money to largely infrastructural projects as we create offices and administrative units in the county governments can only mean that less money is actually available for development at the national level and also at the county level. That will have implications in terms of the growth of our economy without any question.

The national Government has also had its own challenges with respect to available resources for development. That is because the 2010 Constitution and its implementation did

require that new institutions be also put in place and a lot of money has gone to creating those institutions. Simple economics can tell you that, in a sense, this country has stagnated and that fiscal capacity to create new employment opportunities has actually shrank.

It calls for all of us to go back to the drawing board. Every Government institution seems to want more money. We must be ready to cut our coat according to the cloth we have. I think it is high time we began to take seriously the recommendations of the Socio-Economic Audit Report that was tabled by my committee in this honourable House, so that we begin asking ourselves whether we have sufficient resources to do the things that we are committed to do.

Article 203(2)(3) of the Constitution provides that, for every financial year, the equitable share of the revenue raised nationally that is allocated to the county governments shall not be less than 15 per cent of all revenue collected by the national Government. The amount shall be calculated on the basis of the most recent audited accounts of revenue received as approved by this honourable House. I want to confirm that the Division of Revenue Bill that we are about to discuss has, indeed, adhered to that provision of the Constitution.

The same Constitution provides for the criteria to be taken into account in determining the equitable shares among many requirements that are set out. Some of those key criteria include national interest, provision of public debt, the needs of the national Government, fiscal capacity, efficiency of county governments and the like. My Committee has consulted the National Treasury. We spent long hours with Mr. Rotich and his team from the National Treasury last week on the prospect of providing additional resources to county governments. They informed us that there are no additional resources available unless they raise additional taxes which will require amendments to the Finance Bill, 2017 or additional borrowing from domestic and external resources. This will be robbing Peter to pay Paul. It will be very difficult for my Committee to recommend that we follow that path.

You may be aware, as the process of approving the Division of Revenue Bill was going on, there were new developments related to the availability of donor funds for counties. The National Treasury has informed us and explained to my Committee about the availability of those funds. I will be proposing amendments to this Bill in the next stage so as to ensure that we take care of donor funds. However, we also need to indicate to the development partners that our Budget process needs to be respected. Our development needs to work within our Budget calendar and in line with the Paris Declaration on aid effectiveness and the Accra Agenda for Action that provides that donors must use country systems and procedures to the maximum extent possible. It is a requirement, therefore, that the national cycles should be recognised by those wonderful development partners. So, we would just like to make a modest call that, that should be the case.

Over the last four years, as I conclude, the processing and approval of the Division of Revenue Bill has been done with sufficient difficulty. This may have been contributed by the opinion given by the courts with respect to Division of Revenue Bill. My Committee is of the view that the wisdom and intentions of the 2010 Constitution that the processing and concluding of budgets, not least this Bill, be the province of the National Assembly while the Senate deals with the County Allocation of Revenue Bill be respected. As we said earlier - and I think it is very important - the buck needs to stop somewhere. This circus, this shilly-shally, this merry-go-round every single year needs to come to an end. We need to come up with a position where the place, the premier role of the National Assembly is understood and respected so that we make the final decisions as to where we go with the Division of Revenue Bill and we stop this business of going round in circles chasing our own tails and wasting each other's time. Time has come to

really resolve this matter. My Committee recommends that we should adopt a medium term framework for the Division of Revenue Bill in future. The authority should project additional resources in the yester years adjusted after factoring annual growth to cushion inflation. A reality check over the last four years reveals that the national Government institutions suffer from expenditure cuts within their implementation stage of the budget. We expect expenditure cuts in the next financial year, for example, yet we do not seem to do the same when it comes to county allocations. I think we need to look at the envelop and say to ourselves: “We have enough money to do the things we have said we want to do. Do we have more institutions than we actually require?”

I think I have talked enough. I stand to recommend that this Motion be read a Second Time. It is now my pleasure to request my colleague in the Committee, the Hon. Member for the great people of Kitui Central – Hon. (Dr.) Makali Mulu - to second this Motion.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Speaker for giving me the chance to also second this important Motion.

I am sure Members are aware that this is the second time we are debating this Bill - the Division of Revenue Bill. This is because the Meditation Committee could not agree. It means we have to go through the process again.

Before I give my comments, I think it is important I make these opening remarks: Members remember we passed, as a House, the Budget Policy Statement. When we were passing that document, that Statement was informed by a number of macro-economic factors. That Statement has projected inflation rates, it has projected the interest rates, it has projected revenue collection and it has even projected on what the economic growth should be this Financial Year. Those who took time to read the document will realise the projected economic growth is about 5.8 per cent, implying that if any of the macro-economic factors which have been considered change, more likely, the projected growth will also change. With the projected revenue collection, it means it is very important that every time you recommend a change of expenditure, you also recommend the source of that revenue. Otherwise, you will affect the projected budget deficit. I think it is as a result of that, that you will realise that the Committee, after discussing and sitting with the Cabinet Secretary (CS) of the National Treasury, has settled on the same figures. When you look at the amounts proposed, the national Government is proposed to get about Kshs1.23 trillion and the county governments is, from the equitable share of revenue, projected to get about Kshs291 billion. It is a difference of about Kshs10 billion more, compared to last year’s allocation of Kshs280 billion.

In a situation where the Senate proposes to increase the amount to Kshs321 billion, it would have been fair to the process if it also indicated where the money to meet that gap would come from – the finance gap which is being proposed. It is only on the basis of that, as a House, that we would pass this Division of Revenue Bill, so that we make sure that we propose sources of funds any time we propose an additional funding. This being the third year of funding, and this is the third year we are talking of the Division of Revenue Bill, we should know. A number of resources have been proposed; more so, under the so-called conditional grants. I have said it very many times and I want to repeat it: On the issue of leasing of medical equipment, this is the third year we are doing it. We have set aside resources for leasing medical equipment. Any time we interact with Kenyans out there, it is important Kenyans start getting value for money. It is important Kenyans start feeling the quality of medical services improving as a result of that

equipment. That is because equipment will have improved the services. Any time we interact with the people who elected us, we have challenge because it looks like, instead of health services improving, they have either remained stagnant or they are actually deteriorating. This is an area we need to provide effective oversight, as a House so that, at the end of the day, we do not just set aside resources and they are not assisting Kenyans in terms of improving their livelihood.

When you read this Bill, and as the Chairman has said, it has been mentioned that some additional resources have been included in the new Bill. I am really interested in the so-called rising fuel levy. We realise that the county governments are going to be given a conditional grant of Kshs7.9 billion which is going to be an increase from Kshs4.3 billion. This is happening because the fuel levy has improved. We are saying, even as we set more funds aside for the roads, Hon. Members will agree with me that, when you go down there to the ground, most of the roads are still in pathetic situation. I plead with the people in charge of those resources and, more so, the governors and the Cabinet at that low level to make sure that the resources that are set aside for improvement of the roads are used for that purpose.

The other area of interest which Members should be interested in is the money which has been set aside by the World Bank. It has provided Kshs1.5 billion as part of the conditional grant to the county governments. This money is supposed to help our county governments in doing the following: Strengthening the public finance management system; strengthening the human resource management system and strengthening the monitoring and evaluation systems.

I have a bit of interest in the area of monitoring and evaluation and the civic education public participation. Those are the areas which if we get right and have them improved, Kenyans will be able to monitor what is happening with implementation. There are a lot of complaints any time you go out there. Anytime you see governors being summoned to the Senate, most of the issues have to do with misdirection of funds or Kenyans not getting value for the money which has been set aside. This is an area which, as a House, we also need to provide oversight so that at the end of the day, Kenyans can ask the hard questions to do with implementation. I want to plead with the Departmental Committee on Finance, Planning and Trade which takes care of the monitoring and evaluation docket so that we make sure even as we improve the systems, the Directorate of Monitoring and Evaluation is provided with more resources to do the necessary monitoring of the resources.

As I conclude in seconding this Bill, as a House, we need to take up the challenge. The Report from the Budget and Appropriations Committee says that the only audited and approved revenue accounts are for the 2013/2014 Financial Year. We are in the 2016/2017 Financial Year which means, as a House, we are in arrears by about two years. The reason why you see some of these Public Accounts Committee reports and Public Investments Committee reports being tabled and passed and they do not make a lot of sense is because of being in arrears in terms of approving these reports. I want to plead with this House and the 12<sup>th</sup> Parliament to make sure that strategies are put in place so that we catch up these arrears and at the end of the day, we are up to date in terms of approving these reports of both revenue accounts and audited reports. This will help this country in terms of making sure that we are up to speed and the decisions which we make can be implemented - not for the sake of implementation but to help Kenyans improve public finance management.

The Chairman has talked about the issue of approving this Report. I agree with him. Budget-making is a very important process in this country and more so, for the House or Parliament. It is important as a House that we take time and think through the process. If the Constitution

demands that this House approves the Budget, that mandate should be given to this House to make sure that we do not have a situation where the back and forth that we see today delays approval of budgets. I can tell you for sure that if this second attempt fails, we will get to July 1<sup>st</sup>; there will be no County Allocation of Revenue Act at that time and the county assemblies or county governments will be forced to operate on what we call a vote on account. This implies that they can only use a maximum of 50 per cent of the budget. We need to improve what we call certainty in budget-making. We need to make sure that these things are improved in time so that the county governments can start preparing their budgets in time. As a result of that, we will have the budgets approved in good time.

Having spent so much time discussing this Report, I do not think we also need to spend a lot of time discussing the Bill again. Hon. Members, since we had already discussed what we are about to discuss, I plead with you that we just rush through and bring out the most important or salient points and then have this Bill approved by the House so that at the end of the day, we pave the way for the County Allocation of Revenue Bill to be presented to the House.

With those remarks, I beg to second.

**Hon. Speaker:** Member for Balambala, I know you have an interest in this one in that you are prolific.

*(Question proposed)*

Let us have the Member for North Imenti.

**Hon. Dawood:** Thank you, Hon. Speaker. I join the Chairman of the Budget and Appropriations Committee in saying that we should just pass it the way it was passed. We should not increase the Kshs29 billion which the Senate wanted. I agree with what the Chairman has said.

**Hon. Speaker:** Let us have the Member for Makueni.

**Hon. Maanzo:** Thank you, Hon. Speaker for giving me an opportunity to contribute to the Division of Revenue Bill.

The history of this Bill is known by this House. We had passed it. It went to the Senate and for some reason, it came back and was no more. It is very clear that the country has to move forward. This Bill is so important that it must pass so that revenue can be disbursed to the counties. I rise to support the Chairman with regard to this Bill.

It has been debated before. The same matter has come back. It is only that for technical reasons, this process has to be taken. The counties have not performed very well in the past. The expectation of Kenyans has not been met with regard to devolution so far. It would be important for these monies to be released to the counties as soon as possible so that there will be no excuse at all at the counties for failure to do one thing or another. If you check, there are very many uncompleted projects. The feeder roads are not done in many parts of Kenya and many other duties of the county assemblies cannot go on without this Bill being passed and these monies being released to the counties.

The National Treasury has also been delaying the release of monies to counties for one reason or another. It will be better if we have counties furnished because devolution is now a reality in Kenya. It is in the Constitution and without politicising it, it should be able to serve Kenyans better and they should be reached wherever they are. This was meant to go to the grassroots so that poverty can be eradicated; Kenyans could enjoy being in this country and



enjoy the services of their Government which they formed and be served by taxes which they pay very heavily every day, month and year.

I support the Bill and urge Members to support it.

**Hon. Speaker:** Member for Butula.

**Hon. Onyura:** Thank you, Hon. Speaker. I also rise to support this Bill. I hope that we shall pass it so that the revenues can be released to the counties. Our interaction with the leadership at the counties shows that everybody is moaning that there is a lot of delay and there is a standstill in many activities and projects.

One or two areas that I have looked at and felt curious about are the funds that have been set aside to support the village or youth polytechnics. I am not sure that those monies are being used properly. When I look at the two village polytechnics in my constituency, I see that they are in real pathetic conditions. I remember not long time back when I visited them to award bursaries to some of the students there, I found that they are really run down. They hardly have any equipment and are very poorly and completely understaffed. I was surprised to find in one of them that people virtually work for free. I hear they are being paid Kshs3,000 per month. Initially, I thought I misheard that it is Kshs3,000 per day, but it was confirmed to be so. This sort of thing should not be happening at this time in this Century.

Unfortunately, on issues of infrastructure particularly roads, it has not been very clear regarding classification of roads. We, Members of Parliament, are still being blamed and crucified for roads which have been transferred and placed under the counties. The counties need to go out and make it very clear by interacting with *wananchi* and show which roads they are supposed to be doing and what they have in their budgets. I am aware of a particular road that has been raising a lot of hue and cry in my constituency, but when I went some time back, I found that indeed it is in the budget of the county. This is the Khunyangu-Buhuma Road. I do not know why it has not been worked on yet it is provided for in the budget.

On the issue of health services particularly the leased equipment, a thorough audit and assessment needs to be done to see whether this was a correct and prudent approach or whether we are getting value for money for these schemes or whether we should look at them separately and have a different approach. I am not very sure that we are benefiting maximally from this project at all. While on the health sector, everything should be done so that we move as quickly as possible to universal health care.

I know we are discussing the sharing of the revenues got by the national Government. We also need to be told about the revenues that are generated by the county governments. I know their predecessors, the county councils, used to generate a lot of revenue. I wonder what is happening to that and in which way it is accounted for. We need to have a transparent and clear way of accounting for that revenue.

I know at the beginning that our county governments are fairly young and there are a lot of teething problems, but I hope that we have learnt enough lessons in the four years we have had the devolved governments so that the national Government will assist in having clear and good policies that will ensure that we have transparent, open and proper systems for accountability and prudent management of finances and resources at the county level.

Hon. Speaker, I support the Bill. Thank you very much for the opportunity.

**Hon. Speaker:** Hon. Member for Kiminini.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to support this Bill. It is indeed very unfortunate that it was defeated and is likely to bring a lot of problems particularly in the running of the county governments. We know very well that the Division of Revenue Bill normally

divides revenue between the national Government and the county governments. It divides the revenue vertically. This Bill is coming for the second time as a result of the difference that was there between the National Assembly and the Senate. We know very well that the Senate tried to add about Kshs30 billion. Unfortunately, they did not indicate where the Kshs30 billion was going to come from. This issue had gone up to the Supreme Court for an advisory whether it is indeed necessary that this Division of Revenue Bill should go to the Senate. It is unfortunate it is not provided for in the law. There is some lacuna. As legislators, we need to bring some amendments so that we know the direction to take in the event that the Bill goes to the Senate and to the Mediation Committee and it is defeated. It is high time as Members of Parliament, and we humbly request that if we are going to come back in the 12<sup>th</sup> Parliament, which we are sure we are going to do with prayers and hard work, we work on the law so that we have a clear direction in the law in case of this failure.

