

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 23rd July, 2014

The House met at 2.30 p.m.

[The Deputy Speaker (Dr. Laboso) in the Chair]

PRAYERS

PETITIONS

ALLEGED MURDER OF GLADYS RITHO

Hon. Deputy Speaker: Hon. Members, I would like to convey a petition by Luseno Family, friends and citizens on the alleged murder of Gladys Ritho.

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition, other than those presented through a Member. Therefore, I wish to convey to this House that my office has received a petition signed by one Geoffrey Luseno and 20 citizens on behalf of the Luseno Family. Among other prayers, the petitioners are praying that the National Assembly requests the Criminal Investigations Department, the Director of Public Prosecution, the Independent Police Oversight Authority and the Attorney-General to investigate, and prosecute those culpable of, the murder and subsequent release of the body of a deceased to persons other than the next of kin.

The petitioners further pray that the National Assembly intervenes to have released the spouse of the deceased from a house in the United Kingdom, where he is allegedly confined against his will.

Members, this petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the petition and report its findings to the petitioners and the House in accordance with the Standing Order No.227(2).

I must further emphasize that the Committee also undertakes to hear the Petitioners with a view to taking into account their views while considering the pertinent issues raised in the Petition.

Thank you.

PLIGHT OF VICTIMS OF TERRORISM ATTACKS IN THE COUNTRY

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, I want to read a Petition on behalf of the family of the late Stephen B. Keru on compensation for the death of their sole bread winner as a result of a terrorism attack.

I, the undersigned, on behalf of the family of the late Stephen B. Keru and the residents of Murang'a County, draw the attention of the House to the following:-

That on 24th October, 2011, a grenade attack within Nairobi at the OTC Bus Station, injured more than 15 people and claimed the lives of Stephen B. Keru; that the late Stephen B. Keru left behind a widow and two children who totally depended on him and he was their sole bread winner; that the death of Stephen B. Keru has not only caused the family grief, but also deprived them of their only source of livelihood; that, the Government did not offer any assistance to the family in terms of hospital bills, burial expenses or any other form of compensation.

Noting that terrorism attacks such as the ones at Westgate Mall, the Likoni Church, Gikomba Market, Pangani Police Station, Thika Road, Mandera and Mpeketoni, among others, have continued claiming lives in the different parts of this country, that the Government continues to ignore the plight of the victims of these attacks and their dependants, and that Article 29(c) of the Constitution provides that every person has a right to freedom and security of the person which includes the right not to be subjected to any form of violence from either public or private sources; that Article 26(1) of the Constitution provides that every person has the right to life yet the said terror attacks have resulted in loss of lives of innocent citizens, and the matter in respect of which this Petition is made is not pending before any court of law.

Therefore, the humble Petitioners pray that the National Assembly intervenes to have the Government provide social assistance to the family and other victims of terror attacks for the loss of livelihood, injuries and any properties, and two liaises with the relevant security agencies to ensure that proper security measures are put in place to avert future terrorist attacks.

Your Petitioners will ever pray.

It is presented by myself on behalf of Daniel Keru, Priscilla Wanjiru, Beth Muthoni and fifteen others.

Hon. Deputy Speaker: This Petition is committed to which Committee? Is it the same Justice and Legal Affairs Committee?

Hon. (Ms.) S.W. Chege: Yes.

Hon. Deputy Speaker: The same Committee?

Hon. Wandayi, what are you trying to do? You should not debate.

Hon. Wandayi: Hon. Deputy Speaker, I was just trying to seek your indulgence since this is a very grave matter to use your discretion to allow us to make one or two comments before you commit it to the relevant Committee.

Hon. Deputy Speaker: Well, very few comments.

Hon. Wandayi: Thank you, hon. Deputy Speaker. In addition to the Petition as presented by hon. Sabina Chege, it would be important, indeed, that the Committee delves into the matter in its entirety. This is because as I speak, this country is under siege from terrorists. Bearing in mind that the right to security is a right which is enshrined in the Constitution, and more importantly that the duty to provide security to the citizens and safeguard their property is that of the Government, it will be important that the Government comes up with a policy to address---

(Loud consultations)

Hon. Deputy Speaker: Members, the consultations are too loud. Members, please settle down. Can we listen to the contribution from the Member?

Hon. Wandayi: Hon. Deputy Speaker, it would be important, even as the Committee looks at this Petition, that the Government comes up with a clear-cut policy to address the issue of the victims of terrorist acts, which have become very common in the recent past in this country, without trying to apportion blame or to pass the buck. The fact is that once terrorists strike, people suffer. Those who lose their loved ones remain with no one to take care of them; those who are injured remain with permanent injuries. Sometimes, they are crippled. Therefore, it is critical that the Government comes up with a comprehensive policy rather than just offering support in terms of burial and hospital expenses. We need to have something more comprehensive.

Hon. Maanzo: Thank you, Hon. Deputy Speaker, for offering me this opportunity. As we speak, I have a constituent of Makueni who was killed in Mombasa in the recent terrorist attack on a motorbike. In fact, there is nobody to bury the deceased young man other than myself. It is a matter of concern and the right Committee is the Departmental Committee on Administration and National Security. It should address these matters quickly at least for the State to assist with burial expenses. The State should set aside some money for emergencies in the Budget, so that families can be compensated urgently. I propose that the Committee to do this is the one chaired by Hon. Abongotum.

Hon. Deputy Speaker: I was just about to say that it is in the docket of administration and national security committee. Hon. Members, let us wait for Members to go through the Petition, so that we can make progress.

Invite Hon. Members when you carry out your investigations to give their contributions; this will enrich your report.

Allow us to move on to the next Order.

PAPERS LAID

Hon. Deputy Speaker: Leader of Majority Party, you have a number of Papers to present.

Hon. A.B. Duale: Hon. Deputy Speaker, the Chairperson on Education was asking me something that I could not answer because this is the month of Ramadhan and I am fasting. I was telling her that after Tuesday I can answer her.

(Laughter)

Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 23rd July, 2014:-

The Estimates of Recurrent Expenditure, Volumes I and II, and the Estimates of Development Expenditure Volume I of the Government of Kenya for the year ending 30th June, 2015.

The Report of the Auditor-General on the Financial Statements of the Youth Enterprise Development Fund Board for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Water Conservation and Pipeline Corporation for the year ended 30th June, 2010---

(Loud consultations)

There are loud consultations!

Hon. Deputy Speaker: Order, hon. Members! The consultations are high!

Hon. A.B. Duale: Particularly by Hon. Keynan and the two chairpersons.

Hon. Deputy Speaker: Get settled down, including the Chairman of the Public Investments Committee (PIC).

Hon. A.B. Duale: Thank you, Hon. Deputy Speaker.

The Report of the Auditor-General on the Financial Statements of the National Water Conservation and Pipeline Corporation for the year ended 30th June, 2010 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Sugar Development Fund for the year ended 30th June, 2009 and the certificate of the Auditor-General therein.

The Sugar Development Fund Financial Statements for the years ended 30th June, 2005 and 2006.

The Kenya Sugar Board Financial Statements for the years ended 30th June, 2004, 2006 and 2007.

Hon. Nderitu: Hon. Deputy Speaker, I beg to lay the following Paper on the table of the House, today Wednesday, 23rd July, 2014:-

The Report of the Departmental Committee on Lands on the Inspection Visit to the Netherlands.

REQUESTS FOR STATEMENTS

Hon. Deputy Speaker: We shall take requests for Statements. We shall proceed as they appear on the Order Paper. Only read what appears on the Order Paper; no clarification, no elaboration; just what is on the Order Paper.

GOVERNMENT SUPPORT TO AUXILIARY AGENCIES

Hon. Ogolla: Hon. Deputy Speaker, I beg to request a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade, regarding Government support to auxiliary agencies, in particular the Kenya Red Cross.

Hon. Deputy Speaker: When will you be ready with this Statement? The Chairperson, Vice or any designated person? We do not have any Member from the Departmental Committee on Finance, Planning and Trade! Hon. (Ms.) Otucho, can you take the responsibility on behalf of your Committee?

Hon. (Ms.) Otucho: Hon. Deputy Speaker, I will request the Member to give us at least two weeks and we will bring a report. I will inform the Chair accordingly.

Hon. Deputy Speaker: She has taken the responsibility on behalf of the Committee.

Hon. Ogolla: No problem, Hon. Deputy Speaker.

HOUSING AND ROUTINE MAINTENANCE OF
ADMINISTRATIVE OFFICES

Hon. Wekesa: Hon. Deputy Speaker, I beg to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding housing and routine maintenance of offices for the Assistant County Commissioners, Chiefs, Administration and regular police officers in the County.

Hon. Deputy Speaker: Is the Chairman there? Hon. Abongotum?

(Hon. Abongotum and Hon. Githinji consulted)

Hon. Abongotum and Hon. Githinji, you are talking and that is why you are not following what is going on in the House. When can you be ready with this?

Hon. Abongotum: Hon. Deputy Speaker, we are consulting on matters of national and international security.

(Laughter)

I read that request and what I know in the interim is that the offices of the DCs are funded but from the DOs downwards, normally there are issues.

Hon. Deputy Speaker: Are you responding?

Hon. Abongotum: Hon. Deputy Speaker, we will take two weeks. I know because I came from that background; so, I know what happens. We will do it in two weeks.

Hon. Deputy Speaker: I am sure you came from it but it is a long time since you were there. So, take time and find out what new things that might have happened since you left.

Hon. Abongotum: Hon. Deputy Speaker, I will do that. I even served in your county.

Hon. Deputy Speaker: We are giving them two weeks, and so it shall be.

CATEGORIZATION OF HARDSHIP AREAS IN EDUCATION SECTOR

Hon. Iringo: Thank you, hon. Deputy Speaker. I would like to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding categorization of hardship areas in the education sector.

Hon. (Ms.) S. W. Chege: Thank you, hon. Deputy Speaker. I request for three weeks.

Hon. Deputy Speaker: It is understandable because you get many requests in your Committee. That also applies to the Departmental Committee on Administration and National Security. I hope that is okay with the hon. Member. The next one is by the hon. Member for Nyeri County.

STATUS OF TERTIARY EDUCATION LOANS

Hon. (Ms.) Kanyua: Thank you, hon. Deputy Speaker. I wish to request a Statement from the Chairperson, Departmental Committee on Education, Research and Technology concerning the status of tertiary education loans. The Government has started giving tertiary institutions loans through the Higher Education Loans Board (HELB). The full statement is available.

Hon. Deputy Speaker: Remember, hon. Nyokabi, we said that there should be no elaboration or explanations and clarification. Raise what is on the Order Paper. You will do rest once your Statement is brought to the House.

Hon. (Ms.) Kanyua: Hon. Deputy Speaker, because we are on live coverage, just to make sure that the request is well understood, we want to check the status of tertiary institutions students who have received HELB loans.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, hon. Sabina Chege. The Majority Leader is engaging Members until they are not even listening when they are supposed to be answering to the House.

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. I think today the Majority Leader is in very good mood.

Hon. Deputy Speaker: I am also wondering. Unless he has eaten something he should really be on---

(Laughter)

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, although he fasting, he is confirming that.

I request the hon. Member to give me one month because I also have another assignment from her. Four weeks will be enough for the Committee.

Thank you, hon., Deputy Speaker.

Hon. Deputy Speaker: It is okay. I do not think it is a matter of life and death. Hon. Priscilla, you can give them time to give you a comprehensive response.

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. I am happy to wait for literally one month, and not the Kenyan one month, which becomes two months. If the Chair means one month from the date of today which is 23rd July, then in the next one month before the House goes on recess we will get that Statement.

Thank you, hon. Deputy Speaker.

ABSENCE OF MANAGEMENT BOARDS IN LEARNING INSTITUTIONS

Hon. Murgor: Thank you, hon. Deputy Speaker. I would like to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding absence of boards of management in some secondary schools and tertiary colleges.

Hon. Deputy Speaker: Thank you. Again, let us have the Chairperson, Departmental Committee on Education, Research and Technology.

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Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. I request the hon. Member to give us one month due to the number of requests that have. We would also like to look at the issue in depth. So, one month will be okay with the Committee.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: I hope that is okay with hon. Murgor.

Hon. Murgor: Hon. Deputy Speaker, I think there are very many institutions which have no management committees right now. As a result, there are serious challenges in the management of these institutions. I request the Chairperson if she can issue the Statement even in two weeks because this is a problem in secondary schools and technical colleges.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, initially the county education boards were not been set up but they are now in place. I hope that within that period, the remaining management boards will be set up. We will try and give a Statement after two weeks, but due to the many requests that we have received, one month will be okay. That is four weeks. However, if we have the Statement in two weeks, we will respond.

Hon. Deputy Speaker: That is okay. They will make an effort. I think that is the most we can ask of them.

Let us move on to the next request by the Member for Tana River County. Is hon. Halima Ware here?

KILLING OF IBRAHIM I. GUTU IN TANA RIVER COUNTY

Hon. (Ms.) Duri: Yes, I am in the House, hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Your consultations are too high.

Hon. (Ms.) Duri: Thank you for rescuing me, hon. Deputy Speaker.

I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the killing of one minor, Ibrahim Isaak Gutu in Madogo Division, Tana River County.

Hon. Deputy Speaker, on 30th May, 2014---

Hon. Deputy Speaker: Hon. Halima, please remember what I have just instructed, that we are not elaborating or giving background information. We will do all that once the Statement is brought before the House. Could we hear from the Chair, Departmental Committee on Administration and National Security?

Hon. Abongotum: Hon. Deputy Speaker, this being an issue that touches on the life of a Kenyan, we will require one week to respond to it. I think I have already shared with my good friend, hon. Halima, a former District Commissioner somewhere in the former Western Province. So, we will give it in one week.

Hon. Deputy Speaker: That is okay because that is an urgent matter. One week, it shall be.

STATUS OF KUTULO/WARGADUJ ROAD IN MANDERA COUNTY

Hon. Nooru: Hon. Deputy Speaker, on behalf of hon. Huka, the Member for Mandera South, I beg to request a Statement from the Chairperson, Departmental Committee on Transport, Public Works and Housing on the status of a section of the road between Kutulo and Wargaduj, D9, in Mandera County.

Hon. Kamanda: Hon. Deputy Speaker, we have a meeting tomorrow. The Member can attend because this is a straightforward question. He just wants to know the status of the road in this particular area. This can be answered tomorrow because we have the Cabinet Secretary and his team tomorrow. The Member can appear before the Committee tomorrow but; if he does not, then it will take one week to respond to him.

Hon. Deputy Speaker: Very good. I hope you have been designated not just to ask the question but to also make a follow up; so, you can appear before the Committee on his behalf.

Hon. Nooru: Hon. Deputy Speaker, as long as I will be given time I will be competent to take up the challenge, because this is the same road that I use. It extends to Mandera District Headquarters. So, it traverses the whole county. It passes through my constituency, Mandera South up to Mandera East. I am up to the task.

Hon. Deputy Speaker: That is okay. Just give him the details of where the meeting will take place, so that he can attend.

RETIREMENT OF COTU/ FKE MEMBERS FROM NSSF BOARD

Hon. Wakhungu: Thank you, hon. Deputy Speaker. I rise to request a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the reported retirement of COTU's Francis Atwoli and FKE's Jackline Mugo from the Board of NSSF by the Cabinet Secretary for Labour.

Hon. Were: Thank you, hon. Deputy Speaker. I request to respond to this Statement request on Thursday, next week.