The Bill has been moved very well by Rev. Mutava Musyimi. It is, indeed, our desire that more funds must be devolved to the county level. As I clearly mentioned, it is because of inflation that there was a reduction of Kshs80 billion that is going to affect both national Government and county governments. This is meant to reduce prices because the cost of living in this country is unbearable. The Government has tried to resolve the issue of *unga*, but basic commodities are not just *unga*. We also have an issue with milk and sugar. It is high time that the Jubilee Government came up with more policies that can ensure that the cost of living is bearable and is within the limits of the common *mwananchi*.

As other colleagues have mentioned, the Division of Revenue Bill has to be passed to allow budgets to be made at the county level. As we speak right now, we have very many projects that are affected at the county level, particularly projects to do with health care. I request our Hon. Members here today that we move with speed to pass this Bill. When it goes to the Senate, we do not have this rivalry. I call upon our Senate colleagues to look at the Bill critically so that we can pass it, and if possible, before we go for the general elections. If we do not pass it, the county governments are going to suffer.

There is the issue of leasing of medical equipment. This is a wonderful idea. When you go to many rural areas, you find we have advanced medical equipment that will make work easier as far as disease diagnosis is concerned. Unfortunately, when you go down there, you find that we do not have skilled personnel that can operate these machines so that Kenyans can have quality health care. So, it is my humble request that the county governments focus on recruiting staff that is skilled and can operate that medical equipment. I have visited some health facilities and found out that the equipment is gathering dust. So, it is important that the county governments plus the national Government come together and work together so that they can resolve that issue.

The Budget Policy Statement (BPS) gives a clear framework on key priority areas. Once that one is done, we go to the Division of Revenue Bill. That connection has become a problem. This is the time we are calling upon those experts who came up with this Constitution that we need some amendments because the loopholes that are there are making this country suffer so much, particularly at such a time when we are going towards elections and everybody is focusing on the elections.

Sometime back, we had a discussion in this House pertaining to the running of the county governments, and particularly at such a time when we are approaching the elections. It is important to know from the Controller of Budget (COB) how the county governments are spending money, especially at this time when some governors have lost nominations in the

primaries. Some have decided not to go the independent way and some are not assured of coming back. It is very dangerous. We must have a mechanism of how to control the spending, particularly in such a case like that of Hon. Mwangi, who is going to be the governor. Whatever they are going to inherit must be at the level of objectivity. Otherwise, you will get a rogue governor who will be spending without following due process. This is something which is very dangerous because they are going to inherit pending Bills. Some of them might not have been approved by Parliament. This is particularly the time that this House should look at measures and the mechanisms on how we are going to protect the money belonging to the common *mwananchi*. When you look at the list of independent candidates, particularly from Jubilee side, the number is very high. We are getting worried on how we are going to move when it comes to this issue.

I also want to request hon. Members that, as we go out there to campaign, let us do it peacefully. We do not have any other country. This is the only country. We call upon the Independent Electoral and Boundaries Commission (IEBC) to be very objective and fair in whatever they do to ensure that elections are free and fair and, if possible, the announcement of the results of the President at the constituency level must not be altered as was said by the High Court.

I thank you and request hon. Members to support this Bill.

**Hon. Speaker:** Well spoken. Member for Saku.

**Hon. Dido:** Thank you very much, Hon. Speaker. I rise to add my voice to this Bill. I support this Bill in its current context. If we want to move Kenya forward and if we want a good country, we need to seriously consider having stable macro-economic policies in place. Buy the Senate saying we give additional resources to counties, it was just attempting to be politically correct. As the National Assembly, under Article 95 of the Constitution, we oversee how resources are spent and how they are distributed across this country.

The current Bill has proposed to increase the sharable revenue to 31 per cent from what is constitutionally allowed- that is 15 per cent. So, this clearly places us in a position to say that there are adequate resources allocated to the county. We may not say that it is enough. What should happen is that when the resource-envelop is reduced, there must be prioritisation of what is to be done at the county and also at the national Government. When you look at this Bill, the guiding Article must be Article 203 on the criteria on how resources are given out. I come from Marsabit. Currently, we have a serious famine where our people are looking for food, and also pasture for livestock. We have not received adequate rains. For us, there is clearly a concern to look at what will happen to the humans and what will happen to the livestock that has not died so far. For that reason, if we reinforce what has been allocated to the counties to say that if the counties have been given Kshs291 billion, even if the share of the national collection is reduced the counties will still receive Kshs291 billion, it will be important.

Finally, one thing that some of us will not allow is to give out national resources for campaign by governors in our counties. The governors must also dig deep into their pockets to campaign with their own funds, but not to campaign using national resources. Those Members of Parliament who will be the next governors must bring fiscal discipline in this country. That is because public funds collected from *mama mbogas*, *mama makaa* and all the others need not be spent thriftily by a few individuals. That should not be accepted by this House.

With those few remarks, I beg to support this Bill. We should pass it unconditionally. Thank you.

**Hon. Speaker:** Member for Ugenya.

**Hon. Ochieng:** Thank you, Hon. Speaker. I rise to support this very important Bill which is late. Devolution is now a constant feature of our country. It is going to be with us for the longest time, in my opinion. Therefore, the way we midwife and the way we ensure that it works well, the better.

Some of the most important functions of the Government have been devolved. We devolved health, water, agriculture, sports and some of the very basic social services that any Government would want to provide. Therefore, the passing and the working of this Bill should be done in a timely manner but, above all, it should be done through the agreement between the two Houses. I fail to understand why we cannot have informal meetings early enough every year between the relevant bodies of this National Assembly and the Senate so that we do not have to keep on going back and forth every year with disagreements to mediate. Sometimes, it makes good sense if we can agree early. All of us agree that devolution is the best thing that has happened in this country. But why do you have to haggle every year with the issue of dividing revenue as required by the law?

Four years down the lane, we must now have a better formula and working relationship between ourselves and the Senate, to ensure that these kinds of Bills do not have to be antagonistic. We do not have to be going to Senate and back to National Assembly every year just because we agreed on how much should go where. The reason we do it first of all is because resources are scarce. We do not have all the money on earth. If you are going to do it every year, it means that we have not understood why we wanted devolution.

Without going into the amounts that have been allocated, I believe what is required at the base is an understanding why we devolved those services and what the governors need to do. At the end of the day, we have only one national Government - the Government of Kenya - that has the interest of the success of everyone, including those county governments. That is why when I see so much money being given down to the governors conditionally without proper checks and balances, I wonder what the Senate is doing. If every year you give county governments monies for hospitals to help them run the health portfolio, then you must set benchmarks.

We must agree that in every dispensary we have the following services being provided. We cannot have each governor having his own benchmarks on what a dispensary, health centre or hospital should look like. We should have benchmarks early enough. So, if we are going to use money to build hospitals and dispensaries, we must know what a basic dispensary should have in this country. So, you do not have Isiolo having the best services in one dispensary and Siaya having different services in the similar dispensary. We need to have benchmarks. This is the role I thought the Senate should play; that once we send the monies down there, their role should not end up at calling governors. They should set benchmarks that for water services, this is what you expect the county government to provide. We should have a uniform and clear message that every county governor will have to follow this modicum in terms of coming up with water projects. When it comes to agriculture, it is the same thing. We expect that when we devolve money in agriculture, this is the basic minimum we expect from every governor. This is because, currently, everyone does their own things the way they like. For me, this is a failure of the Senate. In my opinion, the Senate has not come up with any law that will guide the county governments on what to do.

Hon. Speaker, the reason you hear a lot of noise down there that there is no so much money is because we basically replicated the whole structure as it is in the national Government to the county governments. We have the governor, the deputy governor, people called the County Executive Committee (CEC) who are basically ministers, then you have a few officers

who are basically Principal Secretaries (PSs), then you have directors down there and then deputy directors. We have taken to the county governments a whole bureaucracy that gobbles a lot of the money that should go into service provision. How I wish that the Senators would have looked at this and say that for the county governments, this is the kind of establishment you expect; that you will have the governor up there, then the deputy governor and the CECs but before the CECs, we will have this lean structure. As we speak, you cannot have 70 per cent of the monies going to employment. Thirty percent cannot develop the counties. This is the Senate's role. It should come up with laws in the various areas. If it is health, there should be laws that provide benchmarks on how to run the health portfolio. If it is agriculture, there should be laws that benchmark to all the governors how they expect the counties to run the agriculture portfolio. If it is sports, let us have laws done by the Senate. This is because the Senate has forgotten. That is why you see them fighting about roles every now and then because as we speak today, the Senate has not given even a single law on how the county governments should run. It has not given even a single devolved function. Zero! That is why we are failing. It is not our role as the National Assembly. The reason why the National Assembly has not summoned any governor is because we do not think that is our role. It is the role of the Senate. However, they cannot fail and then keep on every time fighting about money bills and yet when these monies go down, they are not being used well. We are basically chasing the wind yet we know where the problem is. So, as we pass this Bill, I hope that the Senators, when they come back after 8<sup>th</sup> August, can then sit back and understand their role; that their role is to midwife devolution and ensure that the county governments have enough laws and policies that will help them run.

For example, I have heard about the leasing of medical equipment. That is okay, but how long are you leasing. Leasing happens because there is a plan that has been put to ensure that after 10 years, we move away from leasing and we have our own medical equipment. However, I do not see a plan. I have not seen a plan from the Senate or the national Government that says that after this long, these county governments will have these properties as theirs or this is the plan to ensure that we have enough of them in the country so that we stop leasing. This is because leasing means taking the money outside there to the persons who have brought the items. You do not know how long it is going to happen and without having proper technology and information transfer for this equipment, we will keep leasing them forever. This is because we do not have a framework for doing so. There are things that happen in this country – and that is why we fought for devolution – that need to be sorted out without much ado.

Talking about health, as we speak, we have people called community health workers. In Luo we call them *Nyamrerwa*. These are the people who run the health sector in this country. However, as we speak, you will find governors meeting them for campaigns but they do not get any pay, whether allowances or salaries, and the Senate is there and it knows that these people are necessary but there is nothing that has been made to ensure that they are employed. We have the so called village elders. They play a very important role in the running of the county governments but as we speak, the governors are meeting them and giving them Kshs1,000 each, which is temporary. How I wish the Senate could come up with a law that helps to deal with this kind of a matter to ensure that the county governments are run the right way.

I want to talk about the role of the national Government in devolution. The national Government must, first of all, realise that it is not in competition. They will never be in competition with the county governments. This is because we only have one Government of Kenya and they must ensure that the county governments are run the right way. So, this idea that

if the national Government speaks about the county governments then they are fighting those county governments is wrong. It is also because the national Government has also not made it its business to set these basic minimum standards. If you are going to give county governments money for running health, build a simple dispensary in one or two counties and tell the county governments: "This is what we want to see you doing." Set the example. If it is about water, set up a system for water in one or two counties which agree and then tell the county governments: "This is how we want to run the country in terms of water." However, they cannot keep on asking: "What do you want us to do?" No! The National Assembly has a big role in the success of the county governments and they must set the best example for this country. The President must tell us that as the President, this is how I would want to see the county governments being run. You cannot do it by depending on the governors to decide what is going to be done. Set the example and they will follow. How I wish that in the next financial year we will not have a problem like the one we have now where we have to go to the Senate and then back to the National Assembly on a matter that we know we have to live with. We will live with the fact that we will always pass this kind of Bill every year. So, we do not have to use legalities. Let the two Houses agree and do the right thing early and in a timely and amicable manner because devolution is, in my opinion, the panacea of development in this country.

With those many remarks, I support.

**Hon. Speaker:** Some of the things you said, Hon. Ochieng, are things that the Member for Suba, Member for Wundanyi, Member for Mbeere South, the Whip of the Majority Party, the Member for North Horr and, of course, the Member for Gem will recall that in the 10<sup>th</sup> Parliament, they passed a law known as the Cities and Urban Areas Act. I just keep wondering whose responsibility it is to ensure full implementation of what was contained in that Act. I suspect it may not be this House but the matter is out there.

Hon. Katoo, you placed for an intervention.

**Hon. Katoo:** Yes. Thank you, Hon. Speaker. I rise under Standing Order No. 95 that the Mover be called upon to reply. The House needs to listen to this. Maybe Members have not seen this Bill. It is word for word to a Bill that we debated in this House two months ago. So, everything that Members are saying had been said before. We are just repeating ourselves. We are not changing anything. We are not adding any value. Actually, two months ago, the same Bill, word for word, was debated in this House. What is being done today is more procedural for a Bill that has gone for republication.

Therefore, because it is the same Bill, I rise under Standing Order No. 95 that the Mover be called upon to reply so that we even fast track the steps that are ahead of this Bill in order to actualise it before this House goes for long recess. Thank you, Hon. Speaker.

**Hon. Members:** No!

**Hon. Speaker:** Hon. Members, usually these are the kind of things that I must keep reminding you, under Article 122 of the Constitution I have no vote. So, it is actually your business. I will just put the Question and you will make the decision. It is not me to make the decision.

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

Hon. Members, it will be unfair for you to claim that I took the decision. It is you. Let us have the Member for Nambale.

**Hon. Bunyasi:** Thank you, Hon. Speaker. This House is full of democracy and I am glad that decision was taken. I rise to contribute to this discussion. Anytime a Bill is recommitted to the House for any reason, it will be time for us to examine it yet again. So, this is a very good opportunity. The delays are unfortunate and have been driven largely by our disagreements with the Senate. My position as the Member for Nambale is that any extra shilling that goes out to our rural areas and is used to do what it is supposed to do, is a shilling used better than if it is kept in the Treasury for use in urban places like Nairobi. In our debate, we tend to focus too much on the efficiency of the resources sent to county governments. We do not pay enough attention on similar shillings, which is much more than what goes to the county governments and remains with the national Government. Let me start by commenting on those resources that stay under the purview of the national Government. It consists of two way division and what can move from one side to the other is still a contribution towards the discussion of the division of revenue.

In accordance with Article 203(1)(a) and (b), there are funds allocated, once defined as the national interest. Under this, there are a couple of components that are really critical that we have not paid sufficient attention to. One of them is the discussion on social safety nets. The allocation for the social safety nets is really small. We have an allocation of Kshs17billion up from Kshs16.9 billion, a very modest increment and yet when the President was before this House, he said that beginning next year January, everybody above 70 years age who meets certain means test such as the income test, will be eligible for cash transfer. This is more likely going to cut it and that may be a shortfall in expectations that we are likely to have.

Hon. Speaker, I see a component on school subsidies for the Class Eight and Form Four exams. We should now be enhancing this by allocating resources for assessment tests that determine the learning levels of our students. We are going to move away from national exams but we must provide more now. This kind of provision is very marginal. What concerns me more is the public debt. The provision on public debt is in accordance with Article 203(1)(b) of the Constitution, that has moved up phenomenally from Kshs446 billion to Kshs619 billion. We have talked about debt sustainability. When we think of debt sustainability in terms of the implications of the Budget, then it sinks home because it means that money that would have been released to help our health centers, to do our roads and all manner of things that are essential to move our economy forward, are going into debts. We are accumulating these debts at a phenomenally rapid rate. People who think about this and who perhaps sometimes have all kind of spurious arguments to support the Government's very voracious appetite for debt, should look at the amount of money that goes from the Budget towards debt, and therefore, is denied from financing other important aspects like health care and education. We are in a nation which this national Government spends only a minimal amount of money on school infrastructure. In fact, the promises they made last year on infrastructure have not been met. They have sent to Nambale a pittance Kshs1 million for only 60 per cent of my secondary schools and left out others, contrary to what we had surrendered here. We had surrendered Kshs34 million, but we only got back Kshs14 million instead. What would be critical is for us to manage our appetite for debt to conserve resources that we raise each year from the Budget so that we can invest in our future. It is our future that matters.

Still on allocations to national Government, under the emergencies component, there is only a provision of Kshs1.2 billion for the strategic grain reserve. We are just coming out of enormous hunger and famine. We can reliably predict that we shall have drought every year. We are unlikely to have any year without drought. Each year we are faced with problems. Now we have a very confusing story on what happened to our strategic grain reserve, even more

confusing on how the supply of grain is being managed into this country. I would have thought that we cannot always be waiting to be surprised. We should have an adequate provision for the strategic grain reserve which shall be moved out each time when certain levels of prices are reached. Price reflects scarcity and we do not have to wait until you see people and livestock dying. You can release this well in advance and if it is inadequate, you can place orders well in advance so that our people are not dehumanised the way it is done, that our people do not lose the only wealth they might have in livestock. You can imagine what it means being sent back to zero every year and how difficult it is to manage families and, therefore, become a part of progressive Kenya. I would like to see a lot more drought preparedness. I do not see that being allocated adequately. I think there is room for our national Government to think internally on the efficiency in which they allocate resources.

There are resources that go to the county governments. I would have preferred that we go along with the compromise towards increased allocation as suggested by the Senate. I think we are going through a transit period where we are facing elections. In any case, these monies are not likely to be released anywhere during the cycle of these elections. These are funds that will be coming in the course of next year. I agree that there have been a lot of apparent surpluses within counties as evidenced by the amount of waste that people have observed and others have examined including the Auditor-General. Let us differentiate this management by this first round of managers who are in there and let us be clear that it is not those individuals who are at fault. It is the system that is at fault and individuals are not to blame. But the resources that are needed for the county governments and for devolution are indeed important and that is what really goes down to the people.

You will find that the only thing that has happened is devolution in counties that were far from the center in this country. Health facilities may be struggling. The supply of medication may have only improved modestly or perhaps not at all, but the amount of inflow of resources in these geographic areas of this country have made a difference. If we are to measure some of these by the amount of construction that goes on, by the flow of resources with business community and others into the banking sector, you will find that indeed devolution has a certain way of providing resources that are circulating in areas that are far away from Nairobi. Why is it that in and around Nairobi, most of this wealth is concentrated? It is because they had easy access to it, access to contracts and the reasons are not in any way ethnic, the way I see it. They are class issues; that you have access to resources. You take advantage of it. It does not matter where your mother brought you into this world from. What we have to remember is, if we move these resources around the country, the impact on this country is going to be significant as determined by the people themselves in areas where these resources will go. None of these arguments should lead us in any way to question the need for growing allocation of resources in the rural areas. This is going to be a permanent feature of this economy.

I doubt if we ever went to a referendum, we would be able to recentralise resources. Therefore, the earlier we wake up and deal with systems improvement and recognise that we do not have the monopoly – not the national Government or Parliament – to have the optimal allocation of resources, the better. It is just a shared responsibility and something good can come out of there. However, things do not always come out good. Because they do not always come out good, we must look carefully, and separately, at the issue of misuse of resources and manifestations of misuse of those resources, both within the county governments and the national Government. It must become an objective of what we do to address the issue of misuse of



resources holistically, and not use them in a way of trying to make certain arguments in certain sectors for certain reasons.

It is abhorrent that Government resources would be stolen, misused, misappropriated, whatever word you use. It does not matter where it is happening. It matters that it is happening. The institutions that are responsible for this should look into this issue and see how we can rein in the problem. When we get into these kinds of discussions, we should be indifferent as to whether resources have remained at the centre or gone to the counties, in terms of resource use efficiency. If you listen to the debate in the House, you might think that the only areas where resources are misused are the county governments. We have a national cancer which requires physiotherapy and radiotherapy to make sure that resources that are raised are used appropriately. We need to make sure that Wanjiku, the one who we talk about so much, has access to the services that she deserves as a citizen. It is in that way that growth will come.

With those comments, I support this Bill somewhat reluctantly.

**Hon. Speaker:** Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Speaker, for giving me this opportunity to support this Bill.

First and foremost, as we look at this Bill, we also need to take cognisance of local revenue generated by the counties. It is important for us to see the charges that they levy. From the 31 or so per cent that has been given to county governments, it is important that when they collect their own money, they stop overtaxing and overcharging or double-taxing the *mwananchi*. The Constitution has given them that mandate, unlike in the previous Constitution where the former municipal councils needed to get some clearance from the Ministry of Local Government to increase any levies or charges.

I come from a county with an urban centre. Under the Cities and Urban Centres Act, we wanted to establish a municipal board. We tried and pleaded with the sitting governor to give us a municipal board in Nakuru Town municipality, but he refused completely. He was thinking that he was going to share part of his responsibility with the municipal board members. Nakuru Town East Constituency contributes over 70 per cent of the county revenue, but when it comes to sharing of the revenue, we are never considered. We are given resources like other sub-counties which give almost nothing towards the revenue basket of Nakuru County. Therefore, we need to look at it in terms of actualisation and implementation of the Urban Areas and Cities Act. As I said, Nakuru could be having a municipal board that we could approach to ensure the development tourism, road network and other sectors. The challenge is to start thinking about how to actualise that very important Act, that talks so much about improving the urban set-up.

It is important to conduct an evaluation of the Bill against Article 203(1) of the Constitution. It talks about the criteria which include factors like national interest, public debts and other national obligations. This is where the national Government needs to think in terms of how public debt can be managed. It is true that public debt brings a lot of economic development to our country, but at the same time, we need to look at the value we get from it so that we can enhance the development aspect of our economy. We need to take into consideration the various

geographical areas and their requirements in the country for us to include them in the strategic national development programme, particularly on matters of national interest. In Nakuru County, we have 11 national parks which are managed under the Wildlife and Conservation Act. When we were passing the Bill, we pleaded to have one or two national parks left for Nakuru County to enhance its revenue base. Unfortunately, we were unable to convince the concerned actors. We shall bring a few amendments to the Act to have at least one national park converted into a game reserve. The revenue that will be collected from it will go a long way in improving services in Nakuru County.

One aspect of the conditional grant is the health sector. I am the Vice-Chair of the Committee on Implementation and we looked at the Report by the Departmental Committee on Health, proposing that the health function should be brought back to the national Government. It is good that a lot of money has been given for purposes of improving the health sector as conditional grants. However, we are asking the Senate to be a bit more vigilant. This money is supposed to be spent on health matters. In Nakuru County, for example, there is an audit query of over Kshs600 million which was ring-fenced for purposes of only improving the general hospital in Nakuru, but to pay workers. This is according to the report of the Auditor-General. That money has never been reallocated. We sometimes wonder what the Senate does. They need to take some action against the culprits who misappropriate public funds. The county assembly said that there is a huge workforce. People are forever being employed in Nakuru County. When the county assembly spoke and asked the governor to take action, he never did anything.

I wish to plead with the members of county assembly (MCAs) in In Nakuru County. About 47 sitting MCAs out of 55 were thrown out by a new crop of aspiring MCAs during the just concluded primaries. I ask them to take their responsibilities, as prescribed by law, seriously. The responsibilities of the Senate include overseeing the operations of county governments. An additional Kshs7.9 billion was allocated to Nakuru County for road maintenance. Initially, the Kenya Rural Roads Authority (KERRA) and the Kenya Urban Roads Authority (KURA) were almost removed. I thank this House for deeming it fit to have the two authorities managed by the national Government. They are improving our roads within the local areas. We are asking the county assembly to be vigilant on the way the money that has been given to the county is being spent. They should see that the additional money that has been given to that county for road maintenance is used for road maintenance. On the grants for medical equipment, many questions are being asked including about the containers that are still lying in Mombasa. It is, therefore, important for the national Government to ensure that as we give conditional grants to county governments, we improve our counties.

With those few remarks, I support.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill.

In reality, we should not be discussing the details of this Bill and the figures contained therein because we are dealing with a procedural problem that we have not solved. We discussed the detailed figures and commented on them during the last two occasions this Bill was before the House. What has brought it back is the process of looking at the division of revenue between the National Assembly and the Senate. That is what we have not looked at. That goes to indicate

that we now need to look at the Constitution and identify areas that are giving us problems and think of re-doing it.

When we get at the Budget Policy Statement, we get an extremely clear indication of what the national Government needs, in detail. There is no process that gives that mandate to the Senate or the county governments structures. Of course, there is the Inter-governmental Budget and Economic Council (IBEC). This is the stage at which we should be harmonising this situation, so that when the Division of Revenue Bill goes to the Senate, they can have an input in it. The IBEC comprises of the Minister for Finance, governors, ECEs from the counties, the Commissions on Revenue Allocation as well as this House's Budget and Appropriations Committee. Is there an equal representation from the Senate in the IBED or anybody representing the county governments? We go on to pass the Division of Revenue Bill and when it gets to the Senate, it becomes a whole new process without any basis on which even the Senate itself makes decisions.

My proposal is that we need to review the Constitution and decide that this becomes a function of the national Government totally or we review the Budget Policy Statement process and ensure that a similar process takes place in the county structures, including the Senate. Article 121 of the Constitution is clear as to what should come to the National Assembly. I am not sure whether there is any information that goes to the Senate. We should, therefore, amend the Constitution so that we totally leave it to the national Government or we put in place structures to provide for consultations much earlier before the Division of Revenue Bill comes up for debate. That is what is facing us. Otherwise, we will keep on discussing this same matter from time to time.

Once we pass the Division of Revenue Bill, the national Government, the Parliamentary Service Commission and the Judicial Service Commission can run quite well while county governments cannot move on. Do we, therefore, provide for a Vote on Account arrangement to enable county governments get some funding – at least a half of their budgets – before the process is completed or how do we go about it? I see this not as a discussion on the details of the Bill, but rather on the process that brings us to the Bill. I know the hardworking Chair of the Budget and Appropriations Committee would help us in this and bring out the areas that we need to change in the processes, so that we do not have a repetition of this year in, year out. We need to bring a lot of arguments between us and the Senate.

With those remarks, I support.

**Hon. Speaker:** Member for Budalangi.

**Hon. Ababu:** Hon. Speaker, I support this Bill. The passage of this Bill can hasten the process of ensuring that county governments meet their obligations between now and election day. A lot of activities have been affected across the country. Everybody is keen to hear that this Bill has ultimately been enacted so that we can move forward.

I agree with the sentiments expressed by the Members, that as we move forward, and as we look forward to the 12<sup>th</sup> Parliament, we need to start thinking in advance on how to smoothen the rough edges. Those of us who are students of constitutional history know that any time a new constitution is enacted, and it comes into being, there is a phase transition – the phase when you come to terms with the new dispensation and a new way of doing things – and often times, the first five to 10 years provides an opportunity for the country to reflect and improve on some of the provisions that may not have been thoroughly thought out or which become clearer upon being put to practice. The USA, for instance, had absolutely no hesitation to amend some of the provisions of the American Constitution soon after it was enacted. In acknowledgement of the

fact that once a constitution comes into being, you notice that there are a number of rough edges that would need to be smoothed. I support the sentiments especially expressed by the Member for Seme. The process that leads to this Bill, including consultation, sharing of information and coordination of the process of generating the Bill, needs to be smoother. We want to have an arrangement where the Senate, the National Assembly and other agencies that have an interest in this Bill have some kind of confluence or meeting point where a lot of these issues can be thrashed out even before the Division of Revenue Bill is drafted.

I also want to express my reservation on the safety of resources that may be in the hands of the governors as we head towards election. This is indeed one of the areas we want to start thinking about keenly just to ensure that as county governments prepare to go into elections, we have a fool-proof system that protects the public interest by ensuring that resources that are in the custody of governors who may not be running for office because of losing the primaries are safe and secure. We definitely hope that the 12<sup>th</sup> Parliament will have the courage to take a fresh look at a service like health care and make a very clear determination as to how exactly we want to manage it in this country. While many of us support devolution 100 per cent, and are strong devolutionists, we want to see it succeed and more resources expended to devolved services such as health care and provision of water, it is important that the manner in which these services are funded and managed is made smoother than we have witnessed with the management of services like healthcare in the recent past.

In fact, it is on record that the recent very bad strike which took so long to resolve had a lot to do with uncertainties, overlapping of duties and responsibilities between the national Government and county governments in terms of who exactly is responsible for what and whose mandate ends where. Those are issues we need to deal with. Today, we urge county governments that even after the elections, they need to get serious with the provision of basic social services which we all believed would be managed better, their provision would be made swifter, faster and cheaper with devolution. For instance, in terms of water services, my constituency of Budalangi has suffered the brunt of devolution of this service. Every now and then, simple things like payment of electricity bills to keep the water pump stations running and supplying water are not paid. People go for days on end without water and hospitals and market places suffer greatly. Cholera has broken out because of inability of county governments to provide clean drinking water. These are things which have to improve. I hope many of my colleagues who are headed towards county management and those who are switching responsibilities like my good big brother, Hon. Thomas Mwadeghu, who wants to head the Taita Taveta County Government, and I wish him well, will pay greater attention to basic issues like water and health services because therein lies the heart of devolution.