Hon. Bowen: Hon. Deputy Speaker, I think the Statement requested by hon. Wamalwa is about something which is in court. It is *sub judice*

Hon. Deputy Speaker: Order hon. Wamalwa. Can the Member next to you be seated, so we can know who is on the Floor.

Hon. Wakhungu: Thank you Deputy Speaker. This matter is very urgent and important and it is not a Motion; it has nothing to do with the rule of *sub judice*. This is a request for a Statement. So, the two have nothing to do with the matter in court; I am requesting a Statement. If it was a Motion of adjournment or anything, the *sub judice* would come in. In this case, there is nothing. We need that Statement, because it is a matter of national importance. We know COTU has called for a strike and we want to avert this. Thank you.

Hon. Deputy Speaker: Hon. Member I do not know where you got your information from, whether it is a Statement or a report. When the matter is before a court, we will have to wait until the determination of the court on that matter.

(Applause)

What is your point of order, Leader of Majority Party?

Hon. A. B. Duale: Hon. Deputy Speaker, until the hon. Bowen provides evidence to the House of the status of that case, then, with your direction, we will wait for the Statement on Thursday. But he can bring the court file number and everything. He has said that the matter is in court. The House should not take that; the House should look at evidence and agree on the matter. Unless he provides evidence, the matter will be handled on Thursday, but he can notify the House of any other time.

Hon. Deputy Speaker: The Chairman of the Committee has already indicated we have brought the matter before his committee; you are going to look into it, including whether or not it is *sub judice* before the matter is brought back to the House. Let us leave it as it is. Hon.

Were, you have a comment on that?

Hon. Were: Thank you, hon. Deputy Speaker. I just wanted to inform the Members that actually the Committee has invited the Cabinet Secretary to appear before it on Tuesday next week. It is during that meeting that we will establish whether the matter is *sub judice* or not. So, far we have only read the information in the newspapers, but we do not have the real information with us.

Hon. Deputy Speaker: Yes, that is it. We will leave it to the committee.

Hon. Nassir, Member for Mvita.

Hon. Nassir: Thank you very much hon. Deputy Speaker. Pursuant to Standing Order No. 44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee---

(Loud Consultations)

Hon. Deputy Speaker: Order Members! Your consultations are too loud. This corner of hon. Pukose and hon. Kering!

Hon. Nassir: Thank you, hon. Deputy Speaker, for the protection. I would like, pursuant to Standing Order No. 44(2)(c), to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the Nyumba Kumi security initiative.

Hon. Deputy Speaker: Chair of the Committee on National Security.

Hon. Abongotum: Hon. Deputy Speaker, you know Nyumba Kumi is a new thinking, a new paradigm in our security system. We are actually meeting a group before the end of this month, but we want to be given two weeks to respond to hon. Nassir's request. Two weeks will suffice.

Hon. Deputy Speaker: I am sure you realize hon. Nassir's predicament with all the trouble that they are having in the Coast region of our country. Please expedite it.

That brings us to the end of requests for Statements.

Members, we have a few Members with guests. Hon. Bett, simply say who they are; do not---

Hon. B.K. Bett: Thank you Deputy Speaker. I wish to acknowledge the presence of quite a number of students from various schools in this Republic. Amongst them are pupils from Kembu Primary School, one of the best performing public primary schools in my Constituency. Thank you.

Hon. Deputy Speaker: Thank you hon. Member.

I have two short communications to give. Can you settle down, Members; those who are at the door, kindly settle down.

COMMUNICATION FROM THE CHAIR

EFFECTS OF FAILURE TO DECLARE INTEREST IN A MATTER

Hon. Members, this is a communication on declaration of personal interest by Members.

You will recall that on Wednesday June 26th, 2014, the Chairperson of the Departmental Committee on Education, Research and Technology rose on a point of order, seeking guidance from the Speaker regarding failure by the Member for Homa Bay, hon. Peter Kaluma, to declare interest in a matter for which he had sought a Statement from the Committee. Amongst the issues raised in the Statement were, one, the sources, terms and conditions for funding for building projects undertaken in the university. Two, measures being taken to ensure that the office of the Vice Chancellor is occupied by a duly appointed person, Thirdly, reason, other than discrimination, as to why some persons holding doctor of philosophy degrees and distinctions in their various fields of study remain engaged as Assistant Lecturers, contrary to tradition.

Hon. Members, the Chairperson had heard that hon. Peter Kaluma had represented one Dr. Helena Korir in a suit against Kenyatta University, the subject matter of which was related to the Statement sought. The Chairperson further indicated that some of the witnesses presented to give evidence included the said Dr. Helena Korir, amongst others, thus necessitating direction in view of provisions of Standing Order No.90. She also claimed that the matter was likely to be active in court and, therefore, *sub judice*.

From the outset, it should be noted that it is the responsibility of Members to declare any interest that they may have in any matter before the House. Most parliamentary jurisdictions have long-standing rules and norms regarding the declaration of interest by Members. Erskine May, an authority on parliamentary practice and procedure in the book entitled "Parliamentary Practice," which is the 24th edition, notes that,

"In debate a Member is required to declare any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have, or maybe expecting to have."

In the UK House of Commons, Members are also expected to declare non-registrable interest, which might be thought to influence them.

Such interests have been held to include financial interest, financial interest of close family members or any other circumstances which, though exempt from the requirements to register, might be thought to have a bearing on a Member's financial position. Members are also expected, by practice, to declare non-financial interests.

In the case of the European Parliament, Article 31 of the Code of Conduct. four members of the European Parliament with respect to financial interests and conflict of interest, state that,

"A conflict of interest exist where a member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a

member. Therefore, Members shall disclose before speaking or voting in plenary or in one of the Parliament's bodies, or if proposed as a rapporteur, any actual or potential interest in relation to the matter under consideration, where such conflict is not evident from the information declared".

Our own Standing Orders No.90 states that,

1. A Member who wishes to speak on any matter in which the Member has a personal interest, shall first declare that interest.

2. Personal interest include pecuniary interest, propriety interest, personal relationships and business relationships. Further Article 75(1) of the Constitution states that a State office shall behave whether in public or official life, in private life or in association with other persons in a manner that avoids any conflict between personal interest and public official duties. In addition Article 122 (3) requires that a Member shall not vote on any question in which the Member has pecuniary interest.

The spirit of the Constitution thus expects of Members to at all times declare any personal interest that they may have in any matter before the House. This rule applies not only to debate in the House but also to almost all proceedings of the House, or its Committees in which Members have an opportunity to speak such as debate in Committees, presentations of public petition or meetings of a select committee at which evidence is heard.

In the House of Commons, for example, the Committee on Standards and Privileges regards it as a very serious breach of the rules if a Member fails to register or declare an interest which was relevant to proceedings he had initiated. Precedents on this matter include a resolution on June 22nd 1858 by the House of Commons that:

"It is contrary to the usage and derogatory to the dignity of the House that any Member should bring forward, promote or advocate in the House any proceedings or measure in which they may have acted or been concerned for the consideration of any pecuniary fee or reward."

Invariably the main propose of a declaration of interest is to ensure that fellow Members of the House and the public are made aware at the appropriate time when a Member is participating in the proceedings of the House of any past, present or expected future financial interest which might reasonably be thought to be relevant to those proceedings. This rule is based on one of the maxims of equity that he who comes to equity must come with clean hands, and he who seeks equity must be equity. The norm of the House has been that Members declare their interests in matters before the House, in which case they may choose to contribute or abstain from further contribution.

Hon. Members, having established the general practice on the declaration of interest by Members, the questions that confront us now are threefold. One, what sanctions do we apply to a Member who fails to declare interest? Secondly, if we were to nullify his or her entire matter as placed before the House, is it the Member that we will be punishing, or his or her constituents? Lastly, is it possible to discern and separate the issues in which interest ought to have been declared and mete sanctions separately?

Hon. Members, in an attempt to answer these questions I am guided by our Standing Orders, the practices I have referred to and the tenets of equity. However, I am also reminded that equity regards substance rather than form. For that reason, formalities no matter how important ought not to frustrate justice.

Having said that, I now wish to respond to the issues raised by the Chairperson of the Departmental Committee on Education, Research and Technology as follows. One, the representation of one Dr. Helena Korir by the Member for Homa Bay as her advocate, though in a private capacity, should have been declared before or during the presentation of the matter to the Committee and, by extension, to the House. The client relationship that existed and which had a correlation with the present contestations, creates interest on the part of the hon. Peter Kaluma. As a rule, the failure to declare interest amounts to abuse of privilege. However, out of the matters that the Member had raised in his statement only Item 3, the one regarding the discrimination of staff, required the declaration of interest by the Member for Homa Bay.

Since the Member failed the basic tenets of equity on that particular matter, I, therefore, direct that the Committee proceeds with the prosecution of the rest of the matters raised in the Statement save for the item which relates to the alleged discrimination of staff. The said item is dropped forthwith and should not be addressed by the Committee.

Secondly, whereas the Chairperson alluded to a matter that she claimed was active in a court of law, the claim does not meet the threshold required for a matter to be declared *sub judice*. The Chair failed to prove her claim. I, therefore, do not see anything that would require me to invoke the provision of Standing Order No.89.

I thank you.

(Applause)

Order, Members! We will move to the next business.

Hon. Wandayi: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order hon. Wandayi? We do not allow points of order on communication from the Chair. We are now moving to the next Order. Order, hon. Wandayi! I am not allowing you to articulate your point of order.

Next Order.

I apologise, hon. Members. Hon. Members, I said I had two statements. Can we settle down at the back, please? Can the Members either coming in or leaving the Chamber settle down? Hon. *Daktari*, Naomi Shaban, can you, please, be seated?

RESPONSES TO STATEMENTS REQUESTS BY MEMBERS OTHER THAN CHAIRPERSONS/VICE-CHAIRPERSONS

Hon. Members, I have a Communication on responses to statements by Members other than Chairpersons or Vice-Chairpersons of committees.

Hon. Members, as you may recall on Wednesday the 16th of July 2014, the Member for Suba, the hon. John Mbadi and the Member for Kanduyi, the hon. Wafula Wamunyinyi, rose on points of order seeking the guidance of the Speaker in respect to the application of the provisions of Standing Order No.44 2(c) regarding to responses to Statements. In particular, the Members sought guidance on whether it is in order for a member of a committee other than the Chairperson or the Vice-Chair to give the response

on behalf of the committee, especially when such a Member is a member of a minority coalition.

Other Members who spoke on the matter included the Member for Kitui Central, the hon. Makali Mulu, the Member for Samburu North, hon. Alloys Lentoimaga, the Member for Belgut, hon. Eric Keter, the Member for Kajiado Central and, maybe, others; I may not have put everybody in.

Having listened to them I have deduced the following three matters as requiring my determination: One, who takes responsibility for the responses to Statements requests? Two, do we have Government and Opposition sides in the House? Three, should any Member other than the Chairperson or Vice-Chair respond to a Statement requested by a committee chair?

Hon. Members, just to remind the House, the subject of that particular Statement was on the plight of our soldiers returning from Somalia. Allow me to begin by thanking the membership of this House for raising these very important matters. It is my view that if we were to impartially answer these questions as individual Members we, probably, would not seek the guidance of anybody on the responses to Statements, let alone a ruling of the Speaker. If we were to be faithful to our Standing Orders and practices of this House, I have no doubt that the Speaker would rarely be asked to provide guidance on such matters as the interpretation of Standing Orders.

However, since I was asked to give this guidance I will not fail to rise to the occasion. The first question relates to who owns responses to Statements requested by the members of committee chairs. Hon. Members, Standing Order No.44(1)(c) states that:

“A member may request a statement from committee chairperson relating to matters under the mandate of the committee, and the Speaker may either appoint a day for the Statement or direct that the Statement be issued on the same day. The chairperson does not work in isolation. The role of the chairperson is clearly stipulated in Standing Order No. 180, which includes presiding at meetings of the committee, perform the functions and exercise the powers assigned to the office of the chairperson by the committee, resolutions of the Assembly and legislation and be the spokesperson of the committee.

Therefore, it follows that the Statement requested to the Chairperson, not as an individual, but in their capacity as the spokesperson of the Committee. Responsibility is, therefore, on the entire Committee. In accordance with that Standing Order, in the absence of the Chairperson or the Vice-Chairperson, a Member designated by the Chairperson shall take the Chair. In the absence of such a designated Member, the Members of the Committee shall elect one of them to take the Chair.

This spirit should thus apply in the responses to Statements. In the absence of both the Chair and the Vice-Chair, a Member designated by the Chairperson shall respond. In the absence of such a designated Member, the Members of the Committee shall elect one of them to respond. In the particular case before us, the Member for Kiminini, hon. Wamalwa, was tasked by the Departmental Committee on Defence and Foreign Relations during its sitting held on Tuesday, 15th July, 2014 to respond to the Statement in question.

Hon. Members, the second question relates to whether we do have Government and opposition in the House. Indeed, we are in a presidential system and, therefore, we do

not have the Executive in the House. Thus we do not have government or opposition in the House. What we have is the Majority and the Minority parties or coalitions of parties. The same are represented in our committee system.

Finally, as to whether a request or reply to a Statement is dropped or deferred simply because the Chairperson or the Vice-Chairperson is absent, we have since developed a practice to allow a Statement request to be acknowledged by any Member of the Committee present, who will thereafter convey the request to the Committee.

On responses, it is a fact that we have had several instances where Members of the Committees other than the Chairperson or the Vice-Chairperson have responded to Statements on behalf of the Chairpersons. However, all Chairpersons of Committees and all Members are encouraged to be present in the House at all times, not just during Statement Hour.

Thank you.

Hon. Members, let us now move to the next Order.

THE STATUE LAW (MISCELLANEOUS
AMENDMENTS) BILL

(Several hon. Members were on their feet)

Hon. Deputy Speaker: Order! Order, hon. Members! Members seem to be forgetting the rules that need to be observed in the House. When the Speaker is upstanding, no other person should be upstanding. You should be either frozen or seated in your place. It is as if you are not aware of what is happening in the House.

Hon. Members, on this Order, we were only left with the putting of the Question. Therefore, I will now put the Question.

(Question put and agreed to)

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

MOTIONS

APPOINTMENT OF HON. OPORE
TO DEPARTMENTAL COMMITTEE

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move:-

THAT, notwithstanding the resolution of the House on 8th October, 2013 regarding appointment of Members to respective Committees, this House further approves the appointment of hon. Zebedeo Oopore, MP; to the Departmental Committee on Energy, Communication and Information.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members! The consultations are going up again. Can we allow the Leader of the Majority to move the Motion?

Hon. A.B. Duale: Hon. Deputy Speaker, this is a very straightforward matter. This is the only constituency in the history of Kenya, in the Eleventh Parliament, which has had two Members of Parliament – one from Ford People and the other one from the party of “*Baba and Mama*”. The people whom hon. Opore represents here have decided that it is Ford People which has the mandate. He is in the House, and he needs to be in a Committee. We have decided that he retains his old Committee of Energy, Communication and Information.

Hon. Deputy Speaker, I beg to move and request the Majority Whip, hon. Katoo ole Metito, to second the Motion.

Hon. Deputy Speaker: Yes, hon. ole Metito!

Hon. Katoo: Thank you, hon. Deputy Speaker. I stand here to second the Motion.

First of all, I would like to take this opportunity to congratulate hon. Zebedeo Opore for having managed to come to this House twice in one Session. As the Leader of the Majority has said, the constituency has made history in very many ways. Bonchari is the only constituency in respect of which the High Court declared somebody a winner and gave him a certificate without subjecting the people of Bonchari Constituency to another election.