We wanted to go the devolution way so that when we talk about water and health care services, their access and affordability would be guaranteed and would be better than they were under the management of the national Government. I want to fault many county governments starting with my own county government of Busia, which has been a total disaster in the provision of basic social services like water, health care, agricultural extension services and even maintenance of rural access roads. I hope as we approve this money, the short period between now and 8<sup>th</sup> August when we go for the elections, will be a period when we can protect these resources and ensure that nobody will fiddle and play around with this money because of the knowledge that we are all busy with the elections. We want to send a very clear warning to all governors out there that they shall be accountable for every penny of this money expended

whether well or badly under their watch or whether they are reelected or not. They shall be held accountable for these resources as we pass this Division of Revenue Bill.

Hon. Speaker, I support.

**Hon. Speaker:** The Member for Balambala.

**Hon. Aden:** Thank you, Hon. Speaker for giving me an opportunity to contribute to this Bill. From the outset, I support it and join my colleagues in saying that it is unfortunate that this Bill has taken such a long period of time. I agree with my former Chair, who I was privileged to serve in the same Committee once, that, indeed, even under our Constitution, the issue of dealing with this Bill has proved challenging time and again. Unfortunately, this time round, it is even more challenging than we may have seen in the past few years. It is an issue we need to revisit as a nation and relook at our Constitution to see how we can improve the process for the interest of Kenyans.

The risk we run is that should this Bill continue to be delayed like we have seen happen, our counties are likely to face cash crises in the very near future. We know very well that this is an election year and Kenya is facing serious drought particularly in the area I come from of Garissa County. These funds are very much needed this time around more than ever before in the various counties of the country. I do not agree with the fear that some outgoing governors might steal this money and run away with it. No! Our Constitution is very clear under Article 226(5) that any Government official whether in or out of office will be held liable for any loss they cause to happen and will be forced, if found guilty, to repay back that money. They will be surcharged that money. If you think you are now leaving office, eat and run away, my friend, you can only run away with problems which will catch up with you in the near future. To the governors, I want to say that these funds need to be handled very carefully.

The Kshs291 million is an amount which is an improvement of about Kshs10 million more than we gave to the counties in the last financial year. This improvement is good for Kenyans and I want to urge the governors whose counties are lagging behind that this is very unfortunate. I visited Wajir County and my good friend Ahmed Abdullahi has made real changes to the people of Wajir. I commend him. He is a person and colleague whom I respect very much and I feel very proud that the County Government of Wajir has time and again been seen as one of the best counties in Kenya. For that reason, governors should emulate good practices in terms of good financial management.

Now, they have more support with the Kshs4.5 billion shillings for leasing equipment which I think is a good idea. I know I have challenged this before, but I have seen diabetic patients in my county who otherwise travelled all the way from Garissa to Nairobi receiving these services at far more cheaper prices. The equipment leasing might not necessarily have been a bad idea at all, but I agree with the colleagues who asked for how long we shall lease these machines. We cannot afford to continue paying Kshs4.5 billion to lease equipment. Definitely, in the long run, it will be more economically viable for us to purchase those machines and own them rather than continue paying that money to business people.

The condition of Level 5 hospitals in many of our counties is still wanting. It is unfortunate because this is the highest level of medical institutions in various parts of the country. I want to urge the governors that the money allocated to them, the Kshs4.6 billion unconditional grant, is an opportunity for them to improve the services offered in hospitals and medical facilities so as to ease the suffering of Kenyans and help them enjoy life more.

With regard to the issue of the rehabilitation of village polytechnics which has been granted Kshs2 billion, a large number of our youth are unemployed. This is becoming a

problem. There are people who have finished Standard 8 or who might not necessarily have had the opportunity to even go up to Standard 8, who have not had the opportunity to go to school, but because of drought, their alternative livelihoods of pastoralism or farming has been taken away and they now find themselves in the villages. Even for those who perform poorly in Form Four exams and wish to continue with life, those village polytechnics are the biggest opportunity to help them get those critical skills which can help them get self-employment.

Time and again, counties have got the money. Unfortunately, there is not much on the ground in terms of village polytechnics. I urge the governors that for the betterment of Kenyans, our country and people, village polytechnics should be rehabilitated using the Kshs2 billion given for that purpose. Those who do not have village polytechnics should take the opportunity to put up the facilities to help Kenyans equip themselves with critical knowledge in their lives.

On the issue of the Kshs7.9 billion which has been given for the Fuel Levy Fund, what has happened recently is that a number of roads that, otherwise, used to fall under KeRRA, have now been put under county governments. For example, in my constituency, one of the roads that is a very well-known trade route between the town of Balambala and the town of Dang'ere has been handed over to the county governments. Unfortunately, for two years now, this road has not received any attention. I just want to urge the county governments that now that we are receiving money like Kshs7.9 billion, there is no excuse at all why such a road should remain unattended and impassable in some places like the road that I have just mentioned.

I do not want to say much on this Bill. Much has been said by my colleagues and I have no intention of repeating the good points that have already been said. I just wanted to urge our colleagues in the other House to realise the urgency with which this Bill is being awaited. The county governments have to do a lot of things. We are doing the vertical split which means sharing of revenue between the counties and the national Government. That is what we are doing today. The Senate is required to do the horizontal split which is share out funds to the respective counties. Each county is required to present the same to their own assemblies so that they can now hold the required public hearings. There is quite a lot of work and knowing that this is an election year, we might find ourselves in a situation where counties do not have funds to operate in the near future. For that reason, without further delay on this issue, I support the passage of this Bill.

**Hon. Ng'ongo:** Thank you very much, Hon. Speaker for giving me this opportunity to contribute to the Division of Revenue Bill, 2017.

My colleagues have spoken and said that this Bill had been passed in this House and so we did not expect to transact the same again. Looking at what has happened with this Bill, it reminds me that we really struggled as a country to come up with the Constitution in 2010. One of the best chapters in that Constitution is Chapter 12 on public finance.

*(Hon. S.S. Ahmed argued with the Clerks-at-the-Table)*

**Hon. Speaker:** Hon. Shakeel, you cannot come to quarrel staff. That is out of order. If you remove your card for whatever reason, you cannot blame the staff. Just take your seat. I can now see your name. You can now be seen. You are second last. The luck is that a number of the Members who are ahead of you have already spoken. The Members ahead of you spoke and went back and inserted their cards. Let Hon. Mbadi make his points.

**Hon. Ng'ongo:** Thank you Hon. Speaker. The Member for Kisumu East will have his time very soon. I can see he is really agitated.

I had started by saying that Chapter 12 is one of the most comprehensive chapters of our Constitution detailing the processes of budget making. I want to go further and mention that we have an omnibus law in the name of the Public Finance Management Act which collapsed all the previous statutes that were dealing with public finance management in this country. Looking at this law and taking the sections that deal with the budget-making process, it is exhaustive, very simple and easy to understand. Today, we are dealing with a situation that could have been avoided easily if we followed the budget-making process as spelt out in law.

First, the budget-making process starts in September. That is the time the Cabinet Secretary engages with the line Ministries and even makes forecasts. This comes a long way before the Budget Policy Statements and the Division of Revenue Bill. One would expect that we exhaust all the avenues provided for in law to avoid conflicts of whatever nature.

As Hon. Nyikal mentioned, there is the IBEC which brings together stakeholders. This is chaired by the Deputy President and almost every individual, institution and body that is relevant in public finance sits on that Council. Our Chair of the Budget and Appropriations Committee is a member of that Council. The reason why the Senate is not represented on this body is that no one imagined that the Senate will be involved in the vertical share of revenue. That is my view and this is a position I have held consistently on this matter. That was not supposed to be a function of the Senate. I am fully aware that the Supreme Court pronounced itself through an advisory opinion, which we have to live with, that the Senate is to be involved in this matter hence where we are today - a stalemate between the two Houses.

I want to say to the people of Kenya that going forward, a decision will have to be made whether we want to continue with the current arrangement where we have two sister Houses, which a lot of time, end up disagreeing on vertical division of revenue, or we revert to a system where we give, either exclusive authority to the National Assembly to divide revenue between the national Government and the county governments, or give the Senate a role, but give them a veto power if that is what we want. We cannot continue with a system as critical and important as the division of revenue and involve the two Houses and give them equal power. This will put this country into unnecessary disagreements. I have spoken here before and said that for now, the Jubilee side of both Houses has majority and we still have this stalemate. Assume we have a system where two coalition parties have majority in either House where say, Jubilee has a majority in the Senate and the National Super Alliance (NASA) has a majority in the National Assembly or vice versa, every year, we will always have a stalemate of this nature. I do not think that is very healthy for this country. As a country, if we want to have both houses - the National Assembly and the Senate - dealing with this Bill, we must give one House a veto power over the other.

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

*[The Deputy Speaker (Hon. (Dr.) Laboso) took the Chair]*

Otherwise, we will be debating and disagreeing to the extent that at one point, we may end up losing the Division of Revenue Bill. What then will happen to our country? How then will we get resources for the counties? How will we even have a legal framework or authority to

spend on national Government functions? That is my position that this country will have to decide.

I have heard my colleagues speak a lot about county governments and resources envelope that they get. I also want to share the same concerns that my colleagues have. My colleagues have a lot of concerns whether the resources that we allocate to the counties deliver services for which we allocate them. I will also say that that is not the case. We have a lot of wastage. A lot of resources are also spent properly. That, we must also say because if you go to counties, there are certain services we used not to receive, at least, for sure, you see some services being delivered. But what we expected and what Kenyans woke up very early in 2010 to vote for devolution for, we have not realised or achieved it. But does that mean, therefore, that we are going to starve counties of resources just because there are some rogue officers of county governments embezzling funds or misusing resources that we put to the counties? My answer is no. We have, as a country, a responsibility. Those who are placed in positions of governance and those who have the responsibility to investigate fraudulent activities that take place in counties, are the ones failing this country. It is not even those governors that we talk about or the county officers. The institutions we put in place to ensure that any person who is not sharing the dream of Kenyans of ensuring that the devolved resources that we put to counties, should ensure that the resources are put into good use. This will ensure that Kenyans can be happy and proud that they did not waste their time when they work up very early in the morning of 4<sup>th</sup> December 2010 to cast their votes for a new Constitution. Those people will live to praise themselves wherever they are.

Even as we castigate the county governments, we must be alive to the fact that corruption is a cancer in this country. It eats across at the national and county levels. We even elect very many thieves in this country. By the way, even our electoral process has no way of identifying these thieves because we put every Dick, Tom and Harry who wants to run for an office to the electorate to decide. The electorate has no capacity to determine who these thieves are and deal with them accordingly.

Hon. Deputy Speaker, with those many remarks, let us compromise on this Bill. Even if it is a matter of comprising with the Senate, let us do so, so that we can have it passed this time without a hitch.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Joseph Limo.

*(Hon. S. S. Ahmed protested)*

Hon. Shakeel, I am aware your card was jumped. Just take time. Hon. Shakeel, you will get your time. Hon. Joseph Limo.

**Hon. S.S. Ahmed:** It is not fair. I have been here for two hours. *(Inaudible)*



**Hon. Deputy Speaker:** Order, Order. Hon. Shakeel, do you want to continue being in this Chamber? Relax. We know what you may be feeling or going through. Please, relax. Hon. Joseph Limo.

*(Laughter)*

**Hon. Limo:** Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute to this important Bill. I know this is an issue because we had already passed this stage, but because of procedural issues, we are back. This is a time when, as a country, we should actually decide what happens with such Bills. Whereas we have mediation between the National Assembly and the Senate, it is important to have a sustainable way of resolving the issues because more often, it is very rare for any Bill to move out of the National Assembly and come back the way it was from the Senate. I call upon the two Houses of Parliament to look for a way of doing house-keeping early, so that we can have a common stand especially when it comes to Bills like the Division of Revenue Bill which is of great national importance.

We cannot hold the country at ransom when one House rejects such kind of a Bill and it goes around. Suppose the Budget was not done earlier? The country can be held hostage for a long time without service delivery because of disputes between the two Houses. So, as we discuss this, we should make the country aware that there is a serious problem whenever these two Houses do not agree. That begs the question whether the two Houses in this country are necessary. To me, they are not because the work of the Senate is duplicated at the county level by the county assemblies. Therefore, in terms of oversight, county assemblies, if given enough capacity, can do what the Senate does. At the end of the day, what we pass here, the Constitution says that all Bills must be passed by the National Assembly. So, at the end of the day, what we do and what the Senate does is a duplication. Therefore, we need to rethink this in future because if we are saying that the Senate talks on behalf of counties and if their work is only to come and bring conflict between the two Houses, then it is unnecessary.

Therefore, this Division of Revenue Bill is very important and has been done well. I want to bring the country to speed that the national Government has tried. Right now, we are talking about almost 35 per cent of the national revenue going to counties. At the same time, the national Government supports very serious projects which are being done at the county level. Among them is the medical equipment leased on behalf of the county governments. Though earlier county governments had refused to take them, they are doing a great job. Right now, counties which have fitted the machines are offering state of the art services to *wananchi*. That is very good.

It is also important for our people to know that counties are supposed to charge some service user fee for the use of the facilities which were minimal. At some point, they charged Kshs20 or sometimes Kshs100 to visit Government hospitals. The national Government, through conditional allocations, has given counties Kshs900 million to cater for free attention at medical clinics at the county level. So, Kenyans should know that the national Government has done a

good job. Other than providing medical equipment, it has also paid, through conditional allocations, for the use of hospitals. But how many hospitals offer free medical care? Many of them still charge. In almost all of them, patients pay for medicine or they are told to go to pharmacies. Therefore, I urge counties to get more organised and provide services to the people, which are heavily compensated for by the national Government.

When it comes to youth empowerment, the youth of this country have always been taken round and round in terms of empowerment. The Government has done great. One, it has provided money for youth empowerment through the Youth Enterprise Development Fund and the Uwezo Fund programmes. At the county level, the Budget has provided Kshs2 billion for rehabilitation of youth polytechnics. Youth polytechnics are very important in giving the youth skills they require. It is high we embraced technology and told our youth that it is no longer time to wait to be employed. Youths can be employers of choice in this country through proper technical training. At the county level, the youths who are not able to proceed to high school are encouraged to join youth polytechnics.

The Government has provided Kshs2 billion to rehabilitate and put enough machinery, so that the youth can enjoy. At the same time, when roads were reclassified, it is important to note that most of the roads which used to be rehabilitated by KeRRA were transferred to county governments. For example, my constituency remained with two roads only, namely, the road from Brooke-Chepseon-Kipkelion and Londiani all the way to Makutano and the one starting from Chepsir to Kuresoi. Those are the only two roads which are remaining with KeRRA. The rest have been transferred to county governments. Therefore, that explains the allocation from the Fuel Levy of 15 per cent of Kshs7.8 billion which we should make people aware that this money has been taken to counties. Therefore, the rehabilitation of roads which used to be done under the national Government is now squarely in the county governments.

I also want to add something on what the World Bank has given through conditional grants. These conditional grants are important. I am happy the World Bank has given grants to support performance of various county governments through the Kenya Devolution Support Programme (KDSP). It has given Kshs1.5 billion which will be given together with the Kshs4 billion to strengthen public finance management systems in counties. This will be given to those counties which have been assessed independently and have been seen to be competitive. This is very important because the counties that will be supported will encourage the counties which are below bar to come up. Once you move to performance based funding, this will be very good for future management and especially the counties which have not done very well.

The national Government, during this financial year, has continued strengthening the several activities which are of national interest. One of them being enhanced security operations. We have seen a lot of improvement in terms of funding of security issues, education and support of national social safety net. This is very good.

I support this Bill and ask the House to support it. Thank you.

**Hon. Deputy Speaker:** Thank you. I want to give Hon. Shakeel Shabbir. Have your bite now, Hon. Shabbir. Do not take it on us. I know many people are hurting in this House. Let us keep the matters of this House here and those other ones we can sort them out. Have your bite now, Hon. Shakeel.

**Hon. S.S. Ahmed:** Hon. Deputy Speaker, thank you very much, but we must say that one cannot stay here for two hours and be put in the back by a mistake of a clerk which can be rectified. I am sorry about it, but it is the case. I am not saying that this place is rigged, the machines are bad. The clerks should correct the error.

On the Division of Revenue Bill, devolution has been a fight that we have fought for a long time. We started long time ago. We sat through the Constitution review and struggled over the issue of the division of revenue. Change takes time. We agreed that there was going to be a vertical split. The vertical split was the responsibility and the authority that lays with the National Assembly. At that time, we discussed in great detail the role of the Senate. Many of the Senators were in Naivasha and restricted the role of the Senate to ensure that devolution was not killed by a rogue National Assembly. Unfortunately, it is the other way around. It is the National Assembly which is trying to keep the national purse and the systems in order. It is for the Senate, as we said, to do the horizontal split. The vertical split and the horizontal split are very easy when you speak about it in that manner. Remember, we inherited a system that had inherent problems when it came to the issue of devolution. The idea was that we did not want to throw the baby with the bathwater.

As Hon. Nyikal said, and I agree with him, the issue of the Division of Revenue Bill is more an issue of procedure and process than the issue of the particular times on that Bill. I know there was another proposal to cut short this debate because this Bill had come earlier. We must, as the National Assembly, work and understand that this issue has many repercussions. We are part of the clock. If the clock is broken, we can only fix it in stages. As such, when it comes to the issue of the National Assembly and the Senate, the Senate and the governors must also play their role. Much has been spoken about what should and what should not have been. The issue, as we said, is that we threw out the local authorities without care to see whether we were throwing out the good bits with the bad bits. We did not throw out many good bits. The local authority system is the one we inherited in 1965 from the British and colonial Government. So, the problem that we are facing is not new and is not going to be solved at this time. It is not going to be solved in another couple of years until we finally understand which clock runs what.

Unfortunately, the Senate and the governors seem to think that the National Assembly is becoming a block to their machinations. Unfortunately, the systems that were set up before like the Transition Authority, instead of being extended, were terminated very early. This division of revenue, what people do not understand, is that it is not only the revenue, but the revenue sources. Many of these have been squandered. Many of these have been lost during the transfer from the local authorities to county government. In Kisumu, we lost a lot of good assets like houses. We do not know where they are. When we are now looking at the division of revenue, as it was said by my good friend, the former Permanent Secretary, Hon. Nyikal, these are not simple issues. They have ramifications and one must look at the details. I am suggesting that at this time, we pass the Division of Revenue Bill.

I sit on the Budget and Appropriations Committee and we passed it with some of trepidation that it is not going to solve the problem. You cannot solve a long-term problem with a short-term solution. Likewise, you cannot solve short-term problem with a long-term solution. Both ways, we are stuck. Both ways, this is going to be taken this year and it is going to be in the 12<sup>th</sup> Parliament. We hope we shall solve the problem.

With those remarks, I support. I apologise, but seriously feel that I was hard-done by. I apologise for my outburst. Thank you, Hon. Deputy Speaker, for allowing me to speak.

**Hon. Deputy Speaker:** Thank you, Hon. Shakeel. Before I give the next speaker a chance, I want to recognise the presence of Saint Marys Girls Tachasis from Tinderet Constituency, Nandi County. You are all welcome in the National Assembly.

Next is Hon. Gideon Ochanda, Member for Bondo.

**Hon. Ogolla:** Thank you, Hon. Deputy Speaker. I rise to support the Bill based on the procedure that is at hand. However, I want to quickly mention one or two things that, in my view, will help us as we move forward in terms of how the Division of Revenue Bill might be handled in future. I think there are many other things that if we are not careful, we will be in this game of back and forth for a much longer time than would be useful to the country.

One thing that is important is that we have been on an incremental arrangement with the amount of money or the funds that we have been giving to the counties over the last three years. There is not a single year that we have gone below the subsequent years. This is something that needs to be appreciated. However, as we do this, one or two things need to be mentioned. First, the Senate does not go through the kind of pain this House goes through in terms of managing or handling the Budget process. We should subject the Senate to some good amount of pain to understand what we go through as a House. If we do that, they will understand rather than come up with figures that it is supposed to be 38 or the other figures without looking through in terms of what the other factors are being looked at. It is one thing that is taking us back. The Senate has had clamour to increase this amount of money. For example, if they bothered to explain at one moment that they have looked at Article 203 of the Constitution, they would have indicated very clearly the reasons why some of this money is required. That might have been a much more useful way of looking at it rather than just coming up with global figures from one year to the other that this time it was this and next year it must be that.

In a similar manner, the Commission for Revenue Allocation needs to adjust. Partly, they are also misleading the Senate because for quite a bit of time, the Senate wants to be closer to their figures in terms of when we are looking at the issue of the division of revenue. If the Senate bothered to look at Article 203 of the Constitution, there would be a basis of increasing the money. An example would be based on the need for economic optimisation of each country, that if counties came up with some kind of creative ways of how they wanted to optimise in terms of their economic arrangement, that would have been a much better reason of coming up with different figures from time to time or coming up with new amounts. When you look at it, the process of transferring functions has not been properly completed in this country. The process of costing these functions has not been properly competed in this country. So, when each year we want money to go to the counties and we are not too sure whether those functions were transferred, we are doing a big blunder. The issue of funds needs to go punch by punch with functions. That if we gave this function to the county governments, we costed that function and we know the amount of money it needs. Then we follow that with money and/or complaining that that money has not been transferred. It makes more sense than the way we are handling it as a country at the moment, particularly how the Senate is looking at it. The other thing that I think, is a big problem is exactly the kind of a pain I mentioned earlier.

Articles 221 and 222 of the Constitution give the National Assembly a lot more roles in terms of looking at the Budget of this country. The Cabinet Secretary in charge of Finance tables before the National Assembly the Estimates each year. This does not happen at any moment with the Senate. The Senate does not have equivalence where, for example, accumulative presentations of the 47 counties are placed in front of them indicating that these were the expected expenditures and revenues such that they can balance themselves. When the Senate

does not have all these and does not consider many of these things and comes up constantly with a higher figure, and we now need to go up beyond what we had last year, there must be a very good basis which we still do not have at the moment. So, there is a bigger problem. Either it is a constitutional issue that must be handled, or, like some of my colleagues have suggested here before, we must get a very informal way of engagements before some of these things are placed or go at this level where the same Bill has to be brought twice or thrice and we are talking about the same things.

I support the Bill, but those are concerns that, in my view, to be checked as we move forward in the next years. Thank you.

**Hon. Lati:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Lelelit, what is your point of order?

**Hon. Lati:** Thank you, Hon. Deputy Speaker. I stand on Standing Order No. 95 to move that the Mover be called upon to reply.

Hon. Deputy Speaker, we have discussed this Bill excessively and we are now repeating ourselves. Without anticipating anything, we have a lot of business in the House to go through. So, I do not see anything that could be said on the Division of Revenue Bill that has not been said. So, I ask that that the Mover be called upon to reply.

**Hon. Deputy Speaker:** Is that the feeling of the Members of the House?

**Hon. Members:** Yes.

**Hon. Deputy Speaker:** Hon. Members, you know we always put it to the vote.

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

Thank you, Hon. Members. Hon. Kaluma, we have already put the Question. You must have been very busy doing other things. I know there is a lot of catching up to do. Let us now allow the Chairman of the Budget and Appropriations Committee, Hon. Mutava Musyimi, to reply.

**Hon. Musyimi:** I thank you, Hon. Deputy Speaker. Mine is the happy task of thanking the Hon. Members for very fruitful and helpful suggestions. Sometimes I wish the Senate would find the time to go through the HANSARD and find out what is being said here about this process. I think that has one of the key points that have been raised time and again. We are not reacting. We just are stating the facts as we see them. I really do think that when we come back, maybe through the socio-economic audit, we need to give powers to one House, so that they can have the final say. The buck needs to stop somewhere.

The other thing that we need to appreciate, as we said earlier, is that the envelope is small. We imagine that the envelope is big. It is not. I think if you go back to the numbers over the last four years, at least Kshs1 trillion has gone to the country governments and a lot of that money has been spent putting up structures and setting up administrative units. Not as much money has gone into actual development. So, the economy has been affected negatively and the same thing has happened with respect to the National Assembly. As we try to roll out the 2010 Constitution, the Constitution demanded of us that we create new institutions and a lot of money also went into setting up these new institutions, which also has shrunk the kind of funds that normally would be available for development.

So, we are not putting in as much money to grow the economy as we imagine we have. So, when the World Bank tells us that the growth of our economy this year would not be 5.6 per cent as we imagined, but rather 5.3 per cent, frankly, I am not surprised. So, we need to come back and look

at ourselves. Obviously, the corruption bit has not helped. There is too much seepage and stealing. There is not enough being done to contain the wanton corruption that is taking place. So, money is not being made available for actual development and when that does not happen, it means that the pie is not as big. The envelope is small and we are now beginning to fight over very little funds. I want to thank the Members for their contribution and we look forward to being able to conclude this matter.

With those few remarks, I beg to reply.

**Hon. Deputy Speaker:** Thank you, Hon. Members. We will be putting the Question when it is appropriate. I now want to move to the next Order.

## MOTION

### REPORT OF THE MEDIATION COMMITTEE ON HEALTH BILL, (NATIONAL ASSEMBLY BILL NO.14 OF 2015)

**Hon. Deputy Speaker:** Hon. Rachel Nyamai.

**Hon. (Ms.) (Dr.) Nyamai:** Thank you, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of Mediation Committee on its consideration of the Health Bill (National Assembly Bill No.14 of 2015) laid of the Table of the House on Wednesday, 17<sup>th</sup> 2017 and approves the mediated version of the Bill.

The Health Bill 2016, National Assembly Bill was published in the Kenya Gazette Supplement No.44 of 2015 as a Bill originating from the National Assembly. The Bill underwent the First and Second Readings and was subjected to public participation at both the National Assembly and the Senate. It was then referred to the Senate for consideration pursuant to the National Assembly Standing Order No.142. The Senate subjected the Bill to First and Second Readings and public participation as required by the Constitution and Senate's Standing Orders and was passed on the 14<sup>th</sup> of July 2016 with amendments and referred back to the National Assembly. The National Assembly, during its sitting on the 24<sup>th</sup> of November 2016, considered the proposed amendments by the Senate and by resolution rejected the Senate amendments. Consequently, and pursuant to the National Assembly Standing Order No.149 and the Senate Standing Order No.154, the Bill was referred to the Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

The following were the contentious clauses that the National Assembly rejected and were referred back to the Senate: Clause 5(4), Clause 15(c), Clause 16(2)(a), Clause 17(1)(j), Clause 18, Clause 19(4)(a), Clause 24(a), Clause 25, Part IV which comprised clauses 30 to 44, Part VII which comprised clauses 62 to 67, Clause 73, Clause 89, Clause 91 and the First Schedule. Consequently, the Mediation Committee on the Health Bill, 2015, National Assembly Bill No. 14 of 2015 was constituted by the Speaker of the National Assembly pursuant to the National Assembly Standing Order No.149(2) and the Speaker of the Senate pursuant to the Standing Order No.154 on 26<sup>th</sup> January, 2017 and 25<sup>th</sup> February 2017 respectively. The Committee was

established to come up with an agreed version as I said earlier. The following were the Members of the Mediation Committee;

1. Hon. (Dr.) Rachel Nyamai
2. Hon. (Dr.) Nyikal
3. Hon. (Dr.) Pukose – Deputy Chair of the Departmental Committee on Health National Assembly
4. Hon. (Dr.) Naomi Shaban
5. Hon. (Dr.) Enock Kibunguchy

From the Senate, we had the following Senators:

1. Sen. (Dr.) Wilfred Machage – Chairperson Departmental Committee on Health – Senate
2. Sen. Zipporah Kittony
3. Sen. (Prof.) Wilfred Lesan
4. Sen. Mvita Mshenga
5. Sen. Muriuki Kaure.

The Committee held its first sitting on 4<sup>th</sup> April 2017 and elected myself as the Chair and Hon. (Dr.) Wilfred Machage as the Vice-Chair.

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. I would like to thank the Members because this was something that we really looked forward to.

Hon. Deputy Speaker, I take this opportunity to thank your office and that of the Speaker of the Senate, not forgetting our clerks from the two Houses who extended the necessary support that we required in order to come up with this version. I also thank all the Members of the Committee for the sacrifice, commitment and selflessness to the cause of the mediation process until a common ground was arrived at. As you may recall, this was done during the busy nomination period.