We had hon. John Oyoka in this House for a very short time. Hon. Zebedeo decided to petition the Supreme Court over the matter. The Supreme Court ordered the holding of a by-election. We now have hon. Opore, courtesy of the people of Bonchari Constituency. Therefore, he deserves to represent Kenyans in the Committee on Energy, Communication and Information. We kindly ask this august House to approve his appointment.

Therefore, I beg to second.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members! The level of consultations is far too high. I do not want to resort to sending people out of the Chamber. If you need to consult, there are areas where you can do so without inconveniencing others. You do not have to really raise your voices.

(Question proposed)

Hon. Members: Put the Question! Put the Question!

(Question put and agreed to)

ADOPTION OF REPORT OF MEDIATION COMMITTEE
ON DIVISION OF REVENUE BILL

Hon. Musyimi: Hon. Deputy Speaker, I beg to move:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.153, this House approves the Report of the Mediation Committee on the Division of Revenue Bill, 2014, laid on the Table of the House on Tuesday, 22nd July, 2014.

Hon. Deputy Speaker, the Mediation Committee on the Division of Revenue Bill, 2014 was constituted by the Speakers of the two Houses of Parliament on 24th June, 2014, pursuant to the requirements of the Constitution and the Standing Orders.

The Members of that Committee are:-

1. Hon. Mutava Musyimi, MP – Chairperson.
2. Sen. Billow Kerrow, MP – Vice Chairperson
3. Hon. Mary Otucho, MP – Member
4. Sen. Mutahi Kagwe, MP – Member
5. Sen. Mutula Kilonzo Junior, MP – Member
6. Hon. John Ng'ongo, MP - Member

This Committee met four times as---

Hon. Deputy Speaker: What is happening to your microphone?

Hon. Musyimi: Much obliged hon. Deputy Speaker.

This committee met four times as is evidenced by the Report tabled yesterday and in accordance with the past practice. The Chair of the Mediation Committee should be elected from amongst members of the House that originated the Bill. You will recall that this House did originate this Bill. Appended to this Report is a version of the Bill developed by the Committee for consideration of both Houses.

I take this opportunity to express my appreciation for the support by the Speakers of the two Houses of Parliament.

(Loud consultations)

Hon. Deputy Speaker: Members, I do not understand what is eliciting so much excitement this afternoon, so that Members are not settling down. We cannot hear hon. Mutava Musyimi's presentation. Order Members! Can we please have some order in the House?

Hon. Musyimi: Much obliged hon. Deputy Speaker.

I was just thanking the Speakers and the Clerks of the two Houses of Parliament, and also the Members of the Committee for the work that they so well did.

By way of introduction, let me just say that the National Assembly did pass the Division of Revenue Bill, 2014 on 23rd April, 2014. As you are aware, it is necessary that the Speaker of this House does forward by way of communication to the Senate a message seeking their concurrence. That message was communicated on 25th April, 2014. The Senate did deliberate on the Division of Revenue Bill with amendments on 21st May 2014 and they sought the concurrence of this House.

The amendments were basically around two areas. One, they provided that more money be made available to fund all Level 5 hospitals, and two, the Senate also sought an amendment to the Schedule to alter the stipulation that the allocation to counties is 43 per cent of the most recent audited and approved accounts of the National Assembly; they

wanted this to simply read that the allocation due to the counties supersedes the minimum threshold of 15 per cent of revenue collected by the Government as stipulated in the Act.

You will recall that upon receipt of the message from the Senate this matter was referred to the Budget and Appropriations Committee on 10th June, 2014. My committee did meet and considered this amendment and it was not persuaded---

(Loud consultations)

Hon. Deputy Speaker: Order Members! Order! I do not know which meeting is taking place in the Chamber. Hon. Mungaro, you are the Whip; you cannot be holding a meeting in the Chamber. Hon. Chris Wamalwa!

Hon. Members: Out! Out! Out!

Hon. Deputy Speaker: No! No! I have not said he should go out. But he is certainly headed in that direction if he continues--- Members, I do not want to send anybody out but I will be forced if this level of consultations continues. This is because no one is even listening to what hon. Mutava Musyimi is saying; this is a very important thing. You know that your counties will be in jeopardy if this Bill does not pass. So hon. Members, can we take our business quite seriously and listen to what our Mediation Committee that we passed in this House came up with to save our counties.

Hon. Musyimi: Much obliged hon. Deputy Speaker.

My committee did meet and on 10th June, 2014, we tabled a Report rejecting the proposed amendments to the Division of Revenue Bill, by the Senate. It was this situation, which, the National Assembly having adopted our Report, led eventually to the establishment of the Mediation Committee.

It is important that this House is reminded of the provisions in our Constitution. The law says that if one House passes an ordinary Bill concerning counties and the second House rejects the Bill, that Bill shall be referred to a Mediation Committee appointed under Article 113.

(1) If a Bill is referred to a Mediation Committee under Article 112, the Speakers of both Houses shall appoint a Mediation Committee consisting of equal Members of each House to attempt to develop a version of the Bill that both Houses will pass.

(2) If the Mediation Committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.

(3) If both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.

(4) If the Mediation Committee fails to agree on a version of the Bill, within 30 days or if a version of the proposed Bill by the Committee is rejected by either . House, then the Bill is defeated.

You will agree with me that the consequences of rejecting such a proposal would be ill-advised and altogether calamitous.

Let me then come to the substance of the discussions and of our recommendations. The Mediation Committee was informed that Kshs.226.666 billion was a product of several negotiations and compromises by stakeholders; this House in its wisdom did approve that amount. The Mediation Committee heard that the Senate had

proposed an amendment to the Division of Revenue Bill, basically because they were afraid and very concerned that the Level 5 hospitals risked closure if not well funded.

The Committee noted that the counties with the Level 5 hospitals would be unfairly disadvantaged as they would be forced to put in an extra amount of their equitable share to run the Level 5 health facilities, which provide services to other nearby counties. I think this is a very important point that we wish to understand and embrace. We noted that there were no sufficient funds provided for Level 5 hospitals and it was important that we consider the specific requests made to increase additional revenue to support the running of these hospitals.

The Mediation Committee also noted that there was urgent need to conduct costing of the Level 5 hospitals and, indeed, their functions to determine the amount of resources sufficient to run them. One of the concerns of the Budget and Appropriations Committee all along has been the sense as we have sought to engage the budget process that the one sector that has been least understood, and has gotten very little support in the devolution process has been the health sector. The problem that you have in these Level 5 hospitals reflect an even larger problem, and we are glad to note that the committee on health of this hon. House has actually tabled a Report. I suggest that we need to reconsider providing for these Level 5 hospitals from the national Budget. Therefore, there are challenges faced in the health sector and our committee is aware of that.

As I continue, let me also say that the Committee was concerned and we took the opportunity to express this position. We are deeply concerned about the utilization of funds by the county governments. We get the sense that there is a lot of misappropriation of funds, misallocation of priorities and money that should be going to development is going to votes that, otherwise, will not benefit our people; examples are travel, capacity building and all those other vote heads that we read about.

Hon. Deputy Speaker, the Mediation Committee heard that the Senate Committee on Finance, Commerce and Budget was working on mechanisms to set up a framework for county governments' ceilings on expenditures. This would enhance accountability and expenditure decisions by county governments. The county assemblies were also working on building capacity for oversight.

Hon. Deputy Speaker, by way of recommendation, my Committee observed that, indeed, there is an urgent need to unlock the matter and cause the County Allocation Revenue Bill, 2014 to proceed. The Mediation Committee observed that Level 5 hospitals are not provided for explicitly in the Constitution, hence the need to find a mechanism for dealing with matters in the future to enable them function appropriately and effectively. The Mediation Committee observed that there is urgent need for the health committees of the two Chambers to work together in consultation with other stakeholders to address issues of Level 5 hospitals, and determine the actual cost of running of each of these hospitals.

The Mediation Committee considered the above issues as raised in the National Assembly and were agreed unanimously that we should adopt this Report as the Mediation Committee and bring it to this august House for consideration. As a matter of parliamentary courtesy, I would have wished to have convened a meeting of the Budget and Appropriations Committee to inform them of this decision, but time was not on our side. I therefore, wish to take this opportunity to ask that they understand that the

timelines have been a bit tight. But I am sure they have followed the general drift of the argument.

Hon. Deputy Speaker, the hon. Members will also notice that in the actual Bill that is attached to this Report, we have brought clarity to the issue of the Kshs5 million available to each of the 290 constituencies as conditional grant for the Economic Stimulus Package (ESP). That money will be available to each constituency on the platform of the county governments, but will go down to the constituencies.

Hon. Deputy Speaker, the Mediation Committee, therefore, recommends one, that the National Government allocates Kshs1.87 billion as a conditional allocation for financing all Level 5 hospitals as currently listed. Secondly, my Committee recommends that the schedule that we had agreed upon as the House be admitted with minimum amendments. The two Houses of Parliament recommend that we, in particular this House, approve this report and its appendix thereof.

I thank the Chair and beg to move.

I beg to request that hon. (Ms.) Mary Otucho, the Vice-Chairperson of the Budget and Appropriations Committee, and a Member of the Mediation Committee, seconds this Motion.

Thank you.

Hon. (Ms.) Otucho: Thank you, hon. Deputy Speaker for giving me this opportunity. I rise to second and support the Report of the Mediation Committee. The genesis of this Report is the amendments made by the Senate to the Division of Revenue Bill, 2014. That was after the National Assembly passed the Division of Revenue Bill, 2014, in April, 2014; that is Bill No.13 of 2014.

Hon. Deputy Speaker, we are all aware that the Senate did not concur and instead proposed further amendments and sent the Bill back to the National Assembly on 21st May, 2014 for concurrence of the National Assembly. The proposed amendments are in Clause 4 of the Bill; the Senate proposed that there was need for adequate funding for the Level 5 hospitals. They made reference to Article 187(2) of the Constitution which says that when one level of government passes a function to another level of government, it should provide sufficient funding for that particular function.

The other bone of contention by the Senate was the amendments to the Schedule to give clarity as already alluded to by the Chair. That is one of the areas that our Committee was looking into. We, therefore, did give clarity to the meaning in terms of the percentage of revenue allocated to the county governments based on the most recent audited accounts. This is because what they wanted to see coming out clearly was that the 43 per cent of the amount of the most recent audited accounts represents a clear picture, and should not mislead in terms of the perception that it is 43 per cent of the total revenue collected. I think that issue has actually been clearly addressed by the Committee.

Hon. Deputy Speaker, we noted the issue of the state of the Level 5 hospitals; their state is very deplorable and needs to be addressed. Failure to provide resources for these hospitals will actually disadvantage counties; it will force counties to actually budget from the sharable revenues. That will disadvantage counties that have Level 5 hospitals. We felt that it was important that those hospitals be funded.

In our deliberations, I remember we even had to re-visit our previous discussions in the Budget and Appropriations Committee. Initially the Budget and Appropriations

Committee had set aside money for these hospitals. We actually proposed to ring fence the budget for the Level 5 hospitals. But later, at some stage, the proposed amount was put into counties allocation to come to the figure of Kshs226 billion. We decided not to go that direction because we realized we were not heading anywhere. Therefore, we had to come to a consensus, that it was important that we allocate money for the Level 5 hospitals, so that we do not unfairly disadvantage the counties that have these hospitals.

Hon. Deputy Speaker, our Committee also looked into the issue of the format in which the presentation was made. That is also the area over which the Senate had actually disagreed with us; it was on the issue of the format in which the presentation was done and the percentages. That was corrected and the Committee agreed that the National Government will make a Kshs1.87 billion conditional allocation for financing of the Level 5 hospitals. This is because the county governments have already been budgeted for in line with the amount they put in the budgets they forwarded. It was felt that the county governments were not in a position whatsoever to contribute any further amounts for this purpose.

There was a general concern that whatever measures, or legislation, shall be brought forth with respect to Level 4 or Level 5 hospitals--- Members of the Committee felt that there is need to look into all the counties. This is to ensure that there is funding for Level 5 hospitals wherever they are. This will ensure that members of the public from other counties do not have to travel to their neighbouring counties that have referral hospitals. This will ensure equity in the distribution of health resources.

With those remarks, I support and second.

Hon. Deputy Speaker: Members, we are really flouting our Standing Orders because we are not following the goings-on in the House.

(Hon. Mung'aro stood up in his place)

Hon. Mung'aro, you are an old Member of this Chamber. You can understand the new ones but, yourself; you have been here for a long time. When the Speaker is upstanding, you should not have any other persons standing or, if they are, they should freeze.

(Question proposed)

Hon. Maanzo: Thank you, hon. Deputy Speaker. I rise to support the Motion by the Chairperson of the Mediation Committee on the Division of Revenue Bill. For us to develop this country, there has to be proper working mechanisms between the Senate and the National Assembly. For there to be that relationship, as presented, this is the best way to go. Even from the way the Chairperson has spoken, the manner in which the Committee is constituted shows that the country is ready for devolution. The Mediation Committee is likely to do good to the country.

I support.

Hon. Limo: Hon. Deputy Speaker, I wish to raise a few issues on this. From the outset, it is time that the country realizes that some of the important issues, including health, should not have been devolved. The fact that we are now looking for money to

fund Level 5 hospitals is just an indicator of a bigger problem. Other than the Level 5 hospitals, we have many issues with the other Level 4 hospitals and below. In most counties, especially those that were there before the creation of new districts, there are a lot of problems. Some counties, like my Kericho County, are spending about 30 per cent of the county allocation on health alone. That is because of lack of costing by the Transition Authority (TA) and the Commission on Revenue Authority (CRA).

So, other than allocating this money now, we need to look at the bigger picture, so that the country will not again get into those kinds of problems. In the original schedule, I remember that we had allocated money to Level 5 hospitals. But something happened on the way and it was removed. We have now come back and started a dispute. I want to urge this House and the Senate to avoid such kind of issues in future. The counties are right now suffering because of lack of money. If we do not pass this Bill, it will be a bigger problem.

The counties should come up with very clear systems of allocating funds for development projects. They are not strict on the allocation of money for development projects. A project can be allocated money and it is not implemented in the current financial year. Then, in the next financial year, there is no clear guideline that it will be implemented. They can borrow a leaf from the CDF where, once a project has been approved, it should be done. I want to support this - although with a lot of reluctance so that in future, we do not repeat the same.

As I conclude, I want to urge this House to ensure that this report is amended to say that the Kshs5 million for the Economic Stimulus Programme in the 290 constituencies should be given through the CDF as a conditional grant. If it is not done that way, very little money will reach the ground if it passes through the Ministry of Education, Science and Technology. It will not add value if we allocate this money and it is not passed through the CDF. The beauty of the CDF is that we are sure that 100 per cent of the allocation will reach the *mwananchi* at home. We want our people to get services. We do not want rhetoric.

Therefore, even as we support this, I want to reiterate that we must ensure that every county, once this money has been given, uses it properly to give services to the people. They should follow the right procedures of ensuring that all the hospitals get drugs on time. Currently, many hospitals, in most cases, do not get their drugs on time. That is because of lack of planning. We understand that this is a new system, but we need to re-think and probably support the national Government and the county governments in working together to ensure that those counties which do not have capacity to run the hospitals are assisted. We should ensure that whichever level of government is able to run the health function properly and efficiently, is given the opportunity to do so.

With those few remarks, I beg to support.