I now take this opportunity to take the House through the clauses. On Clause 5, the Senate amendment was that Clause 5 of the Bill be amended by inserting the following new subsections immediately after subsection 2, “The national and the county governments shall ensure the provision of free and compulsory vaccination for children under the age of 5 and maternity care” and “For the purpose of implementing subsection 3, the national Government shall in consultation with the respective county governments provide conditional grants to county governments. The justification of the Senate was that the amendment sought to anchor into legislation provision of free maternity and also ensure provisions of funds through conditional grants to cater for service. The Committee’s recommendation was that the Committee agreed with the proposed amendment to Clause 5(3) with further amendment to delete the word “compulsory”. The Committee rejects the Senate Amendments to Clause 5(4) and the justification was to legislate for conditional grants goes against best practise and causes rigidity in law. The Mediation Committee resolved that Members agreed with the proposal by the Senate to insert the following new Sub-clause (4) to read as follows: The purpose of implementing subsection (3), the national Government shall in consultation with respective county governments provide funds to the county governments.”

The justification was that the amendments seek to anchor into legislation provision of free maternity and ensure provision of funds to cater for both services.

Regarding Clause 15, concerning the national Governments Ministry responsible for health, Clause 15 of the Bill to be amended in Sub-clause (1) by deleting-

*(Loud consultations)*

**Hon. Deputy Speaker:** Order Members! Hon. Jakoyo's *Kamukunji*, let the Member moving be heard.

**Hon. (Dr.) Nyamai:** Thank you, Hon. Deputy Speaker.

Ensure that the implementation of the rights to health specified in the Bill of Rights and more particularly progressive realisation of the rights to the highest attainable standard of health including reproductive health care and the right to emergency treatment. The justification of the Senate was that this amendment will ensure that the role of the national Government is more on policy as health is a devolved function. The Committee rejected the Senate amendment to Clause 15(c) and the justification for rejection was that the role of the National Assembly is to ensure implementation of the rights to health enforcing standards and policies including ensuring Kenya meets international health obligations.

The Mediation Committee resolution was that the Committee resolved to reinstate Sub-clause i(c) as passed by the National Assembly as follows: "Ensure the implementation of rights to health specified in the Bill of Rights and more particularly the progressive realisation of the right to the highest attainable standard of health including reproductive health care and the right to emergency treatment."

Clause 16 regards the office of the Director General. The amendment from the Senate was that Clause 16 of the Bill be amended by deleting Sub-Clause 2 and substituting therefor the following new Sub-Clause 2: "The Director-General for Health shall be recruited by the Public Service Commission through a competitive process and appointed by the Cabinet Secretary." Substituting also (a) with a new paragraph, "Be a health practitioner registered by respective regulatory authority." Just to inform the House, this meant that any health professional would fit even if they are not doctors. The Senate's justification for this was that the position of the Director-General is not equivalent to that of the Cabinet Secretary or the Principal Secretary and as such, there would be no need to have Director General vetted by Parliament and appointed by the President. The amendment will take the Director-General's position to be appointed by the Cabinet Secretary through a competitive recruitment exercise carried by the PSC.

The Mediation Committee resolved to have Clause 16(2) to read as follows:

"16(2). The Director-General for Health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary."

The justification for this was that given the role of the DG as an adviser to the Government on all matters relating to health within the health sector, vetting by Parliament will ensure public representation in the process through elected representatives. The Committee agreed with the National Assembly's position on Clause 16(3)(a) as follows:

"16(3)(a). A person appointed under subsection (2) must be a medical practitioner registered by the Medical Practitioners and Dentists Board."

The justification for this is that the DG will be in charge of the country's health sector and should have the basic qualifications for medicine as a first degree.

On Clause 17 on the functions of the DG, the Senate had made an amendment that it be amended by deleting paragraph (i): provide guidelines for registration, licensing, certification, gazettement of all health facilities; and the deletion of paragraph (j): be responsible for internship programme for health workers.



The Committee's recommendation was that the National Assembly rejected this and brought it as a matter to be discussed during the mediation. The justification was that the role of the national Government is to develop standards, policies and guidelines for registration, licensing, certification and gazettement. Additionally, internship is part of training, and capacity building is a national Government function.

The Mediation Committee resolved to reinstate Clause 17(i) and (j) as per the National Assembly's amendment. The justification was that this is in line with the functions of the national Government in developing standards, policies and guidelines for registration, licensing, certification, gazettement and internship. This is because internship is part of training, which is a function of the national Government.

The Senate proposed that Clause 18 be deleted and substituted with the following new clause:

“18. For the purposes of Clause 15(1)(b), the Cabinet Secretary shall—

(a) form directorates to deal with the following matters: medical services, nursing and allied workers, pharmaceutical services, public health and administrative services; and,

(b) notwithstanding paragraph (a), form directorates based on policy priority areas in consultation with the DG.”

The justification was that this will compel the CS to create directorates that deal with areas within the health sector for better coordination.

The Committee rejected the Senate's amendment. The justification for rejection was that creation of directorates is an administrative function and does not require legislation.

The Committee agreed with the Senate Amendment on the creation of directorates by the CS as follows:

“For the purpose of Section 15(1)(b), the Cabinet Secretary shall—

(a) form directorates to deal with the following matters: medical services, nursing, pharmaceutical services, public health, and administrative services; and,

(b) notwithstanding paragraph (a), form other directorates based on policy priority areas in consultation with the Director-General.”

I notice a slight error on the Order Paper, on page 434. I, therefore, seek your indulgence to move a further amendment to include the word “other” to appear in paragraph (b). The word is missing and it makes the sentence not to be in order. Therefore, I beg your indulgence. The purpose of including the word “other” is to enable flow of language so that this amendment does not bring confusion.

The justification for this amendment is to ensure that the CS is able to create directorates that deal with key areas within the health sector for better coordination without requiring legislation. Deleting the phrase “allied workers” in Clause 18(a)(ii) is meant to remove any ambiguity in the law.

Let me proceed to Clause 19 on the county health systems. The Senate Amendment was as follows:

“THAT, Clause 19 of the Bill be amended in subclause (4) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) be a health practitioner registered by the respective regulatory body.”

The Committee rejected the Senate Amendment to Clause 19(4)(a). The justification was that for effective management of the health function, the County Director of Health must be a medical practitioner. The Mediation Committee resolved to retain the National Assembly's

position on Clause 19(4)(a) as follows: “That the person must be a medical practitioner registered by the Medical Practitioners and Dentists Board.”

*(Loud consultations)*

**Hon. Deputy Speaker:** The level of consultations is going up again, Members. Hon. Kajwang’ has his own team now as Hon. Jakoyo continues to cause disturbance in the House. We have a serious Bill before us because it affects all of us. Let us get it out of the way before we leave this House so that Kenyans can see the work we are doing.

Proceed Hon. Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Deputy Speaker. The Senate Amendment was:

“THAT Clause 20 of the Bill be amended by—

(a) deleting the introductory phrase and substituting therefor the following new phrase—

The county government, in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution, shall be responsible for—

(a) deleting the marginal note and inserting therefor the following new marginal note—

Duties of county government”

The justification by the Senate was that Part II of the Fourth Schedule of the Constitution assigns functions to county governments and not departments. As such, the amendment seeks to align the clause to the Constitution. At the mediation stage, the Committee agreed with the Senate’s position to delete the introductory phrase in Clause (20) and substitute therefor with the following new phrase:

“The county government, in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution, shall be responsible for—”

The Committee agreed with the Senate’s position to delete the marginal note. Therefore, we agreed with the position of the Senate. The justification for agreement was that the amendment seeks to align the clause to Part II of the Fourth Schedule of the Constitution, which assigns functions to county governments and not to departments.

Clause 24 is on the retention of service provision. The Senate Amendment was:

“THAT, Clause 24 of the Bill be amended by deleting paragraph (a).”

This amendment is necessary after the deletion of classification of health facilities. Their justification was that the constitutional role of the national Government is to manage any public health institution classified as a national facility.

At the mediation stage, the Committee agreed with the Senate position to delete Clause 24(b). The justification was that retention of Clause 24(b) would have interfered with the devolved health functions/facilities. It could also hamper development of county health facilities to the highest possible levels.

Clause 25 concerns classification of levels of healthcare facilities. The Senate Amendment was that Clause 25 of the Bill be deleted. Their justification was that this clause deletes the classification of health facilities as highlighted in the First Schedule to the Bill. The county governments need to be given freedom to develop health facilities to the highest standards without fearing that the facilities will later on be taken up by the national Government.

The National Assembly Committee rejected the Senate amendment to Clause 25. Their justification was that the technical classifications are in line with the Health Policy 2014/2030, which provides for technical classification as community, dispensaries, health centres, primary, referral facilities, secondary referral facilities and tertiary referral facilities.

At the mediation, the Committee agreed with the National Assembly's position to reinstate Clause 25. However, it also agreed that a new Clause 25 should be introduced to provide that the classification shall not affect health facilities already under the devolved system in the counties. The Committee resolved to reinstate Clause 25 with amendments as follows:

- “(i) re-numbering the prefatory statement as sub clause 1;
- (ii) inserting the following new sub clause immediately after renumbering sub clause 1–
  - (ii) Sub section (1) shall not apply to a health facility under the management of county government at the commencement of this Act.”

This was done because the counties wanted to safeguard the 11 former provincial hospitals.

There is also another consequential amendment which was made on Clause 112 on regulations because it is affected by this Clause. We are seeking to insert a new Clause to read as follows:

“Grading of health facilities in consultation with county governments.”

The justification is that the amendment seeks to provide guidelines for upgrading or downgrading of health facilities.

The First Schedule is on technical classification of levels of health care delivery. On Level 5 Hospital (Secondary Hospitals), we seek to amend the schedule to expand the functions of Level 5 Hospitals to include–

- (i) general specialisation;
- (ii) provision of county specific specialised as care services; and,
- (iii) research centres to provide for research services on issues of importance relating to local conditions within the counties.

The justification is that this will give room for county governments to develop Level 5 facilities to provide specialised services to the counties.

Part V, which affects Clauses 30 to 44 is on establishment of Kenya Health Human Resource Advisory Council (HRAC).

The Senate amendment was that Clause 30 to Clause 44 be deleted. The senate's justification for the proposed deletion was that it deals with the establishment of Kenya Human Resource Advisory Council in order to give the county governments the independence to deal with health work force.

The National Assembly Committee rejected the Senate's amendment for deletion of Clauses 30 to 44. The justification was that the HRAC was established to address the current gap in harmonisation of county health workers' emerging issues, including – and not limited to – internships, rationalising of remuneration, transfers and promotions among other issues.

At the Mediation stage, the Committee agreed with the National Assembly's position to reinstate Clauses 30 to 44 with amendments as follows.

- “Clause 30 of the Bill be amended in sub clause (1) by–
  - (a) deleting it and substituting therefor with the words “one person not being a governor nominated by the Council of Governors to be part of the council”;

(b) deleting the words “Intergovernmental Consultative Council” and substituting therefor the words “County Directors of Health” appearing in paragraph (g) to read “one person nominated by the County Director of Health”; and,

(c) inserting the words “who shall be an *ex-officio* member” immediately after the word “officer” appearing in paragraph (g) to read “the Chief Executive Officer, who shall be an *ex-officio* member and the Secretary to the Council”.

Hon. Deputy Speaker, the justification is that the amendment will provide for representation of counties and the Council of Governors and allow the Council of Governors to appoint their preferred representatives in the Health Human Resource Advisory Council.

We agreed that Clause 31 of the Bill shall be amended in sub clause (1) by inserting the word “welfare” – which was not there in the earlier version – to read “the welfare and the scheme of service for health professionals”.

The justification is that the amendment allows for flexibility.

Clause 46 provides for the Board of the Authority and its composition. The Senate amendment was that Clause 46 of the Bill be amended by deleting sub clause 1(f).

Their justification was that after deleting the council in Clause 30, the amendment is necessary as reference had been made to the Council to nominate Members of the Health Professions Oversight Authority. The Committee rejected the proposed Senate Amendment to Clause 46(1)(f) and seeks to amend it to include the words “of governors.”

At the mediation stage, the Committee resolved to reinstate sub clause 1(f) as passed by the National Assembly with a further amendment to it by inserting the words “of governors” immediately after the word “Council” so as to read “two representatives nominated by the Council of Governors”.

The justification is that it is a requirement to have the Council of Governors represented in the Health Professionals Oversight Authority.

Clause 48 provides the functions of the Authority. Upon deliberation on this matter, the Mediation Committee also considered the provisions of Clause 48(a). We resolved to amend paragraph (a) by inserting the words “and county” and the word “national” appearing in paragraph (a) to read “maintain a duplicate register of all health professionals working within the national and county governments health system”.

The justification is for inclusivity.

Hon. Deputy Speaker, Part VII, which affects Clauses 62 to 67, concerns the regulation of health products and health technologies. The Senate had suggested that Clauses 62 to 66 be deleted. The justification was that the proposed Authority conflicts with existing legal frameworks, including the Kenya Medical Supplies Authority Act and the Pharmacy and Poisons Act among others. It was, therefore, their view that, that part should be deleted from the Bill, and that the necessary legal frameworks should be created through separate statutes.

The Committee rejected the Senate’s Amendment to delete Clauses 62 to 66. The justification is that this provides for establishment of an Act of Parliament, as a single regulatory body for regulation of health products and health technologies is important. The Government policy currently is to separate the regulation of the profession from the regulation of the products and health technologies for efficiency, and to improve health services. This policy is informed by the practice amongst health practitioners in countries like the USA. The Mediation Committee agreed with the National Assembly’s position to reinstate clauses 62 to 67 with amendments to the following clauses.

We agreed to amend Clause 67 in sub clause (1) by deleting the words “where the Kenya Medical Supplies Authority is the primary provider” appearing immediately after the word “upon” to read “the procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the intergovernmental arrangement for medicine and medical products agreed upon”.

Two, in Sub-Clause 3(a), deleting the word “national” appearing after the word “county” to read as follows: “The Kenya Medical Supplies Authority (KEMSA) may be the point of first call for procurement of health products at the county referral level and it shall endeavour to establish branches within each county at such locations as it may determine.”

The justification for the first amendment is that the Government policy is to separate the regulation of profession and product. The second amendment is proposed to remove the mandatory requirement placed on procuring entities to procure from KEMSA and allows room to procure from other providers of health products when the commodities may not be available at KEMSA.