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I stand to support the Report of the Mediation Committee pursuant to Article 113 of the Constitution. This is the second Mediation Report of the two Houses. There was the one on the County Government Bill by Senator Sang, the Senator for Nandi. This is the second Mediation Report that is coming to the House. That shows that, at least, the two Houses are using the provisions of the Constitution to sort out differences where they arise. This Report is

before this House based on Articles 112(1)(a) and 113 of the Constitution, which envisages where a disagreement arises between the two Houses.

I totally agree that the Division of Revenue Bill that came before the House was developed based on consensus between the Budget and Appropriations Committee, the National Treasury and the Senate. The amendment that was brought by the Senate based on Level 5 hospitals is the one that created the situation that took us to the mediation route.

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

*[The Temporary Deputy Speaker
(Hon. Cheboi) took the Chair]*

I am a very worried man and I want to go on record that ideally, and if you read the Constitution, the Division of Revenue Bill is an exclusive Bill of the National Assembly. The two Houses are working very well and I have nothing against the Senate. I know they got an advisory opinion from the Supreme Court. I agree with the divergent opinion of one Judge, Lady Justice Njoki Ndung'u, and I will ask the Members of the National Assembly to look for the dissenting judgment of Lady Justice Njoki Ndung'u. If I read Article 95(4), it says that:-

“(4) The National Assembly—

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

That is a very clear provision of the Constitution. That Article gives the constitutional mandate of the National Assembly. But the Senate and many other people will read a different Article, which I have no problem with, which talks about Parliament. The biggest mistake the crafters of the Constitution made, and I hope this will come in the referendum question---

(Applause)

That the referendum will not be on the IEBC and security alone! In my opinion, and I will have an opportunity after the 24 county assemblies, the road is very long for the referendum.

(Loud consultations)

Hon. Temporary Deputy Speaker, please, protect me! When it comes to the National Assembly, because there are many places in this Constitution---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. (Ms.) Odhiambo-Mabona, do not harass hon. A.B. Duale.

Hon. A.B. Duale: She only harasses me during the month of *Ramadhan* and she knows the reasons. That is because I am very much limited in how I relate to some particular Members of the House on the Holy Month of *Ramadhan*.

(Laughter)

Hon. Temporary Deputy Speaker, let me go back to the gist of the matter. There are so many provisions in the Constitution that talk about Parliament, and that is where the conflict between us and the Senate comes in. The drafters of the Constitution should have been very specific. Like Article 95(4) is very clear; that the National Assembly has the mandate to deal with the allocations. It is the Budget and Appropriations Committee of the National Assembly that deals with the Budget of the National Government. But now that the drafters of the Constitution gave the mediation clause where we are today, we are obliged and today we must dispose of this matter so that we are not accused as the National Assembly of denying the county governments their annual budgetary resources. The moment we dispose of this - and I want to confirm that the Senate dealt with the Mediation Report yesterday and finished - then the Senate will do its mandate of now bringing the County Allocation---

Hon. Kaluma: On a point of order, hon. Temporary Deputy Speaker. You have heard the Leader of the Majority Party quote various provisions of the Constitution and confirm that the issues around the Division of Revenue Bill are matters for the National Assembly. You have also heard his last statement. He is saying that we should be committing an illegality as the National Assembly so that we are not accused. Is that the way we should go as leaders of this country and as the National Assembly? Where there is an illegality, why do we not just say that it is illegal and we end it there? Why are we avoiding accusations if it is an illegality?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I will continue and wait for the Referendum question because I do not understand the point of order. But I was saying that in last year's Budget, we got stuck and the Division of Revenue Bill was signed by the President; the one that left the National Assembly. Our colleagues went to the Supreme Court and we must respect the Supreme Court. It is we who created it. The Supreme Court gave a verdict in majority that the Senate has a role but, as a legislator, I was using the Floor of the House to still use the provisions of the Constitution that, that was not in order. I am not in a court of law. I am not a lawyer unlike hon. Kaluma. I also do not think that he should appear before the Supreme Court. I have eminent lawyers like Ahmednassir Abdulahi who does all my bits in the Supreme Court and the High Court and many other good lawyers, including my friend, hon. (Ms.) Odhiambo-Mabona. Once in a while, I seek her services.

(Laughter)

Hon. Members: What services?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, legal services. I want to clarify that it is legal services.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. (Ms.) Odhiambo-Mabona, what is it? By the way, you should be informed that the Leader of the Majority Party is fasting. So, I hope you are not going to throw unnecessary jabs.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I am not worried whether I give him service, legal or otherwise! That does not worry me. I am a lioness!

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Which other services?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I am not worried about giving him legal or other services, but my concern is this: Is the Leader of the Majority Party in order to be intimidated by me? This Leader of the Majority Party does not speak? Every time he speaks, he must make reference to hon. (Ms.) Odhiambo-Mabona. Allow me to even change my dressing style or hairstyle so that I am less intimidating to him because he may not be able to deliver his--- Sometimes, he gives the excuse of *Ramadhan*. Even if I am fasting, I am not scared of him. He should not be intimidated by me!

The Temporary Deputy Speaker (Hon. Cheboi): You see when you mention too many services, the Leader of the Majority Party might obviously be intimidated!

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I want to correct that bit. I only seek legal services and join prominent lawyers like Ahmednassir Abdulahi. There are lawyers who carry the bags of the senior counsels and, at the same time, to be mentioned by the first occupant of the Leader of the Majority Party in Kenya is a plus. It is a plus for your CV. So, hon. (Ms.) Odhiambo-Mabona should even be very happy. There are many hon. Members I could have mentioned, but you are very special.

(Laughter)

If I go back to the gist of the matter, this Mediation Report talks about Level 5 hospitals. I have nothing against the governors but I am one person in whose constituency a Level 5 hospital is situated. That is Garissa General Hospital. From the Floor of the House, I want to challenge the Membership of this House who belong to the Departmental Committee on Health, both in this House and in the Senate, to go and visit those Level 5 hospitals across the country, since the new Constitution or since county governments were formed. They are all collapsing. Let us not cheat ourselves. Those Level 5 hospitals are collapsing! There are no drugs; there are no doctors and there are no nurses. Please, visit them! We are allocating Kshs1.8 billion but the thing is that we have an oversight role. We need to go to Kakamega. We need to go to Kisumu. We need to go to Garissa, Machakos, Embu, and Coast General Hospital and put to task the county governments. We are urging the National Treasury and Mr. Rotich that, that money, because the Level 5 hospitals is a shared responsibility like rural electrification---

(Loud consultations)

There is another *kamukunji* somewhere!

The Temporary Deputy Speaker (Hon. Cheboi): It is actually your Deputy. So, just proceed.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, let me proceed as my Deputy is lobbying. I only mentioned hon. (Ms.) Odhiambo-Mabona and not other colleagues. So, let us do our oversight and I am happy that the House now is cheerful. I expect the person who will speak after me to pick from where I have left. You do not need to mention hon. (Ms.) Odhiambo-Mabona; mention another person. So, the Level 5 hospitals--- Hon. (Prof.) Nyikal is a former renowned public sector expert in the health sector; he is a medical doctor. Let us make sure that the Level 5 hospitals work. Garissa General Hospital serves the whole of Ukambani, part of Coast Province and the whole of North Eastern Province but, today, there are no drugs, nurses and doctors. The doctors are resigning.

Hon. Temporary Deputy Speaker, this House has an obligation to make sure that the Kshs1.23 trillion that we passed changes the lives of our people. If we have money for Rural Electrification Authority (REA), we must see how much is going to the county government. Is it visible? How much are we giving?

My biggest concern is that we have resolved the stalemate between the Senate and the National Assembly and the national Government has allocated money. But is that money being translated into development at the county level?

Hon. Temporary Deputy Speaker, with those very many remarks, I will leave the rest for the day when I will not be fasting. I will pick my serious discussion with hon. Millie Odhiambo once the *Ramadhan* is over. I wish her well.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, the hon. Member for Ugunja. You are free to seek legal services from hon. Kajuju in response.

(Laughter)

Hon. Wandayi: Thank you, hon. Temporary Deputy Speaker. I also want to support this Motion. Indeed, it is important that we understand that, as a House, what the people out there are in need of are services.

Hon. (Ms.) Kajuju: On a point of order, hon. Temporary Deputy Speaker. You have said that the hon. Member can seek legal services from me. I was also mentioned yesterday in relation to hon. Mbadi about intimacy. Hon. Temporary Deputy Speaker, you were the Chair. However, I said that intimacy does not include conjugal rights.

(Laughter)

Hon. Temporary Deputy Speaker, I can only offer legal services to the exclusion of any other service.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, that is the kind of services that---

It is only legal services that can be sought even from you the Chairman, Departmental Committee on Justice and Legal Affairs.

(Laughter)

Hon. Chepkong'a: On a point of order, hon. Temporary Deputy Speaker. I rise pursuant to Standing Order No.83. There is un-parliamentary language that my colleague, hon. Florence Kajuju has used. Is it in order for hon. Kajuju to use a language that can cause parents to switch off television sets in their houses right now? Could you order hon. Kajuju to withdraw certain terminologies that are very offensive, including the support she is getting from hon. Millie Odhiambo?

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Chepkong'a! You know I was in the same class with hon. Kajuju and I remember one lecturer using exactly those terms that she has mentioned now in family law. I think she is protected. Those terms were perfectly in order but we will stop that discussion for another day.

Proceed, hon. Wandayi.

Hon. Wandayi: Thank you, hon. Temporary Deputy Speaker. I was saying before I was interrupted that, what the public out there is concerned about is getting the health services that they desire.

As a House or as Members of Parliament, we can engage in phonetics but what is important to understand is that people out there are not concerned with the legalities or jargons. What they want are services. By the Mediation Committee coming up with this Report, the Senate has been vindicated to an extent. I do not agree with the proposition that since there was a dissent in the Supreme Court ruling, we cannot go with the majority ruling that decreed that the Division of Revenue Bill is under the purview of both this House and the Senate. That must be taken into consideration; that the Senate has a say in the Division of Revenue Bill as decreed by the Supreme Court. We must be a people who respect the law and the Judiciary. As CORD, you know we have set the example. This is by respecting the verdict of the Supreme Court in the past. So, it is important that the Majority Leader lives by those standards.

Hon. Temporary Deputy Speaker, it is also true that under the current Constitution, it is fairly vague as to where the Level 5 Hospitals lie; that is, between the national Government and the county governments. But, again, the action that has been taken by this Committee to ask Parliament to authorize Kshs1.8 billion from the national Government as conditional grant to the counties is in order, but it is not the way to go. This is not a long-term solution. The long-term solution, in my view, is that we must determine, once and for all, where those hospitals lie. In my view, those hospitals should squarely lie in the county governments. However, once we determine that, we must be able to do a thorough costing. From the outset, when we allocate money through the Division of Revenue Bill, we are clear that, that money is going to the county governments. We have given them the power to prioritize. We cannot continue, as a House, to micro-manage the county governments. Once we determine that those hospitals belong to them, this House must give them money and then they determine how to spend it. That is the long-term view.

I can see a clamour for functions to be reverted back to the national Government for whatever reasons. If you asked me, I will go for a situation where we only retain the national hospitals and, perhaps, the referral ones at the national level. However, we should empower the county governments to manage and run the other hospitals and health facilities.

Hon. Temporary Deputy Speaker, there is the other issue which I am not hearing people talk about. There were two issues of contention when this matter was referred to the Mediation Committee. The other issue of contention was reference to the percentage allocation; that is the percentage of monies allocated to the county governments vis-à-vis the audited revenue accounts. This is a matter that we might again revisit.

I have said here before - and I want to repeat it - that I do not think the framers of this Constitution, which is highly dynamic, intended a situation where the Controller and Auditor-General and this Parliament could sit on revenue accounts of the nation. As we speak, the law obviously states that the 15 per cent will be the percentage of revenues as per the last audited revenue accounts. That is a fact. We are aware that in this particular case, we are talking about the revenue account of 2009/2010 Financial Year. When you say and you want to be happy about it that in this financial year, we have allocated 43 per cent of the revenue of the last audited revenue accounts, it looks nice but, in reality, that is not the case. The fact of the matter is that, if you look at the last audited revenue accounts approved by Parliament - that is the 2013/2014 Financial Year - that percentage comes down drastically to perhaps 13 or 14 per cent.

In theory, we are giving the counties more than 15 per cent - which is in the Constitution - but in practice, we are giving them less money. So, this is a matter that has to be determined once and for all. Indeed, I am happy that in the forthcoming referendum, we may get an opportunity to, once and for all, determine that the county governments be allocated a specific percentage against the latest revenues of accounts which, in this case, should have been for the 2013/2014 Financial Year.

I want to conclude, of course, by supporting this Report really, because I have no choice. If we delay approving this Report, the issue of revenue Bill will be a problem. The Allocation of County Revenue Bill will be in problems. Therefore, we need to make the country move forward. My appeal is that when the time comes, we must make a determination once and for all and allocate the counties moneys that are enough for them to run their functions. That is not less than 40 per cent of the latest account of revenues.

With those very many remarks, I wish to support.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Sheikh from Turkana South.

Hon. Ekomwa: Thank you hon. Temporary Deputy Speaker for giving me this opportunity. I want to thank you for that because I am always blessed, wherever you take that seat. I am always included in the list of your favourites.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Well! I totally deny your allegation the hon. Member for Turkana South.

Hon. Ekomwa: Hon. Speaker, it is better to be real, because you are conversant with my names, unlike other Speakers who find it difficult to pronounce the name. But we are not looking at the names. We are looking at the representation, I am representing a Constituency. So, when I am given this opportunity, it is the whole Constituency that is talking and not Ekomwa.

(Laughter)

Hon. Temporary Deputy Speaker, I want to support this Report with a lot of reservations. I think the Constitution that we have recognizes counties and National Government. I do not think there are issue of provinces and districts. I have not seen it in the Constitution. I come from the largest county - Turkana County - which is 77,000 Km². It is equal to Nyanza, Central and Mombasa provinces combined. I am perplexed even as we pass this Report. The hospital that is there does not even qualify to be Level 5. When there is a problem in Turkana, patients travel 300 kilometres just to access medical services at Moi Teaching and Referral Hospital.

So, as I support this Motion, I urge the Government to urgently upgrade some of the hospitals in ASAL areas. I expected the Mediation Committee to say that Level 5 hospitals must be in ASAL areas. That is because it is people from those areas who are suffering. I expected that and I think that recommendation should actually be taken seriously. That is not enough. I want hon. Members of Parliament who are here to stop cheating Kenyans. It is very true that funds were taken to the counties. Some funds were actually left in the National Government. I want to give a scenario so that other Members of Parliament can get the truth. In my county, we were allocated Kshs9.2billion. The six constituencies within that county received Kshs0.6 billion for CDF. We have realized the much that Kshs0.6 billion has done. It is much more compared with the work that has been done by Kshs9.2 billion.

(Applause)

Are we just here to seek for services or just to allocate funds? I think what Kenyans want are services. They are looking for the impact, whether it is in National Government, or county governments. We have to see whatever the funds that we are allocating to those counties have actually realized the right priorities of the citizens. I want to tell this House: Were it not for CDF, the impact of the National Government could not have been seen. CDF is doing a great job. People who misused CDF have suffered the consequences of that. The same will also happen to the governors. If there is anybody who is misappropriating the county funds, he or she will suffer the consequences. One thing we are saying is: Yes, we support that funds must go to the counties but, as a Parliament, we have a role to play. We need to oversight those funds. We need to ensure that whatever we are giving out in this Parliament, we have to follow it on the ground to ensure that it has done the right job for Kenyans.