In Clause 73 on mental health, the Senate Amendments were that the Bill be amended by deleting Clause 73. Their justification was that there is existing legal framework and as such there is no need to have it included in this Bill. The Mediation Committee’s recommendation was that it rejected its deletion. Its justification was that mental health is a major health issue and its inclusion in the Health Bill, 2016 is to give effect to other legislations which may follow. The Mediation Committee agreed with the National Assembly’s position to reinstate Clause 73 with the following amendment:

“Inserting the words “both at the national and county level” immediately after the word “country” appearing in paragraph (c) to read as follows: “Establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country both at the national and county levels.”

The justification is that the inclusion of mental health in the Health Bill which is the parent law anchoring health matters gives effect to other legislations which may follow.

On Clause 89 on licensing of private entities to operate hospitals and clinics, the Senate Amendments were that the Bill be amended by deleting Clause 89. The justification was that a separate legislation should be enacted. The Mediation Committee’s recommendation was that it rejected the Senate Amendment to Clause 89. The Mediation Committee’s resolution was that it agreed with the National Assembly’s position to reinstate Clause 89 and the justification was that the provision is provided for to foster and encourage private sector participation in the health sector.

Clause 91 on duties of the licensees, the Senate Amendment was that the Bill be amended by deleting Clause 91. The justification was that separate legislation should be enacted. The Mediation Committee rejected the Senate Amendment to delete Clause 91. The justification was that private participation in the health sector requires regulation. The Mediation Committee agreed with the National Assembly’s position to reinstate Clause 91 and the justification was that private sector participation in the health sector requires regulation.

I would like to thank all those who participated in coming up with this agreed version of the Health Bill. It has now been agreed upon by the National Assembly and the Senate. I would like to thank all the Members of the Departmental Committee of Health both in the National Assembly, the Senate and the Mediation Committee Members appointed by the Speakers of the National Assembly and the Senate.

I now take this opportunity to request the House to adopt the Report by the Mediation Committee on the Health Bill and approve the mediated version of the Health Bill. I beg to move and call upon Hon. (Dr.) Nyikal who has been a strong Member of the Departmental Committee on Health and was also part of the Mediation Committee to second.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. (Dr.) Nyikal, you have the Floor.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Deputy Speaker for giving me the opportunity. I rise to second the adoption of this Report. Let me start by saying that this is an extremely important Bill. It may probably be the biggest legacy that the 11<sup>th</sup> Parliament leaves in this country. This is because prior to the enactment of this Bill, we have been working with the Public Health Act which was enacted long before Independence probably in the 1940s. At that time, it did not even recognise the existence of Ministers for Health. It only recognised the Director of Medical Services and the public health officers. That Act did not even recognise the existence of private practice or provide health institutions.

Over the years, we have tried to deal with it. Therefore, this effort to get a new Health Bill has been there for the last 10 years. Because of the inadequacy of the previous Act, there has been a large number of Acts in the health sector. Probably, they are 20 or more. There was need to have a mother Act and this is what the Health Bill is.

Let me also appreciate the work which has been done by the Mediation Committee. It was in the middle of the nomination period and they were able to sit through and we appreciate that.

The overall view which the Chair has gone through in fair amount of details is basically to stem the fears that arose from the Senate that this Bill was to some extent excluding county government structures and county health governance. We actually went through it and addressed those fears. I will only highlight a few areas like the need to have the rights to the highest attainable health care and our decision to start with, at least, vaccination for children and maternity care. If there is any single intervention in this country which has improved the survival of children it is vaccination. Therefore, to have it free and compulsory is something which this country needs.

Despite the improvements we have had in health 2003 and 2008, one area which has remained unaffected and the data has been bad is maternal mortality. Therefore, it is necessary for this area to be emphasised so that we can look at the issue of maternal deaths. Nobody would like to have our women dying when doing the most important job in this world of giving birth to children. This is extremely important.

Clause 15 on the responsibilities of the Ministry of Health to develop health policies, laws, administrative procedures and programmes in consultation with county governments and health sector stakeholders is extremely important. This is because devolution has not been able to set similar standards and adhere to policies across all the counties. That is why you see some counties like Makueni doing extremely well in health care to the extent that they almost have free health care. Others are not doing well because we do not have policies and standards we can ask all the counties to adhere to. Therefore, bringing this out is extremely important. Developing through regulatory bodies of training and providing institutions for training must be regulated across the country in all the counties.

The position of the Director-General of Medical services was a big argument. The feeling was that any health worker can become the Director-General would put the country in a very awkward situation because worldwide, even in the World Health Organisation (WHO) which for

the first time has an African elected as the Director, that would be the rule. We agreed on the need to vet the Director-General because he or she holds such an important role in the country and the people's representative in Parliament should have a hand in his/her appointment.

There shall be established in Clause 19 in respect to every county a county executive department responsible for health. This has been done and structures have been put in place. Various counties have done them according to what they feel. It is important as a country that we have a uniform way of coming up with structures so that deliveries can be done everywhere.

Clause 46 is on the Health Human Resource Advisory Council and its board. In my mind, it is the absence of this structure that is responsible for the strikes that we have had in the health sector and the prolonged strike that we had. Health is complex with a variety of over 40 cadres with various schemes of service and training needs. Therefore, having them being managed differently across the country in various counties will promote a situation where some will do well while others will not. To have one body that looks at how they are trained and recruited, how they get further training, how they retire and how they are remunerated is extremely important. This is something that would have probably been done by a commission in the Constitution. We understand that it was discussed during the promulgation of the Constitution but it was said that it could be done administratively. This Bill attempts to do that.

I am just mentioning a few areas. The other area I want to touch on is the Kenya Health Professionals Oversight. As I said, there are numerous cadres and each cadre has---If you can remember, I have brought Bills to this House. We have, at least, 20 Acts relating to health and regulating the health profession. Obviously, there need to have an oversight body that will coordinate all of them. Again, the Senate was not keen on this but eventually, when we discussed this, we agreement that that is really necessary.

Procurement is an extremely important aspect of health systems. Standards need to be met in the procurement of drugs, known pharmaceuticals and equipment. Therefore, to put in law that it must be according to the Public Procurement and Asset Disposal Act is important even if it looks repetitive. The suggestion that the Kenya Medical Supplies Authority (KEMSA) be the first institution of call was not agreed upon. We eventually agreed that maybe counties should not be forced to only purchase from KEMSA.

Another area is that of the Mental Health Act. In Clause 73, we were proposing that there should be a law. We were just proposing a law. Mental health is extremely complicated. Many people, particularly important people will be mentally ill for a long time but nobody will dare take them for treatment. We need an Act that ensures that they are treated.

The issue of delegated authority including the regulation of fees that are charged in health facilities was important, and we agreed on that. In the First Schedule on the classification of levels, we had to classify the facilities functionally not only in public services but even in private services.

**Hon. Deputy Speaker:** You can have one more minute.

**Hon. (Dr.) Nyikal:** If we move forward and look for universal healthcare through insurance where the insurance cover will pay for you whether you go to a public hospital or a private institution, it is important that health facilities are classified as private or public in a uniform way by what they do and the services you get at what level. There was fear that if we move them so that Level 5 goes to Level 6 then it will move to the national Government. We addressed that and said that that is not compulsory. The establishment of national referral hospitals can be done under this law in consultation with the county government.

All in all, this is an important Bill. The agreement between the National Assembly and the Senate is a great way forward. I beg to second and request our Members to support it. I also request the Senate to pass it so that before this Parliament adjourns *sine die*, we have this law for the people of Kenya.

*(Question proposed)*

**Hon. Deputy Speaker:** I can see Hon. Maanzo.

**Hon. Maanzo:** Thank you, Hon. Deputy Speaker. I would like to support the Chairperson of the Departmental Committee on Health on this matter as seconded by Dr. Nyikal. Mediation is very important. It is what makes the two Houses agree on matters which are very important to the nation.

The matter has been very well deliberated. We have looked at sections of the law dealing with it as put in the notices and classes therein. It is good that health is harmonised in the country. You remember there is a proposal for the Office of Director-General for Health. Hon. Dr. Nyikal has just seconded this. He is very passionate about this because he has been in the health sector for long. I want to agree with what he as an expert advises us as a House. Though there are financial implications indicated, the health sector seems to be in disarray up to today.

We are still groping in the dark as to what will harmonise the health sector. This is especially after devolution where some matters are being handled at the county level and other matters are being handled at the national level. There has been a lot of discontent with doctors in the manner in which some of them have been handled at the county levels. There is also discontent on the way matters have proceeded in many areas including the recent strike and the structure and mechanism of sorting out these issues.

I believe that this law is meant to make health better for Kenyans. The new Constitution is here and devolution is a reality. So, we can only improve health services in the country by making sure that there are proper laws. The role of this House is well spelt out.

There are many things which are not clear. How do counties procure medication? Many times, there are complaints that health centres or hospitals have no proper medication. What about this issue of hiring equipment at very exorbitant prices? Why can we not get donations? Why can we not buy our own equipment because there are budgets? What budgets do you handle at national level and what budgets do you handle at the devolved level?

There have also been issues of corruption at the Ministry of Health. Currently, the United States of America has withdrawn or threatened to withdraw its funding on health in the country. This is especially in relation to HIV/AIDS and children. There are very many issues dealing with health. You need a law to harmonise those matters. You also need somebody responsible to deal with counties and at the same time the national level. That person should synchronise all the activities so that the people of Kenya can be treated well.

Hon. Deputy Speaker, first of all, health being a very expensive affair we look forward to a day that Kenyans will get free medical services like many advanced countries in the world or countries in Africa that have utilised their resources well like Botswana. Those countries have mined their minerals and managed them very well. They have enough money and their citizens do not pay taxes. Their education and health care are free.

As a country, we need to take up the challenge and invest in coal which is lying idle in Kitui. No one in the world is selling or buying it. We now have oil which we should exploit so



that health and other sectors are sufficiently covered. This can only happen through a better law. The role of this House is to make law and the law is here with us.

So, I support the mediated version of the Bill as harmonised by both the Senate and the National Assembly.

Thank you very much Hon. Deputy Speaker for giving me an opportunity to contribute on this very important matter.

**Hon. Deputy Speaker:** Hon. Members, is Chris Wamalwa in the House? I see no further interest. I call upon the Mover to reply.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Deputy Speaker. I must start by thanking our colleagues who have contributed to this Motion. We appreciate that we really have not had long arguments on this. Therefore, I beg to reply.

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on its consideration of the Health Bill (National Assembly Bill No.14 of 2015) laid on the Table of the House on Wednesday, May 17 2017, and approves the mediated version of the Bill as amended in Clause 18.

This has been a great day for this country.

I beg to reply.

Thank you.

**Hon. Deputy Speaker:** Thank you, Dr. Nyikal. Like I said earlier on, the Question will be put when it is appropriate. Let us move on to the next Order.

*(Putting of the Question deferred)*

## BILL

### *Second Reading*

#### THE CONSTITUTION OF KENYA (AMENDMENT) (NO.6) BILL

**Hon. Deputy Speaker:** The Whip of the Majority Party, you have the Floor.

**Hon. Katoo:** Hon. Deputy Speaker, I beg to move that the Constitution of Kenya (Amendment) No.6 Bill, National Assembly Bill No.65 of 2015 be now read a Second Time.

This Bill is one of the very famous Bills in this House. It has come to the Floor of this House possibly once or twice and also went to the Senate once or twice. However, we were not able to pass it because we were unable to get the required number because it is a constitutional amendment. But we have no option as a House other than to keep trying until we pass it because it is a requirement in our Constitution. One day, and I hope it is this time, we will be successful. We have to achieve it.

Article 81 of the Constitution says:

“The electoral system shall comply with the following principles-

(b) not more than two-thirds of members of elective public bodies shall be of the same gender.”

There are other Articles of the Constitution that cite this requirement like Article 177(1)(b) which reads:

“A county assembly consists of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly is of the same gender.”

This House is now in its sunset days. We are ending probably our four-and-a-half years and we have not achieved this requirement save for the Supreme Court advisory opinion that was sought by the Attorney-General of the Republic of Kenya that says that this requirement could be achieved progressively.

I know that the membership of the Senate is 47 elected Senators who all happen to be men; Members of the same gender. The Senate has nomination of 20 Members. The Senate is fairly within the requirement, but this House is far much below that constitutional requirement. Therefore, this Bill intends to achieve that constitutional requirement.

Its objective is to amend the Constitution to give effect to those Articles I have mentioned earlier on. That is Article 81(b) of the Constitution which I have read out. Therefore, the Bill also tries to ensure that the membership of the two Houses conforms to the two-thirds gender principle in accordance with our Constitution.

The Bill I am moving is similar to a Bill that was published by the late Senator Mutula Kilonzo save for the provisions in this Bill that outline the sunset clause. If you look at the Bill though I will try to explain later on, you will find that there is a sunset clause that says that we should only exercise that affirmative action to arrive at the two-thirds gender rule for only 20 years.

If you look at Clause 5 of the proposed amendment, you will realise that it proposes to amend Article 98 of the Constitution by inserting Clause 1(c) that says that Parliament may enact legislation to extend the period under Clause 1(b) for a further fixed period not exceeding ten years.

Clause 5 - that is the amendment of Article 98 - says:

“A sunset clause of twenty-years is included in the amendment with an option for extension for one further fixed period of ten years as it is expected that by that time enormous gains will have been made with regard to gender parity in elected members of Parliament.”

That is the only difference between this Bill and the Bill which was published by the late Senator Mutula Kilonzo. Clause 2 applies to general election. How do we arrive at these special seats? If you look at Clause 4 of the Bill---

*(Hon. Wandayi consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Wandayi. I am sure this is not the podium that you are used to. So, let us confine the work of the podiums to where they belong and let this House be a debating Chamber. Allow the Hon. Member to move this very important Bill before us.

**Hon. (Ms.) Nyasuna:** Summarise!

**Hon. Katoo:** I am not in any hurry. I want to make sure that Members understand. I do not even see where the Members who have been pushing for this Bill two times and failed are. I understand where they are. Most of them lost the nominations. I think they also lost interest in the Bill.

I was saying that in Article 97 of the Constitution, we are proposing an insertion under Clause (1)(b) and 1(a) where the number of these special seats under clause 1(c)(a), a new clause, shall be determined - this is very critical - after the declaration of the results of a general

election. As it is now, in the last general election, we forwarded the names of party lists, those to be nominated before the general election but this Bill proposes that it shall be determined after the declaration of the results of the general election.