The Temporary Deputy Speaker (Hon. Cheboi): Order hon. Ekomwa! What is it hon. Langat? You have placed your card---

Hon. Langat: Sorry! I wanted to raise a point of order in the manner in which--- In fact, I respect what he says. But when he says Members of Parliament are cheating the public, I think that is un-parliamentary. That is because we never cheat. We actually represent them very well in this House. If there are problems out there, then it is not those Members who go and mislead the public. It is the other arms of Government. So, I was going to request him, with due respect, that he withdraws that word and kindly use a different word which is Parliamentary and not what he has said earlier on.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Ekomwa, I think it is just fair that you simply withdraw that bit of statement and proceed. You will have to withdraw. The use of the term “cheating” is un-parliamentary.

Hon. Ekomwa: Hon. Temporary Deputy Speaker, with due respect, I did classical logic, the study of correct thinking.

(Laughter)

I think I will withdraw the word “cheating” and replace it with the word “lying”.

(Laughter)

Temporary Deputy Speaker (Hon. Cheboi): That is also un-parliamentary! Withdraw and give us another one.

Hon. Ekomwa: I withdraw. I think the right word here is actually misleading.

The Temporary Deputy Speaker (Hon. Cheboi): That is perfect, hon. Ekomwa

Hon. Ekomwa: That is a logical word hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): You see, when you use that term, it also includes you. I want to, at least, absolve you from that.

Proceed now.

Hon. Ekomwa: Yeah. Thank you, Temporary Deputy Speaker. I think, just to support this Report again, one thing that we are saying is that the Level 5 hospitals belong to specific counties. They belong to those specific counties. The other counties will not have a say over the same Level 5 hospitals. However, I support this Motion because of one thing, which is that those Level 5 hospitals belong to specific counties. However, you as a Member of Parliament, when you are sick, you do not know where you will be admitted. You might try to trace that specific Level 5 hospital in your county, but you will be admitted in a different hospital.

So, as Kenyans, we must ensure that all health facilities in Kenya are well equipped. They should have all the medical services, drugs and so on. That is the reason why I support this Motion. Although there are only 5 Level 5 hospitals in Kenya, we must provide the right stock of medicines and enough personnel in order to take care of Kenyans wherever they are. That is so that we do not personalise hospitals. That is what I want to make clear.

The Temporary Deputy Speaker (Hon. Cheboi): What is it hon. Keter?

Hon. E. Keter: Hon. Temporary Deputy Speaker, I think at this juncture, we should be in a position to really know the contributions which are made by the county governments as regards those funds. That is because, to me, what is happening right now is---

The Temporary Deputy Speaker (Hon. Cheboi): No. What is out of order? I do not want you to contribute to it? I have just given you an opportunity to raise a point of order.

Hon. E. Keter: I was thinking that you give me an opportunity to express myself on this issue.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): No. Then you will queue like everybody else. I thought it was a point of order. Hon. Keter, you will have to wait for him to finalise and if you are in the list, then you will get your opportunity.

Hon. Eric Keter: Okay. Thank you. I stand corrected.

The Temporary Deputy Speaker (Hon. Cheboi): Proceed, hon. Ekomwa.

Hon. Ekomwa: Hon. Temporary Deputy Speaker, I think I need to inform hon. Keter that the funds that we have allocated to the county governments must first be used to improve those Level 5 hospitals as we supplement the ones that we are actually giving--

The Temporary Deputy Speaker (Hon. Cheboi): You do not have to answer hon. Keter because I have actually ruled him out of order.

Hon. Ekomwa: Thank you, hon. Temporary Deputy Speaker. I was saying that the issue of health is very sensitive. We should not politicise it because life is very important. We all need to live long and that is why we are here. The same applies to other Kenyans out there. So, the Government is supposed to put more funds in the health sector. We should ensure that all the health facilities are well equipped.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. So, you should be winding up because I can see that your time is up.

Hon. Ekomwa: Hon. Temporary Deputy Speaker, to finalize, I want to inform this House that Turkana County has been marginalised for 50 years. The problems that we are solving now would have been solved 50 years ago. So, I want to inform my colleagues who think that Turkana County has been allocated a lot of funds that they are wrong. We can exchange counties. You can come to our county and we can go to yours so that you can suffer.

(Laughter)

You will suffer because of the problems that we are facing now. We never wished to be where we are now. So, I really urge my colleagues that although oil has been discovered there, it will not solve all the problems we are facing. So, when you see some funds being allocated to Turkana County, do not wish to be poor. Be satisfied with your condition.

The Temporary Deputy Speaker (Hon. Cheboi): Why do you want others to be satisfied with their conditions and yet you are not? Let us have the hon. Member for Kitutu Chache North.

Hon. Angwenyi: Thank you very much, hon. Temporary Deputy Speaker, for giving me time to contribute to this important Motion. First, I rise to support this Motion not because I fear of being accused, but because I feel this is a reasonable and palatable illegality.

Hon. Temporary Deputy Speaker, over the weekend, I visited one of the wards in Kisii Level 5 Hospital and it was despicable. Three patients were sharing one bed. Imagine that is a Level 5 hospital. That hospital serves Kisii, Nyamira, Migori, Homa

Bay, Bomet and Narok counties. It even extends to some parts of Tanzania. It also serves even Kericho County as my colleague has informed me.

I called my Governor to come and see the condition of that ward and he told me that he is even more scared because the conditional funds that we are giving them had been withdrawn. So, it was a very positive step taken by this Committee to reinstate the--

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Angwenyi. What is it hon. Member for Kisumu East?

Hon. S.S. Ahmed: Is it in order for my dear brother to state that the conditional grants were withdrawn, when we know for a fact that conditional grants were given to each governor? I know that for Kisumu County, the conditional grant amounting to Kshs350 million was misused. Is it that hon. Jimmy Angwenyi, who we call 007, has facts that the money was withdrawn? That is because I have got a different opinion?

The Temporary Deputy Speaker (Hon. Cheboi): I think you are actually pursuing an argument and you have actually stated it anyway. So, proceed, hon. Jimmy. I do not consider that a valid point of order.

Hon. Angwenyi: Hon. Temporary Deputy Speaker, my good friend from my previous provincial headquarters has not gone through the financial records. Actually, until it was reinstated by the Mediation Committee, there was no conditional grant to Level 5 hospitals. There were some funds last year but, in this year's Budget, before this Mediation Committee came in, there were no conditional grants to Level 5 hospitals.

Hon. Temporary Deputy Speaker, so now that the conditional grants have been brought back, and I wish I knew how many Level 5 hospitals we have got in the country, I will propose that you pump a lot of money out of that Kshs1.8 billion – maybe, Kshs300 million or Kshs400 million - to Kisii Hospital and reserve some Kshs200 million to be allocated as follows: Kshs100 million to Kericho and another Kshs100 million to Homa Bay to start building their own Level 5 hospitals.

Hon. Temporary Deputy Speaker, I know we have had a problem with the Senate and, unfortunately, most Members of the Senate were Members of this House. They are the ones who crafted the Constitution which they are now trying to defy. However, be that as it may, with those mediation committees, it looks like we can move ahead and serve the people of Kenya.

Hon. Temporary Deputy Speaker, I wish this House had approved the proposal by the Departmental Committee on Health that Level 3 and above hospitals be national hospitals and anything below be county hospitals. I know there are many people here who will say that we will be in a sense destroying the counties. No. We want to give them functions that they can serve our people effectively.

Hon. Temporary Deputy Speaker, just imagine if we gave our counties the minimum 15 per cent as required by the Constitution. Even if they shared it equally, then each county will get less than 0.4 per cent of our Budget. Would that cater for everything? Do they have the capacity to provide some of those services?

Hon. Temporary Deputy Speaker, if we were to adopt that proposal, it would be good. It does not require a referendum. I know my friends here want a referendum without seriously thinking about its cost. It is going to cost us Kshs15 billion to do a referendum. If we gave Kshs5 billion to this friend of mine here, then Turkana County

would resemble somewhere in South Korea. Okay? If we give the balance to the Chairman's county, it will be like somewhere in Scotland. So, what we are saying is that it does not require a referendum to give to the National Government Level 3 and above hospitals, so that they can maintain adequate service and standards.

Hon. Temporary Deputy Speaker, right now, we have got a problem. I was talking to the Chairman of the Doctors Association and he told me that they have got a big problem. A doctor is posted say, for example, to Marsabit. The conditions there are quite difficult. He is not given an allowance to take care of those challenges that he is going to experience. So, he quits and, therefore, the standards of that hospital remain poor. They have not yet developed local manpower that can take over from the doctor who has quit. So, to maintain standards, and health is a primary need of every human being, let us adopt that proposal given by the Departmental Committee on Health - that the role of the National Government goes up to Level 3 hospitals. So, what we are talking about is cumulative. That money should be channelled through the CDF. The CDF has done a lot of work. It has actually vindicated the contribution of retired President Kibaki, when we brought the Constituencies Development Fund Bill in this House. He said:-

“Why did Kenyans not elect those two young men? They would have brought the CDF Bill here many years ago, and Kenya would have developed.”

The two young men included an old man called “Eng. Karue” and another old man called “Jimmy Angwenyi”. At that time, we were young. We were the age of my students here. What I am saying is that the CDF has been very effective in serving the people at the grassroots. Unfortunately, former President Moi could not sign that Bill after the National Assembly had passed it. So, we had to bring it back to Parliament after Mr. Kibaki took power. When Mr. Kibaki took power, his Minister for Finance then, Mr. Mwiraria, told us that we should not have brought back the Bill because the coffers were empty. So, we went to Kibaki and gave him his contribution. That is why we reduced the minimum CDF allocation percentage from 5 per cent to 2.5 per cent.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Langat, I will not give you the Floor because---

Hon. Angwenyi: Hon. Temporary Deputy Speaker, my time is almost up. What I am saying is that this is a good Bill. We should resolve our differences with the Senate and work together harmoniously, so that we can improve on what we have done. I am glad that my former student was among the Members who mediated this Bill.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Mbalambala.

Hon. Aden: Thank you very much, hon. Temporary Deputy Speaker, for giving me the opportunity to speak on this very important Report. I want to, on the outset, state clearly that I support the Report as proposed by the Mediation Committee. That is because a decline by this House to approve this Report will devastate the Level 5 health facilities in the country.

I am encouraged that a number of my colleagues on the other side of the House are in support. Unfortunately, the Leader of the Majority Party, who is my good friend, is not here. Hon. Jimmy Angwenyi has acknowledged the fact that there is need to give more money to Turkana County. He suggested a sum of Kshs5 billion. I just want to advise

them that, indeed, giving them Kshs5 billion once will not help. Through the referendum that we want to bring, we want to say that Turkana County should continuously get Kshs5 billion. As the Leader of the Majority Party rightly said, there are many minor confusing clauses in the current Constitution. So, when CORD says that there is need for a referendum to correct those issues, the initiative should be supported. The logic of it should be seen.

Hon. Temporary Deputy Speaker, the Level 5 hospitals are very important facilities in the counties where they exist. But I must say that those particular hospitals are referral facilities which serve people from many other counties. For that reason, I would like to say that in the subsequent year, we must move those institutions to the National Government. It is the only way we can be able to give them the attention that they deserve.

When I visited Garissa General Hospital, which the referral facility that covers that vast region, I saw a condition which I thought would never be acceptable anywhere in Kenya. There were no drugs or any other supportive facilities. There were no beds. I hear that, that is the same situation at Kisii Level 5 Hospital. This shows that there is total failure across the country in the management of Level 5 hospitals. Therefore, the attention of the National Government is required in terms of ensuring that Level 5 hospitals are in the best form.

Hon. Temporary Deputy Speaker, the intent of devolution was to make sure that good services are taken to the lowest level in Kenya. We must, indeed, champion to have a Level 5 hospital in every county and have them funded from the national coffers, so that Kenyans can access good health services.

Regarding the Kshs1.8 billion that we are approving, there are certain procedural issues we must taken note of as a House. The county governments, which are also going to benefit from this money, must also take note of those procedural issues. Unfortunately, we have gone through the full cycle of the budgeting process. We have done the national appropriation. We have actually passed the Appropriation Bill for the National Government. What we are trying to tell the National Treasury is for them to avail Kshs1.87 billion. Where will this money come from? That is a question we need to answer.

Hon. Temporary Deputy Speaker, the only way that money can become available is for the Cabinet Secretary to come up with a supplementary budget. He must seek the approval of this House to make available Kshs1.87 billion, which will then become available to the counties. So, to the Chair of the Budget and Appropriations Committee – even though I am a Member of the Committee – I want to say that the Cabinet Secretary of the National Treasury must prepare a supplementary budget of Kshs1.87 billion to make that money available. Right now, that money is not available. It is going to be another shortfall within the approval of the Budget that we have passed.

Each of the counties that have Level 5 hospitals must also prepare supplementary budgets, because most of them have already completed their budget process for the current financial year through their various county assemblies. My county of Garissa, which is also going to benefit from the Kshs1.87 billion, must take a supplementary budget to the County Assembly of Garissa to make sure that the money that will be available to them is appropriated, so that it can accordingly be utilised.

Hon. Temporary Deputy Speaker, this kind of mediation should in future happen before we pass the national Appropriation Bill. We are now in a situation which hon. Angwenyi describes as a “conditional illegality”. I do not know whether I want to use that word. We are approving this money because it is in the interest of Kenyans. We want funds to become available to our Level 5 hospitals. Therefore, we must make this money available. However, the timing of this process has it is, is putting the Cabinet Secretary of the National Treasury into a very difficult position in terms of making the money available. It is forcing the county executive members in all the county assemblies to prepare other supplementary budgets to ensure that the money is appropriated as required by law. I want to say there is need to enforce the utilization of funds at the county levels. It is disheartening to see that, indeed, even as the taxpayers in Kenya struggles to make sure that there is money available, taxes are paid and collected; there are a lot of leakages in our systems. It has recently been reported by the Auditor-General - and it was very surprising - that taxes which had been collected by the tax man did not end up in the Central Bank coffers. Where is that money? There are a number of critical questions, both at national and county levels that we need to answer. I believe there is no good utilization of the little available resources that we have in the country.

As I end, CORD or the coalition that I honorably represent on this side, wants to make sure that part of the referendum issues we are pushing for is, indeed, to have more money available to our counties. That is the very major issue that we want addressed. All those other small things that we are hearing from the other side are diversionary issues, which I must acknowledge---

The Temporary Deputy Speaker (Hon. Cheboi): Order! What is it hon. Member for South Imenti Constituency. Order! Order!

Hon. Murungi: On a point of order, hon. Temporary Deputy Speaker. I was wondering whether the Member for Mbalambala is being timed by the clerks because he has taken a lot of time. On the same note, I would like to request whether, maybe, we can agree with the Members to shorten the time to 5 minutes, so that we can be able to contribute to this Motion and dispense it off.

The Temporary Deputy Speaker (Hon. Cheboi): I will respond to the two issues which you have raised. One, unfortunately, the clerks who are seated here cannot, at all, doctor the time. That is impossible because I am scrutinizing them. Secondly, the issue of---

Hon. Aden: Thank you, hon. Temporary Deputy Speaker---

The Temporary Deputy Speaker (Hon. Cheboi): Order! Member for Mbalambala, it is important that this one becomes clear. Now, you might have a very good point that we should shorten the time because, probably, the interests are too high and, indeed, they are. There are 25 requests before me now but, as the Speaker ruled - and I thought you were here yourselves---You can see the hon. Member for South Imenti is not even listening!