In Clause 3, the Bill proposes to amend Article 90 to reflect the amendment proposed in Article 97. If you go to Article 90(1) on elections for a seat in Parliament provided under Article 97(1)(c) and 98(1)(b)(c) and (d) and for the Members of the county assemblies--- This is why it is critical because we are also tying it to county assemblies.

Under Article 177(1), the one I had read, (b) and (c) shall be on the basis of proportional representation by use of party list. That is why we are proposing that that determination be made after the declaration of the results of the general election.

Article 97 of the Constitution is being proposed for amendment. This especially 97(1)(c) that says that the membership of the National Assembly consists of among others, twelve Members nominated by political parties to their proportion of Members of the National Assembly in accordance with Article 90 among other things.

Therefore, because the Constitution currently talks about 12 nominated members, we are proposing to amend it to leave it open to the number that will determine the two-thirds gender rule after the declaration of the results of the general election. That is also being proposed to Article 98 about the Senate.

Article 98 (1) (b) says:

“Sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;”

That number may not be 16 again. It will depend with the number required to bridge or attain the two-thirds gender rule after the results of the general election.

I am almost concluding. I had earlier on explained the provisions of the sunset for 20 years. However, it is also very clear under Clause 5. It says:

“Parliament may, however, by legislation, extend this period by a further 10 years.”

It is expected that after those 20 years, the electorate will have no problem voting for candidates without regard to gender and that there will be gender parity in the election of the Members of Parliament.

Clause 4 further specifies that not less than two-thirds of the members of the National Assembly and not less than two-thirds of all county delegates in the Senate must support such an amendment for an extension by another 10 years.

As I conclude, I also want to say that as we speak now, this Constitution is very progressive. Under Article 261 of the Constitution, one Kenyan has taken Parliament to court because we have not achieved or passed that legislation that is required.

Under Article 261 of the Constitution in the transitional and consequential provisions, the High Court has made a ruling that Parliament should, in accordance with the Constitution, pass this law. We were given about 60 days as a House to pass this Bill. After the lapse of the 60 days I think the necessary procedures will follow, which are under Article 261(7) that says:

“If Parliament fails to enact legislation in accordance with an order under clause (6) (b), the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.”

Therefore, I want to request the 11<sup>th</sup> Parliament that we support this Bill and try to get the numbers to pass it and we make history as the House that has given those articles of the constitution some effectiveness.

With those few remarks, I beg to move and request Hon. Kaluma to second.

**Hon. Kaluma:** Hon. Deputy Speaker, thank you for the opportunity to second this important Bill. It delights me that our good Whip of the Majority Party has designated me as the Member of Parliament to second this important Bill. I believe the passage of this Bill will be the greatest mark of the 11<sup>th</sup> Parliament. It is something we have struggled over for years. I want to say that in as much as a court determination has been made under Article 261 of the Constitution, the fact of that court order is not what is motivating us to move in the direction we are moving.

Indeed, it has been important for us that we have all genders of our nation represented in our governance. Even as we pass this Bill which will unlock the governance bottlenecks more particularly the female genders fest in getting into leadership positions and more so elective ones. In this House, we must as a society look back and consider very deeply why we are in a situation where we have to fight for gender balance when these matters are electoral processes.

A short while ago I was questioning why it is the case. If you look at the 11<sup>th</sup> Parliament, you will find that the female Members representing constituencies virtually came from their places of birth. I do not know what the society is telling us. If you remember, Hon. Cecily Mbarire, it is her place of birth and my niece Hon. Millie Odhiambo had to come back to Suba to be elected. Look at our good Deputy Speaker. I do not want to speak more. I know the sky is the limit and we wish you well, but there is something that the society is telling us. I do not know why it is so easy for our society to embrace their daughters at the places of birth and not their places of marriage.

Let me say that development is coming up in Homa Bay that will shock the 12<sup>th</sup> Parliament if it succeeds in the manner I am seeing it moving. In fact, we are beginning to think that there is something special about Hon. Wanga and Hon. Millie Odhiambo. There is a possibility. I am talking of a possibility because I wish my colleagues who are still serving in the 11<sup>th</sup> Parliament in the affected constituencies well. There is a possibility that when the 12<sup>th</sup> Parliament is constituted, Homa Bay County may stand out as the county that implemented the two-thirds gender principle without resorting to legislation or seeking this constitutional amendment. There is the possibility that very learned ladies, not just ladies, are going to join the very learned team of the two ladies we already have here. Dr. Eve Obara and Dr. Lilian Gogo could be here. I am talking of a possibility because I still wish them well in the battle they are going for.

In short I am saying that there are economic issues and barriers on the face of women as they seek elective leadership. There are also cultural issues which we need to deeply think about and deal with. There are cultural and societal idiosyncrasies about leadership and the role of women in leadership that we need to deal with. This is a solution. I believe that in as much as we have suffered in the circumstances that the people of Kenya took us through, whatever happens whether we come back here or not, the biggest thing that Kenyans will salute us for, is that this critical gender balance that we have been talking about the world over has been achieved in this country.

I was in Rwanda a short while ago, and you cannot imagine the percentage of women leaders in the Parliament of Rwanda. We have been to South Africa and the United Kingdom and other developing nations and the matter of gender is no longer a small issue. I want to speak very briefly.

I want to tell the women of Kenya out there that this is a great day for you. This is a day you should sit and implore each and every Member of Parliament representing you to be in the House when we need those numbers to pass this Bill so that we move forward. I am requesting women of Kenya out there and those Members or our colleagues you did not give the grace during the party nominations which was largely a blood bath for this House, to cajole them and get them back. Even without being cajoled, fellow colleagues, whether you are within the House or out there, we know you are watching the proceedings. This is a fundamental mark and a historic achievement you will leave for this country as the 11<sup>th</sup> Parliament faces its twilight.

With those very many remarks, I beg to second and urge Members that we all consolidate our efforts and see the passage of this important Bill.

I thank you.

*(Question proposed)*

**Hon. Deputy Speaker:** Hon. Chris Wamalwa, are you on point of order?

**Hon. Wakhungu:** Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Just before you contribute, Chris, are you on a point of order Hon. Ken Okoth? You are just on the list waiting? Okay, you are waiting under intervention. Just a minute, I thought it was one intervention. Give the microphone to Hon. Kajwang'. Is it a point of order?

**Hon. Kajwang':** Hon. Deputy Speaker, I am on an intervention. In all fairness to my colleagues, let one or two Members participate before I rise, if you do not mind, Hon. Deputy Speaker. I was going to rise under Standing Order 96. I wanted to make a discussion on it but I think it would be good for one or two Members to participate.

**Hon. Deputy Speaker:** I think there might be more than two Members interested in participating in this debate.

**Hon. Kajwang':** Hon. Deputy Speaker, if you will recognise me after one or two Members, I will be happy.

**Hon. Wakhungu:** Thank you, Hon. Deputy Speaker. I rise to support this Bill. It is very important for purposes of the two-thirds gender rule. We have had a lot of metamorphosis on this Bill. There was the Duale Bill, the Chepkong'a Bill and right now we have the ole Metito Bill. I hope the ole Metito Bill will pass.

As the 11<sup>th</sup> Parliament, we are very committed to the issue of the two-thirds gender rule. I do not want to talk too much because we want to expedite and move on to the East African Legislative Assembly (EALA) issue. We are getting late for the EALA issue. Other countries have already finalised their processes.

I support.

**Hon. Deputy Speaker:** Hon. Maanzo.

**Hon. Maanzo:** Thank you, Hon. Deputy Speaker. The Bill is very important to the gender rule in elective positions. We are aware that there is a court judgment. For that matter, it is good to comply with the court as a House. Actualising the two-thirds gender rule is important for the country. However, there must be a method through which to achieve it through elections. I do not think nomination is the way forward. I believe that during the Committee of the whole House we will dissect this Bill and come up with a way of actualising the two-thirds gender rule so that the country can settle this matter once and for all. The best way could have been through a constitutional amendment.

With those remarks, I support.

**Hon. Deputy Speaker:** Let us now hear Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Deputy Speaker for giving me this opportunity. I want to thank the Mover for bringing this Bill to the House. I would very reluctantly support this Bill, which is a bit strange. The reason is that we have been very busy with campaigns. Therefore, I have not had occasion to look at it critically, but I have seen that there is a fundamental change in the architecture of the Bill, and in the principles surrounding it. I was part of the delegates at the Bomas of Kenya.

One of the issues that derailed the Bomas process at one point in relation to the issue of affirmative action was the issue of proportional representation.

I have heard the Hon. Member say that the amendment they have proposed speaks to the issue of proportional representation. The only reason as to why I would be persuaded to support proportional representation is time, and we need to obey the court. If we do not obey the court, there are implications on us as Members of Parliament. If the lifespan of the House is shortened by a court order, and not by operation of the law, there are very serious financial implications for Members of this House. That is not my only motivation; it is so, so that you are aware.

I have a challenge with this amendment because even though I am very saddened that many women unsuccessfully sought nomination to vie for Member of County Assembly, Member of Parliament, Senator and Governor seats, this is the first time I have seen an amazing number of women who are interested elective positions in this country. I was moving all over town, in my constituency and other places. The number of women who sought nomination for various political seats was unprecedented.

One of the things that could have encouraged women is what women who joined Parliament by virtue of affirmative action do on the Floor of this House. The women of this country have seen the excellent work that the 47 county women representatives have been able to do; the excellent work that the 16 leading elected women Members of the National Assembly have been able to do and the fantastic work that the women Senators have been able to do.

For the first time in the history of this country, women have realised that what has all along seemed impossibility is actually possible; that, they are able to compete fairly and equally with men. However, when you talk about proportional representation, which would take us to the party lists, it means we are removing the element of competition. Somebody will sit down, write down a list and include anybody they want.

We saw the fiasco that was in the county assemblies as a result of selection of people, as opposed to election. I am fairly hesitant to support a system which does not give women a chance to learn politics. The reason why we are doing affirmative action is because women can learn competitive politics. I am very happy about the issue of the sunset clause. However, the sunset clause presumes that we will have learnt to compete with men. We have learnt the tricks that we have seen, which have seen many women fall. Men rig elections, beat up people and do all manner of things to make you get off the way. The fact that some women have managed to make it to Parliament despite their male counterparts' bad manners is inspiring. If we put a proportional representation list, women would just sit back. The tragedy is that the few women who would have tried will be left out of those lists.

I want us to challenge ourselves and look at the lists that the parties will be presenting. Very few will put women who actually tried to be elected as Members of Parliament and Members of County Assembly. We will see fresh faces of people who are relatives of party mandarins. I do not want to say girlfriends because the men like saying so. It is not only

girlfriends because even us we can nominate boyfriends. However, that is not the reason. I would like to say that they would also put relatives on those lists. That is why sometimes I get embarrassed when I hear Members referring to the case of Hon. Kalonzo Musyoka's son, who was nominated to join the East African Legislative Assembly (EALA). They were castigating him hard while we have Members sitting here as their own sisters sit in Nairobi County Assembly.

Sitting Members of this House, and not members from Mars, have also nominated their own relatives to sit in some assemblies. However, it became a problem when Hon. Kalonzo Musyoka nominated his son to join EALA.

Let us be honest and realistic. I would like to encourage the Hon. Member. I reluctantly support the Bill. I am personally persuaded to support a system that allows women to go for competitive politics.

With those remarks, I reluctantly support the Bill.

**Hon. Deputy Speaker:** Let us now hear Hon. Joseph Limo.

**Hon. Limo:** Thank you, Hon. Deputy Speaker. I wish to contribute to this very important Bill. People normally say that a country cannot move forward without women. Currently, as we can see in the society, the prime movers of development are women. When it comes to political offices, the society is very unfair and expects women to take the back seat. Therefore, this affirmative action is very important. There are some pertinent issues which are making women shy away from politics and most of them are perpetuated by the society to scare them away.

Therefore, we need to come up with very serious legislation and ensure they are implemented. People must have integrity while campaigning. The reason why women shy away is because the environment is volatile. It is not very good. In fact, most people shy away from politics and many leaders have not participated in constructive politics because of the way people handle campaigns. During the campaign period in the country, people talk bad things about others especially women. In fact, I want to take this opportunity to congratulate the women of this country who are in this House, the Senate and in county assemblies, because they went through very serious problems and situations.

As we try to ensure that we comply with this gender rule, we must also ensure that we create a friendly environment for women to participate in elective positions in this country. Unless, we do so, we are going to be legislating and nominating people into these positions without complying with the Constitution. The purpose of these nominations is to build capacity and offer women an opportunity to participate in politics. Therefore, we need to arm them with skills and the necessary requirements to ensure that they succeed when they vie. But as long as the environment is not conducive, we cannot attain this. As we support this Bill, we must think, investigate and do serious research on what other counties have done.

For example, if you look at a country like Tanzania, you will find that it is doing very well. The women there are participating seriously in politics. In Kenya, we have not gone far but there are certain communities which have shown respect for their women especially the Kamba. If we look back, we will realise that there are Hon. Members who have been in politics for a long time like Hon. Nyiva Mwendwa who is still in this House. If you count the number of women who are elected in the larger Kamba community, you will find that it is bigger than any other community in Kenya. This shows that there are stereotypes in our society which have to be removed through capacity building and proper legislation to ensure that we level the ground for women to participate.

As I conclude, the Constitution provides for nomination to ensure that the younger generation is represented, but the drafters of the Constitution did not anticipate that at one time the youth will be fast enough and get opportunities to be elected. It will reach a time when in almost all county assemblies, the majority will be the youth. Therefore, the slots for nomination will be left for the older generation. I take this opportunity to support this Bill. I also urge the House to support it because it is good for us to salvage the 11<sup>th</sup> Parliament before we go for elections.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. T. J. Kajwang', you have a minute.

**Hon. Kajwang':** Thank you, Hon. Deputy Speaker for recognising me. I withdraw my comments on the intervention.

**Hon. Deputy Speaker:** Will you continue when this debate appears next on the Order Paper or you do not wish to contribute on it?

**Hon. Kajwang':** I was on intervention and not contributing. I was going to rise under Standing Order No.96 at that time but I do not think it is necessary any more.

### ADJOURNMENT

**Hon. Deputy Speaker:** Hon. Members, it is now time to adjourn the business of the House. The time being 6.30 p.m., this House stands adjourned until tomorrow, Thursday, 25<sup>th</sup> May 2017, at 2.30 p.m.

The House rose at 6.30 p.m.