The Speaker, ruled - and it is correct because it is in the Standing Orders - that if you are interested in shortening the time of contribution, you must do it at the beginning of the debate.

(Applause)

Now, doing that halfway through it is impossible. That is because it is against the Standing Orders. So, as much as I sympathies with your position, it is unfortunate that there is little that I can do now. The only thing which Members can do, with positive co-operation, is to reduce the time they speak to this Report. That is because they are actually repeating the same thing.

In fact, I will say this: I was almost tempted to start giving opportunity to somebody like hon. Mbadi because he was a Member of that particular Committee or hon. (Prof.) Nyikal here, who was an eminent person in that profession. Or even the Vice-Chair of the Committee here. But I am just looking at it in this manner: We can save this time by being straight to the point. Many Members will be able to contribute and probably, therefore, we will deal with it and finalize before the end of the day. So, Members, you can exercise that and, by the way hon. Member for Mbalambala, you had only 30 seconds remaining! So, finalize your contribution.

Hon. Aden: Thank you, hon. Temporary Deputy Speaker. I stand guided by your advice. The other issues that I wanted to speak to - and I am sure my colleagues will speak to them - and in the interest of time, I thank you and end.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. So, we will have hon. (Eng.) Gumbo. I hope you took my advice hon. Gumbo, I know you have your time, but I am sure you are an old Member and you can be able to do this.

Hon. (Eng.) Gumbo: Yes, I do, hon. Temporary Deputy Speaker. I thank you for giving me the opportunity to contribute to the Motion. While I do believe that the Division of Revenue ought to be a function of the National Assembly, I think we have a duty to respect the decision of the court even though some of us do not agree with it.

Health is a basic human right and if we were to revamp the Level 5 hospitals to be able to relieve pressure on the referral hospitals, this will be good for our country. As it stands now, the quality or lack thereof of health care in most of our hospitals is wanting. In fact, health care is becoming a preserve of the well to do in society which, in a way, is wrong. Health care should be available to all and hospitals, as of necessity, must be places of hope.

Many Members have spoken to the conditions of hospitals all over the country. I do not want to go back there because they are pathetic. It is probably the one intervention that we need to make as a House to try to see if there is a way we can intervene to improve the conditions in our hospitals. Having said that, devolution - and I do support it like most Members - was meant to be a panacea for the yawning inequalities in our country, if the first one year of devolution in Kenya is anything to go by. But it has been a very big disappointment. What we have seen is wastages and even as we approve this Motion, I think it is also an opportunity for us to ask serious questions on the capacities of the respective county governments. In the counties, many people, from the governors to the members of the county assemblies seem to be more on an ego trip rather than offering services to the people who elected them.

The level of wastages in our counties is now something that this House cannot ignore, and I think a time has come when we have to ask the hard questions. I have asked it before in different forums and I want to ask it again; Do the members of the county assemblies dotted all over Kenya have the capacity to provide oversight to the billions of shillings that we are devolving to the counties? This is very important, because one

would expect that, out of the Kshs.226 billion that we are now devolving to the counties, at least, Kshs100 to Kshs150 billion is devoted to development that will improve the livelihoods of our people. But what we are seeing is money being spent on issues that, in my view, ought not to be there.

I have also noticed, because we manage the CDF in our respective constituencies that, on a comparative level, the amount of money being spent by the county governments on similar projects is very high, compared to what we spend on CDF. The other day, I went to a primary school where an Early Childhood (ECD) classroom had just been done. I was surprised to be told that the classroom had been done for almost Kshs.1.5 million. That is in a place where we are doing classrooms for as little as Kshs.600,000. I think this House can no longer just give money by way of Bills such as what we are doing now and sit back and wait for that money to be wasted.

On the amount of money that we are giving to counties - and hon. Oner spoke very eloquently about it - when you look comparatively for example at Siaya County where I come from, if that money was to be divided equally, each constituency ought to get about Kshs500 million. But in the past one year, I have not seen a single thing that the county government can say they have done in my constituency. Yes, it is good and when the time comes, we will support the increment of allocations to the counties, but we must accept the reality. I think the mindset of most of those people that we have put in charge of providing oversight over the expenditure of that money still belongs to the past where we came from.

In the last Parliament, I was one of the people who insisted that the kind of functions which we are devolving to the counties required that we had a certain quality of representation in the counties. I was on the forefront in moving a Motion here to demand that all MCAs should, at least, have a diploma level of education. But, of course, that amendment was shot down due to interests which were outside this House.

A time has come now, when we must ask the question: Do the Members of the County Assemblies have the capacity to provide oversight over the monies that we are sending to the counties? On representation, we are 40 million people and not everyone can be elected to be a representative. Only a few of us get that privilege. Even the Good Book that I read says that to those whom much is given, much is expected of them. We are giving so many functions to the counties and we must demand that the money we give to the counties is spent properly. The people whom we have given the responsibility must make sure that, that money is spent properly and that they have the capacity to do that.

Hon. Temporary Deputy Speaker, if we continue to give money, we would not want to see three to four years down the line with devolution, serious questions of inequalities in the country. Devolution was meant to be a leveler in terms of transferring development and providing quality of life to all Kenyans wherever they are. What this House would not want is that, three years from now, if we took stock, we only find that money had been sent to those counties, but not much is there to account for it.

Hon. Temporary Deputy Speaker, for the purposes of removing the gridlock and making sure that the counties receive their funding, I want to support this Motion. Even as I support this Motion, I think it is incumbent upon this House, with our sister House the Senate, to look for laws governing the county governments. As it stands now, I am convinced, no matter how much money we take to the counties - perhaps, there are a few

counties where we have individuals who want to make a difference in the lives of their people. We will see improvement in those counties. But if we continue the way we are doing, I am afraid we may be pouring money. It would be like pouring money into a bottomless pit where nothing comes out.

Therefore, as we go forward, I will be one of the proponents who will be saying we must improve the quality of representation at the counties.

With those remarks, I reluctantly support.

Hon. M'uthari: Thank you, hon. Temporary Deputy Speaker. I rise to support this Report. Although to a large extent there is clamour for increasing funding to the counties but, surely, the level of wastage, as some hon. Members have indicated, does not serve the purpose for which the counties or devolution was created. Even this idea of referendum is trying to make people relevant. But the importance of the whole matter is for the good of this country. But people have to be busy at the expense of the work of other Kenyans.

Therefore, when you look at the whole question about the Division of Revenue Bill, it is important that we support it. If we do not support this Report, we are likely to make our counties not work.

It is time we looked at our health sector as it has been indicated by previous speakers. When you look at the health facilities in many places, they are in deplorable condition. There is also the confusion with the personnel at that particular level. I think those are the areas that we need to look at more keenly as a House. As we look at that, those funds which go to Level 5 hospitals should be channeled to those hospitals because there is a danger of that money going to other uses instead of the intended purposes.

A high percentage of the money that has been given to most of those counties may not have gone to serve Kenyans as intended. Instead, it has been utilized in most cases to make the leadership in those counties relevant and to buy off Members of County Assemblies through inducement.

As you have heard, you can have a classroom constructed at a cost of Kshs1.2 million and, at the same area, you can have a classroom constructed at Kshs600,000. Therefore, you wonder what the rationale is; whether the idea is to provide services or something else.

Hon. Temporary Deputy Speaker, we need to look at the issue of hospitals and their conditions and see what should happen. The idea is that Kenyans should not be marginalization. We should provide resources so that Kenyans can be served in the best way possible. As it is at the moment, given that those hospitals serve majority of the population, it is important that, at that level, as we give this funding--- Maybe, in the next financial year, the national Government should provide funding for every county. Every county should have a Level 5 hospital and that can provide an opportunity for Kenyans, wherever they are, to get the best services possible.

Therefore, the two Houses should have those issues addressed thereafter. It happened last year and it has happened again this year. It is about the Division of Revenue Bill. Therefore, it is important to have discussions before bringing the matter to this House. At this level, where we are faced by a situation like that, what would happen if this House declines to support the Report? Then this can be lost and that would be dangerous for the country and devolution.

Hon. Temporary Deputy Speaker the Constitution encourages participation and involvement of Kenyans. Therefore, in that spirit, those matters can be discussed earlier and then funds can be allocated according to the priorities which can serve Kenyans best. When we go to the county level, we talk about marginalization. That even happens from within a given county. You may go to one area of the county and find that it has been neglected because of one reason or the other although, to larger extent, the neglect is contributed by the people. This is because every region in Kenya has had representation in this House since the beginning. What did the leaders do to represent their people and how is their representation? Many a times, it is easier to blame the problem outside there. But we do not look at the individual leadership and whether the people are doing what is right or not for the intended course.

Hon. Temporary Deputy Speaker, even the whole clamour around the referendum is just a matter of being relevant to some quarters or some people. But it is not geared towards serving the interest of Kenyans. Many people in this clamour supported the new Constitution. We are just trying to create a situation where poor Kenyans are engaged in meetings and talk about their problems. But there is nothing to tell them on how they can solve the problems that they face.

With those remarks, I support this Report. Let Kenyans be led. Let them accept the leadership. If people were elected into office, they should be accepted. Those who were not elected should wait for another time. That is because there is always another time.

Thank you.

*[The Temporary Deputy Speaker
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Speaker
(hon. (Ms.) Mbalu) took the Chair]*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken. Thank you. Let us hear from hon. Makali Mulu, Member of Parliament of Kitui Central.

(Hon. Nyamweya stood up in his place)

Hon. Nyamweya, you will be the next after hon. Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity. I am surprised that the hon. Member is still standing! I had announced that, actually, I was skipped to allow that hon. Member to contribute.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, hon. Mulu! I need to remind you about the message from the Chairperson. That is the Speaker's position.

Please, let us look at our Standing Order No. 106 about persistence on irrelevance or tedious repetition of either other Members' arguments or the other arguments that have been used by other hon. Members in the debate.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker. I can assure you that I have actually done a lot of research on this Paper and I will focus on the issues.

Let me just start by thanking the Mediation Committee, led by our Chairman, hon. Musyimi. Looking at this report, I know where our chairman was coming from. As the Committee on Budget and Appropriations, we had said no to this proposal. I see a situation where our Chairman was put between a hard place and a rock. He had earlier said no and this is a situation where he must save this country. In the spirit of saving our country, our Chairman, hon. Mbadi and hon. Emaase went ahead and accepted to some of these proposals. So, in the same spirit, I want to support this report. I want to plead with this House to adopt this report.

Even as I support this report, there are a number of lessons learnt, which we need to take forward. Looking at this report, the Mediation Committee has only given the Level 5 hospitals Kshs1.87 billion. The Budget and Appropriations Committee had earlier given the same Level 5 hospitals Kshs3.74 billion. So, even as we discuss this report, there is a shortage to the same hospitals of Kshs1.87 billion. This report does not indicate whether the money which has gone to the counties will be provided for the Level 5 hospitals because this is still a general figure. The national Government has gone that extra mile to provide additional Kshs1.87 billion. The county governments, through the Senate, would have also agreed to have a conditional grant to the same hospitals of the same amount, so that the earlier Kshs3.74 billion is there for the Level 5 hospitals.

In short, we are saying that we should leave the issue of Kshs1.7 billion at the county level to the governors. My worry is that I do not see that money being provided for Level 5 hospitals. This means that the governors, who are in charge of the counties where the Level 5 Hospitals are, will have to provide more resources from their equal allocation. It is obvious that we are going to be unfair to those counties.

The second lesson which we need to learn from this exercise is that in future, as the Committee on Budget and Appropriations under the chairmanship of hon. Musyimi, we must be firm in our decisions. All this happened as a result of us allowing some consultations which took place outside the Committee sessions. Those consultations brought the problem that we are in. Now, because we need to save the country, we will accept to go this way but in future, we need to be firm, as a Committee, in whatever decision that we make. We have a technical team which advises the Budget and Appropriations Committee. We rely on that information to make our decisions.

The third lesson that is learnt is that as a House, we have no choice but to pass this report. As I speak, county governments have prepared their budgets, which have been presented to the county assemblies. Some of these budgets have been forwarded to the Controller of Budget. This is all despite the fact that we do not have a Division of Revenue Act and a County Allocation of Revenue Act, which are key documents. Article 224 of the Constitution clearly states that the county governments will only prepare their budgets after these two Acts are approved, one by the National Assembly and the other one by the county assemblies. So, you can see the kind of illegality which is taking place as a result of what we are doing.

So, even as we move forward, it is important that we realize that the Constitution is very clear on how the Budget should be prepared. We humbly request that we adhere to the timelines and the provisions of the Constitution, so that the budget making process does not just become another activity of this House.

The last point relates to the adherence of the Constitution. You must have realized that for the last two days, it has been reported that some counties have submitted their budgets to the Controller of Budget and the Controller of Budget has rejected them. The Constitution is very clear that the Controller of Budget has no mandate or role in approving budgets. She has a role of only approving withdrawals from the approved budgets. The work of approving budgets is the work of the county assemblies and the National Assembly, possibly in consultation with the Senate.

On that note, I see a situation where this office is over-stepping its mandate. If we do not control this, we will be trending on a very dangerous ground. It is important that this particular office strictly adheres to its responsibilities as clearly stipulated in the Constitution. If we do not do that, we are going to render our county assemblies useless in terms of the budget making process. I am sure even this National Assembly will not allow anybody to change budgets after we have approved them. I do not want us to have a situation where we are defending our tuff and then we allow the county assemblies not to defend their tuff. I would strictly recommend that the work of approving budgets is the work of the county assemblies. They might have no capacity, but this does not mean that we should take their work. We need to build their capacity, so that they can approve their budgets.

Based on these comments, we will need to support this report, so that money flows to the counties. However, in future, in terms of the budget making process, it is important that we observe and make use of these lessons that we have learnt.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, very well spoken. Hon. Nyamweya.

Hon. Nyamweya: Thank you, hon. Temporary Deputy Speaker, for giving me a chance to support this Bill. I support it fully because we have a constitutional obligation to work together as the Senate and the National Assembly. More importantly, we have an obligation to serve this country. I have gone through what we passed as the National Assembly and I have also seen what the Senate said. It is not about who is right or who is wrong. It is what we need to do for this country. We need to pass this Budget, so that the county governments can start their budget making process.

There is one issue which everybody has repeated, which is that we have wastage at the county level. That is true, but we have more wastage at the National Assembly. There are reports which have been tabled by the Auditor General and others which have not gone through, which show that Ministries are transferring funds from one Ministry to another without the approval of Parliament. So, we have a crisis as a nation. Let us look at the issues at the county government and blame them. Let us re-assess ourselves as Kenyans. We need to develop this country. We need to bake the cake for this country and reduce poverty.

Currently, I do not agree with the revenue sharing formula which gives the county government Kshs226 billion out of a national Budget of Kshs1.8 trillion. We are trying to say that we are using a formula and what has been passed by the Auditor-General. That is an excuse. We are the National Assembly and we can move amendments, so that we can do what is correct. We should not rely on what has been passed and say that we must stick to it. It is the National Assembly which needs to seize this opportunity so that we

pass the relevant law even if cautionary measures are required. There are some sections which we can pass.

So, hon. Temporary Deputy Speaker, I support this report but I also support the allocation of funds to county governments. Let them misuse them and we follow them there. We know who they are. It is easier to know the guys who are misusing our funds at the county level than at the National Assembly. We will know as they do it because we know this is my brother or cousin, for example in Kisii County. Let us give them all the money and if there is misallocation, we shall follow them at the county level and deal with them there. Let us be honest with each other. So much happens at the national Government and we do not talk about it. We are hon. Members. Let us be fair to our people. The county government is just trying to walk. It needs stability. We cannot sit here, blame it and keep quiet when a report has been tabled here to show wastage which the national Government is doing.

Finally, we have talked about---

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, hon. Members! Your consultations are loud; let us hear what hon. Nyamweya is saying.

Hon. Nyamweya: Hon. Temporary Deputy Speaker, we have talked about Level 5 hospitals. It pains that we have reduced the money for those hospitals. I come from Kisii County and the Level 5 hospital serves beyond Kisii County. It serves people from Migori County; it serves people from Kisumu County and it serves people from Kilgoris. So, it is unfortunate that as at this level we can say that it belongs to a county. It is like a national school. We have national schools in this country which are funded. They are given money because we know the kids across this country. So as we move on, I know that the worst is that we try and hide under rules and the Constitution when we should be doing the correct thing for this country. Level 5 hospitals are national assets. For example, if you get an accident, that is where you will go for treatment. If it is in Nakuru, that is where you will go for treatment. Nobody is going to say that you come from Kisii County and so go there. You will go where the accident has happened. So as we move forward, it is really painful that they have lost 50 per cent of their revenue allocations. I thank the Chairman for his patience. He has been very patient on this together with the Members of the Budget and Appropriations Committee in this National Assembly. He has taken a lot of time to go through the figures. However, I want the guys in the Treasury to take them seriously because if we have passed this Budget, money should be used the way we have passed it in the Budget. It is very unfair for hon. Members to take a lot of time, listen, take opinions and when money goes, the technocrats in the Treasury, the Office of the President or in charge of infrastructure and Ministries do what they want. We must be more serious in this House because if we have passed this Budget, let us follow it up so that the money which we have allocated, if it is in infrastructure, it should go there. We need to take more measures as the National Assembly that if funds are diverted - it is not only the Budget and Appropriations Committee but also the Departmental Committee on Finance - from a specific Ministry to another one and Parliament has not sanctioned it ---

Hon. Langat: On a point of order!

Hon. Nyamweya: Hon. Temporary Deputy Speaker, there is nothing out of order.

Hon. Langat: On a point of order, hon. Temporary Deputy Speaker. My good friend has been making serious allegations to the effect that some Ministries are transferring money from one Ministry to the other, which is illegal. I think it is fair for him to substantiate that allegation with facts. Which Ministry in particular is he referring to that has transferred money without the approval of the House? That is a serious allegation.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyamweya, can you explain part of your argument?

Hon. Nyamweya: Hon. Temporary Deputy Speaker, I cannot expect that to come from the Chairman of the Departmental Committee on Finance, of all the people, because he is in the picture that the funds in last financial year--- There is a report which has been tabled by the Auditor-General showing that funds were transferred from the Ministry in charge of Administration Police to the NIS and probably to him, we do not know. I am so shocked because he knows this. The records are there to show; there is nothing to substantiate.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, allow hon. Nyamweya to put his points across.

Hon. Nyamweya: Hon. Temporary Deputy Speaker, as we move on, the point I was making is that as we do this Budget process, let us not be treated like kids. Where we have approved funds for specific functions or to Ministries and then money is transferred to other departments, this House will be a laughing stock. That is not why we are here. I know the Chairman is serious; he means well for this country. The Members here are serious about it except the Chairman of the Departmental Committee on Finance who is not sure of what he is doing.

(Laughter)

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I know that is the opposite of the Chairman of the Departmental Committee on Finance.

Hon. (Dr.) Pukose: Hon. Temporary Deputy Speaker, thank you for allowing me to contribute to this report. First and foremost, I want to thank the Chairman, Hon. Musyimi, for having chaired that Mediation Committee and come up with these recommendations. My only challenge is; having discussed and approved the Division of Revenue Bill which was for the national Government and now we are allocating money from the national Government to the counties, how are we going to implement that which calls for him and the Treasury to bring the Supplementary Budget that can take care of that? Otherwise, we will not be fair to the Level 5 hospitals in our country because after the debate today and approval by this House, they will have that money availed to them. In the last financial year, we were able as the Departmental Committee on Health to visit

several hospitals; Jaramogi Oginga Odinga Hospital, Kakamega Provincial General Hospital, Mombasa and others. What we found was that the conditional grant that was allocated to those facilities was never given to them and many other hospitals. Hon. Members have even talked about Kisii Level 5 hospital having three patients occupying one bed. You realize that in those hospitals, you have dedicated women and men who are working there as doctors, nurses and other paramedics. They are doing that under very difficult circumstances without financial backing; without equipment and without other resources. So, they cannot give good service to *wananchi* yet our Constitution demands that health is a right. It is a right for every Kenyan to be given the highest attainable standard. So, I think as we agree on this, the counties need to go further and where Level 5 hospitals are found, they must also allocate monies. We are aware that Kshs3.74 billion which was initially earmarked as conditional grants went to the counties in the Division of Revenue Bill. So, the counties which have Level 5 hospitals, for the time being, must allocate resources to those hospitals so that the Kshs1.7 billion that has been given through the Mediation Committee is a top up to those facilities to provide services.

Hon. Temporary Deputy Speaker, I urge the Budget and Appropriations Committee and the National Treasury to make sure that the Kshs1.7 billion is delivered directly to those health facilities. This is because if you give it through the counties, chances are that these facilities will not be able to get that money. Therefore, we will still have the challenges.

As we are aware, in the definition of “national referral hospitals”, there has been a misconception that it is only Kenyatta National Hospital and Moi Teaching and Referral Hospital (MTRH) that can be referral hospitals. All Level 4 hospitals are supposed to be national referral facilities. A referral facility is where you have a patient being referred from one facility to another. Most of the Level 5 hospitals are in the counties, which means that they are serving within the national level. They also serve more than one county. Therefore, they qualify to be national referral hospitals. These hospitals do not have to rely on conditional grants.

This House has a responsibility to make sure that these hospitals not only get conditional grants but they should in future get budgets like KNH and MTRH so that we take off the burden of the county government. We cannot just continue saying that the county government has to fund these facilities.

Hon. Temporary Deputy Speaker, again, the Level 5 hospitals must be spread out within the regions because we should have regional representation in the health sector. If we only have the KNH and MTRH then other areas of this country, just the way hon. Lomenen put it, will be disadvantaged. We must have Jaramogi Oginga Odinga as a national referral hospital. We should have another in Kakamega, Coast, Turkana and Garissa. These facilities must be funded by the national Government. We should have another one in Bungoma. This will ensure that we take off the burden on the county governments so that the little resources that they have been allocated are utilized well in the delivery of services.

I am aware that even the nurses who were employed under the ESP programme in Bungoma have not been paid for the last two months and they are suffering. These are problems that we should take care of.

Hon. Temporary Deputy Speaker, as I wind up, I know that health is a critical issue. It is also supposed to be a national issue. I know people are clamouring about referendum. Actually, all of us want it. At one stage, after the passing of this Constitution, majority of us who were on this other side opposed the referendum saying that there were issues that needed to be corrected. But to move forward, all of us must reason as Kenyans.

Even in health, the Health Service Commission is not there. So, how do we take care of the health workers? To me and other health workers, one of the issues that we need to take to the referendum is the creation of the Health Service Commission. These are issues that we need to come out very clearly.

I know that CORD is collecting signatures and we will allow them to collect the one million signatures---

An hon. Member: It is five million signatures!

Hon. (Dr.) Pukose: It is five million signatures, hon. Temporary Deputy Speaker. After you have collected those signatures, come and collect from my constituency and other constituencies and then we sit down as Kenyans and reason together.

(Applause)

This is because we must be able to look at areas--- We are not dialoguing. You collect the signatures, we sit and we discuss.

Hon. Temporary Deputy Speaker, with those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. I can see a lot of anxiety with the signature collection.

Yes, the Member for Suba, hon. Mbadi.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker. First of all, let me take this opportunity to thank the Speaker and the House for allowing me to sit in the Mediation Committee to try and look for solutions to this problem.

I would like to point out the issues under contention. Before I do that, I want to reiterate a position that I have held for very long. That is the Division of Revenue Bill was exclusively a function of the National Assembly. However, the Supreme Court has pronounced itself on this issue and therefore---

Hon. Maanzo: On a point of order, hon. Temporary Deputy Speaker. Having sat here for a while and followed the debate, I have noticed that hon. Members are repeating themselves. Could the Mover be called upon to reply after hon. Mbadi has made his contribution?

Hon. Members: No! That is your opinion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Maanzo for your observation. My discretion and ruling is that there are enough Members who are interested in debating this matter. The mood of the House is that we continue.

Yes, hon. Mbadi.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker. One of the Members said that if you look at Article 95, you will find that the National Assembly has a responsibility to determine the allocation of national revenue between the levels of governments; that is the vertical sharing.

Of course, if you go to the role of the Senate, you will find that it is clearly spelt out under Article 96(3). It says that the Senate determines the allocation of national revenue among counties. That is the horizontal division of revenue.

Hon. Temporary Deputy Speaker, as I said, since the Supreme Court pronounced itself on this matter, I think we need to respect that court and go by that verdict. I would like to say that there were two outstanding issues between the National Assembly and the Senate which required mediation. The first one was that the Senate wanted us to amend Clause 4 of the Bill to provide for adequate funding for all Level 5 hospitals through allocation to functions from the national level of Government as opposed to the county level of government. The amendment further referred to Article 187(2) as the basis for the amendment.

Hon. Temporary Deputy Speaker, when we sat as the National Assembly, we had to argue with the Senate on that amendment with regard to what they quoted.

Article 187(2) that the Senate quoted says:-

- (a) “If a function or power is transferred from a government at one level to a government at the other level-
arrangements shall be put in place to ensure that the resources necessary for the performance of the functions or exercise of the power are transferred.”

Our argument against the Senate was that the way the Article was framed, if that was the basis, then the Senate implied that Level 5 hospitals were actually a function of the national Government which are being transferred to the county. However, our feeling was that in the last financial year, the Level 5 hospitals were treated as county functions. That is why they were given conditional grants.

The law under the Fourth Schedule of the Constitution is not very clear on what should go to the national Government and what should go to the county government with regard to health. This also applies to roads because it just talks about national trunk roads and it is not clearly defined. This is something that the Transition Authority (TA) should have helped to unbundle. However, that did not happen. The Constitution only talks about national referral health facilities. That should be a national Government function. It also talks about county health facilities and pharmacies to be the county functions. Therefore, there is a lacuna in this which we must accept.

So, what did our Committee do? With regard to locating where the Level 5 hospitals should belong; whether national or county, we felt as the Mediation Committee that we could not come up with a conclusive answer. Therefore, we referred this matter through the Report to the two Committees of Health of both Houses; that is the National Assembly and the Senate. We would like the two Committees to comprehensively look at this matter and advise the two Houses on where Level 5 hospitals should belong.

We went ahead on that particular issue to discuss with the Senate, now that the initial Division of Revenue Bill had allocated over Kshs3.7 billion, ring-fenced and put as conditional grant for Level 5 hospitals. That was again changed through an amendment which you remember, hon. Temporary Deputy Speaker, was actually initiated by the Leader of Majority Party. He initiated that citing that there were some consultations. That amendment was passed and now, the Kshs226 billion includes that conditional grant. However, it became difficult when we were negotiating on how you would remove that money from the Kshs226 billion. This is because when it is called sharable revenue, there

is a formula the Constitution has conditioned us to. That formula is generated by no other body apart from the Commission on Revenue Allocation (CRA) and can only be amended by the Senate at any time.

However, the Senate promised us that they were in the process of looking again at that formula. Therefore, we looked at the time element and realized that we did not have enough time to ask the Senate to amend and change the formula to provide funds for the Level 5 hospitals. We recognized as a Committee that despite all the problems, we have Level 5 hospitals which are very important for this country and must be funded. Therefore, we had to find a middle ground. We agreed that as a starting point, we need to allocate a conditional grant of half the original amount allocated; Kshs1.87 billion, bearing in mind that the national Government is also constrained. That is why we arrived at Kshs1.87 billion which is now a conditional grant and is going directly to Level 5 hospitals. It will be shared among the 11 Level 5 hospitals to push them forward. Someone is asking how that is possible. It is the same way Kshs.3.7 billion was allocated to health facilities in the last financial year. But I want to also add that the counties where these hospitals reside will still allocate more funds to these facilities to help facilitate their activities.

The second point which none or very few people have spoken to is the issue of contention, that we should amend the schedule which stipulated that allocation to counties is 43 per cent. The argument from the Senate and many people in this country has been that the statement that we have allocated the 43 per cent based on the last audited and approved accounts is misleading. Fine, but our argument was that, that is what the Constitution says. Article 203 actually talks about allocating not less than 15 per cent of the last audited and approved accounts. It may be misleading, it may not be enough, actually, what CORD coalition is pushing now and which we must take to a referendum and I am sure Kenyans are going to pass, is that, we allocate not less than 40 per cent of the projected ordinary revenue to the counties. So when I talk of projected, it actually takes care of that. It is projected for the financial year. We did not agree with the Senate---

Hon. Temporary Deputy Speaker, my time is running out but you---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, you have one minute hon. Member.

Hon. Ng'ongo: We did not agree with the Senate on this because what the Constitution requires is that for every financial year, the equitable share of revenue raised nationally shall be allocated to county governments and it shall not be less than 15 per cent of all revenue collected by the national Government. It says that this will be calculated on the basis of the most recently audited accounts. So, you must demonstrate the calculation. We insisted that somewhere, there must be a calculation of 43 per cent.

Finally, I have heard a number of us talk about the mismanagement of resources at the county. I want to say this with your permission; the fact that there has been mismanagement of resources in some counties or many counties, should not make us roll back on the gains of devolution. What we need to do is to ask the relevant authorities; the Auditor General, the Ethics and Anti-Corruption Commission and the Senate, to hold those accountable. They should take them to jail so that we protect our devolution. We must understand, those of us who are thinking that we will centralize---

The Temporary Deputy Speaker (Hon. Cheboi): Thank you. There are some communities which suffered for so many years. Hon. Members from Suba and Kibwezi can attest to that. Hon. Member, your time is over and next on the list is hon. (Prof) Nyikal, the Member for Seme. We can hear the medical doctor on the issue of the Level 5 hospitals

Hon. (Prof.) Nyikal: First of all, may I appreciate the work of the Mediation Committee. It has given me confidence that this process will help us. Secondly, I support the adoption of this Report and the Bill that has come with it, basically for national reasons; that we must allow the counties to proceed and function. Otherwise if we do not today, then basically we will be stalling the work of the counties. I want just to bring out the third reason that I really support this.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Ng'ongo, you have made your contribution. Allow hon. Nyikal to do his.

Hon. (Prof.) Nyikal: The other reason is that Sections 4 and 5 are quite in line with the Constitution and I must appreciate the work that has been done by the Mediation Committee and the Budget and Appropriations Committee.

Let me talk about Level 5 hospitals. To begin with, I do not know where people got the idea that the Constitution places Level 5 hospitals under the national Government. What the Constitution talks about is national referral hospitals. There is nowhere, as far as I know, either in law or administratively that defines those national referral hospitals. I am aware of this fact because I headed the committee that came up with these levels. The levels were meant to help us manage the facilities. As it is now, nobody has gone down and said which level belongs where. So, for reasons that I do not know, we have decided that Level 5 hospitals are national hospitals.

The Report of the Health Committee stated that we need to look at the issue of Level 5 hospitals. In any case, they serve more than one county. I do not think we need to raise the issue of a referendum at this case. In fact, in the Health Act that we are anticipating, we should be able to correct that. All we have to do is to define the levels of health care in this country and that will determine where they stay. I think we should not hold ourselves back thinking that the only time we can handle the issue of Level 5 hospitals is through the Constitution. That is not necessary, as things stand now. I call upon the governors to release the Kshs.1.87 billion to Level 5 hospitals. The conditional allocation that was given last year was not released to these hospitals. The Health Committee visited Kakamega, Kisumu and Mombasa and in all cases, it found that money was not released to these hospitals. This time, they are worried that they may not receive the allocation. Not only that, as has been indicated by my colleagues in the Budget and Appropriations Committee, the conditional grant was actually swallowed in the Budget with the intention that governors would give it directly to Level 5 hospitals. Then, of course, the Senate turned round and said that is part of the general allocation to the counties. So, we know that in the county allocations, there is also money for health services including Level 5 hospitals. So, I call upon the governors to give Kshs.1.87

billion to Level 5 hospitals and add more which is in the Budget. I do not think we have any other way around it otherwise these levels will grind to a halt.

Hon. Temporary Deputy Speaker, the next thing I would say is that what we are seeing in level 5 hospitals and in the health sector as a whole is a clear sign of how we are handling devolution. The main problem is that we have not followed the structures and the laws that we put in place for transition. Everybody here has been saying that they do not have the capacity, we should have looked at the capacity, they do not have the staff and we should have looked at the staff.

I appeal to Members to take that to the Transition to Devolved Government Act. That is exactly what the Act indicated; work out the capacity; work out the staff that is required and work out the assets that they have. We did not do that and I am happy that yesterday we saved the Transition Authority (TA). We have not even done the functions that the county governments are doing. My Chair will agree with me that in the first budget we did, that is the question that we asked and I know we used the Commission on Revenue Allocation (CRA) criteria. We used information from the Budget but we did not use the costed functions.

So, up to today in the second year, we are still using almost a guessed figure and we all know in the Budget and Appropriations Committee that we actually brought it up by a percentage when we should have had a costed function. We did not have it. So, we must now let the Transition Authority work. I do not believe that the Inter-Government Relations Council can do the work that was intended for the Transition Authority. It cannot even constitutionally and, therefore, once again I want to call upon the Council of Governors and the Ministry of Devolution and Planning to let the Transition Authority do its work. If we are not happy with the staff running it, we should not kill a whole institution because of the staff. We can change that but we do not threaten to kill it before its time in the Constitution.

So, hon. Temporary Deputy Speaker, it is just that we are seeing this in health but I think this problem is there in all areas because we have not--- I want to use an analogy here. If you live in a town and you are working there, practising there and you have a business and you want to move with your family, all your assets and everything to another town, how long will it take you? I have just worked it and it will probably take you a year or two. How do you expect that a whole system that was working for over 40 years can be done instantly?

That is where the problem is and we are devolving badly and giving devolution a bad name. It will be a question of giving a dog a bad name and hanging it. Those of us who are supporting devolution to the hilt, all we want is to go back, follow the law and be patient. Things will work out. It is not too late. That is what we need.

Hon. Temporary Deputy Speaker, finally, my colleagues in the Budget and Appropriations Committee have even indicated that the process we are following with the county governments' budget may be illegal, of reporting to the Director of Budget and so on. Leaving the illegalities alone, I just see that the process had its own problem. By the time we are getting the Budget Policy Statement (BPS) which guides us to the Division of Revenue Bill, we should get an indication of what the national Government needs. We have no indication whatsoever at that point of what the county governments need. So, we are going by the CRA criteria. My view is, and I have said it before, this is the time we

need to actually take time, study the laws on devolution and harmonise the Budget process for both the national Government and the county governments. As much as the county governments are independent, the division of revenue is a national issue and, therefore, information must be available both for the national Government and the county governments as a whole. If we do that, we will never have this problem. My Chair is here. I think we should refuse if we do not have costs for the functions and we have no indications of the needs of the county governments. For the budgets that are being prepared now, we do not even have laws in place. The Division of Revenue Bill is here; the County Allocation Bill is not there, what is the Budget based on?

Hon. Temporary Deputy Speaker, I support but we must look at our processes, institutions and laws must be put in place to implement the Constitution and let the Transition Authority be independent like the CRA.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Your time is over. I am sure even your Chair has heard you. The hon. Member for Narok West, hon. Patrick ole Ntutu.

Hon. ole Ntutu: Thank you, hon. Temporary Deputy Speaker for also giving me this opportunity to join my colleagues in supporting this Motion or this Report from the Mediation Committee. I thank them for the good work that they have done. I think it is the second one as provided for in Articles 112 and 113 of the Constitution, even though I expected our Chairman of the Budget and Appropriation Committee to first of all bring the Report to us before we bring it to this House. However, I understand that the time that he had was limited. Nevertheless, as always you have rose to the occasion and you have done a good job and we support you.

Much has been said about this Kshs1.87 billion to our Level 5 hospitals but I think all along our Budget and Appropriations Committee has had concerns about the issue of the costing of the functions. Without this, honestly, I believe that we are sending a lot of money to these counties and that is why a lot of misappropriations are going on.

Hon. Temporary Deputy Speaker, I was a little bit concerned when I heard my good friend, hon. Nyamweya, say that we should not worry but just send money to the counties and then make a follow up. We sent to Nairobi County Kshs9 billion last year and if you ask Members of Parliament from Nairobi if they have seen this money in their respective constituencies, the answer will be in the negative. This applies to very many other constituencies across our country.

Hon. Temporary Deputy Speaker, the other issue was under-utilisation of funds by our counties. Most of us saw the other day in the newspapers that a lot of money has not been used by the counties. Even though it will not be sent back to the Treasury, the fact remains that we are now going to the second year and the funds have not been utilised. If you ask people on the ground why this money has not been utilized, they will tell you that it is because of lack of capacity of the counties to utilise these funds. It is very unfortunate that we keep on sending a lot of money. If I were to go to my county and see that the services that we are supposed to provide for our people are there, I have no problem. I have no problem with what my colleagues are saying, that probably we need more money to go to the ground or counties. However, I have one problem as a Member of Parliament for Narok West that we are giving these people money and we are not seeing it working on the ground. You will agree with me that we have used the little

money that we got last year from our Constituencies Development Fund (CDF) kitty and we started initiating projects. Personally, I have initiated about 15 projects so far. I am saying this with a lot of honesty. I know that these county governments are still coming up but unless we keep putting pressure on them to do what they are supposed to do, they will not.

Hon. Temporary Deputy Speaker, the other issue was lack of priorities among our counties. The health sector is very important in this country, particularly in providing services to our people. The Level 5 hospitals that we have in this country are very few and we should be able to actually fund them so that they provide the most needed services to our people. What my colleague said about Kisii Level 5 Hospital is true. My people from Narok County use that hospital but it is a pity when you take your sick people there. You are told that there are no beds and that your five patients will share one bed and yet they are very sick. So, you are left wondering where the money goes to. I do not think the money is enough. It is a drop in the ocean. Unless we properly cost the Level 5 hospitals, as well as other functions in the counties, we are not headed in the right direction as a country.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support the Report and thank you for giving me the opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Next is hon. Waluke, the Member for Sirisia. If he is not in, we can have hon. Peter Mwangi, the Member for Maragwa.

Hon. Mwangi: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very important Motion.

I applaud the Committee---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nakara, what is your point of order?

Hon. Nakara: Thank you, hon. Temporary Deputy Speaker. I just want to raise a concern. Some of us placed our requests when the Chairman of the Budget and Appropriations Committee started speaking. Some people---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nakara, you are not the Speaker. Respect the Chair, and your problem will be dealt with.

Hon. Nakara: But follow the line---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have been putting your request button on and off. You kept on switching from the normal request position to intervention and vice-versa. You are out of order!

Hon. Mwangi: Hon. Temporary Deputy Speaker, I wonder when---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have hon. Mwangi moving on. You must differentiate between being on intervention and being on a request. You cannot be moving up and down.

Hon. Mwangi: Hon. Temporary Deputy Speaker, I wonder when he was given a register to mark when Members entered this Chamber. Let me continue.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Proceed, hon. Peter Mwangi.

Hon. Mwangi: Hon. Temporary Deputy Speaker, I applaud the Committee for the work they have done. They have actually shown the way; that there are problems

which can arise. A Committee from the two Houses of Parliament sat together and found that there are real problems. They came up with solutions, but they are short-term.

There is the issue of the 15 per cent, which is being referred to a referendum. There is nobody who is saying referendum is not good. Referendum is good. I am waiting for it. Some of us have a problem with the constitutional provision that one should get 50 per cent plus one vote of the total vote cast in order to be declared the winner of a presidential election. We want to remove it. So, when they brought about the issue of referendum, we did not care.

Hon. Temporary Deputy Speaker, I now want to speak on the Level 5 hospitals. As Members of the Health Committee, we discussed the problems being faced by Level 5 hospitals. My people from Murang'a County have to travel all the way to Thika Hospital, which is a Level 5 hospital. I would like to suggest that even though we have come up with the Kshs1.87 billion to support the Level 5 hospitals across the country, we should come up with a long-term solution. We should upgrade all the county hospitals to Level 5 hospitals, so that our people can access medical services nearer to where they stay.

I have an issue with the Kshs5 million per constituency for the Economic Stimulus Programme. It would be a very serious offence for us to be going to the governors to ask for this money, if it is to be disbursed through the counties. The money should be disbursed directly to the accounts of the CDF because we have them. I have heard that we should know that the money is meant for completion of projects which had been started previously. We have problems with some of those projects. Some of them were construction of health centres which do not even have personnel. It is high time the Government started hiring personnel.

In my constituency, there is a health centre which has been constructed to completion but to-date it is not functional due to lack of personnel. There are nurses who were employed in 2011 but their salaries have since been stopped. They were promised to be absorbed into the Ministry but they are still waiting, not knowing their fate. The situation affects the whole country. If you go to Mombasa, Murang'a, Kisii, Kirinyaga and all other counties, you will find those nurses stranded. For how long can we keep them waiting? Let us give them hope.

With those few words, I beg to support and give other hon. Members time to contribute.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very good!

Hon. Members, if you really think that you cannot spend all your ten minutes, there are other hon. Members who are ready to utilise the remainder of your time.

Next is hon. Peter Kaluma.

Hon. Kaluma: Thank you, hon. Temporary Deputy Speaker. I stand here to oppose the Report of the Mediation Committee. I have to do so, on account of sheer principle.

We are a House of laws and traditions. We must be careful not to establish traditions which may entangle our people and undermine our operations not just as a society but more so as the National Assembly. Several hon. Members have spoken on the various provisions in designating the roles of the National Assembly and the Senate.

Let me refer the House to the provisions of Article 93 of the Constitution. It establishes the Parliament of Kenya. Sub-Article (2) talks of the Parliament of Kenya.

Sub-Article (1) talks about the National Assembly and the Senate. It says they will perform respective functions set forth in the Constitution. Of course, those functions are specified for the National Assembly under Article 95 and for the Senate, under Article 96. The business of doing the Division of Revenue Bill is sitting with the National Assembly, under Article 95(4). The business of distributing money across the counties, through the County Allocation of Revenue Bill, is the business of the Senate.

Hon. Temporary Deputy Speaker, as the National Assembly, we made a mistake by setting the precedent of sending a matter which properly belongs to the National Assembly to the Senate. I know that people are saying: "The Supreme Court made a decision". We must learn to distinguish between an opinion and an enforceable decision, which we call an "order", which has to be acted upon by institutions. The Supreme Court was giving opinion. They were giving their thoughts on the lamentations by the Senate. We need to take this very seriously.

Imagine a situation where the issue of division of revenue by this country failed in the Mediation Committee. Where would we be? There is no contradiction, if you look at the provisions of the Constitution in Article 218. In Article 93, it is already clear, these are specific functions and if you look at Article 218(1) it is talking of Division of Revenue Bill and County Allocation of Revenue Bill. There is no contradiction. I wanted to urge the Members of this great National Assembly who are supporting this Bill and maybe in the Majority side, that we do not establish a precedent which may haunt this nation and our future.

In principle, there is no public good great enough as to enable or justify the violation of the Constitution. The people of Kenya gave themselves this Constitution and the laws are clear, we are mulling over weakness of institutions. Are we going to be tied as the people of Kenya because an institution could have made an error or not? In terms of our society moving forward, we are still talking about IEBC issues, because of decisions of the Supreme Court. We know we cannot appeal, but we must distinguish and really make decisions in terms of how to move.

Secondly is the issue of Level 5 hospitals. In the entire Homa Bay County---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is a point of order from hon. Gikaria, Member for Nakuru Town East.

Hon. Gikaria: On a point of order, hon. Temporary Deputy Speaker. My good friend, hon. Kaluma has stipulated very clearly the functions of National Assembly and Senate. Is he in order to mislead this House that also under the same Constitution, the functions of the Supreme Court have been stipulated? Is he in order to continuously say that we should not follow the Supreme Court orders?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kaluma, as you debate and borrow your information from such maybe you can try to clarify.

Hon. Kaluma: Yes, hon. Temporary Deputy Speaker, I have not said there is an order from the Supreme Court which should be disobeyed. In fact, what I am saying is that there is no order on this matter from the Supreme Court. What it did was to give an advisory opinion to abide. They gave views and opinions on what they believe is their interpretation of the matters that were remitted to them by the Senate. There is no binding decision or order that enables or compels us as a country, and a people particularly as leaders to violate the Constitution.

Let me dare say that under Article 2 of the Constitution, even an order which is unconstitutional is null and void to the extent of its unconstitutionality or inconsistency with the Constitution. We know the Supreme Court made a decision; many are the decisions that even judges make and then turn around. I want to tell hon. Gikaria, in the history of legal jurisprudence, we have judges who have even contradicted their decisions having gone to other courts up there like Lord Denning and Lord Diplock; they did it graciously. That is why we have to review jurisdictions going before the same judge and you change them.

What I was saying, not to be distracted, is that we should not be beholden to decisions which on the clear reading of the law are unconstitutional. In fact, then we undermine what we are dealing with. Let me leave that aside.

The other reason as to why I object to the manner in which we are proceeding is that it entrenches the inequities and inequalities we have in the country. I come from Homa Bay County, the biggest hospital is Homa Bay District Hospital, which was built by Tom Mboya. I do not know how many years ago. Homa Bay County is a stretch of a distance you cannot unwind in a day. We do not have a Level 5 hospital there neither is it there in Migori County. The entire Luo Southern Nyanza has no Level 5 hospital. So, why should I be sitting here as a leader instead of proffering suggestions like the ones my colleagues are raising? How do we get referral hospitals per county so that you do not tell all of Southern Nyanza, the citizens of this country, they have to go to Kisii? In some counties, there are as many as two Level 5 hospitals.

I would prefer a situation where our Committee on Budget and Appropriations, looked into the future and decided that we have at least one referral health institution in each county and we give them money directly to facilitate them. As to whether or not monies are being eaten by governors, it is the failure of our institutions which should be under-guarding the usage of those monies. It is not something which we should debate much about at this level.

With those very few remarks, I oppose and urge my hon. colleagues not to sanction illegalities and unconstitutional actions, simply because you want to bend backwards. We may shackle ourselves in chains which we may not break from in future.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, very well spoken and you oppose. Hon. John Nakara, Member for Turkana Central.

Hon. Nakara: Thank you, hon. Temporary Deputy Speaker. I apologize for the first attempt. I will just take two or three minutes, because the Members have spoken to what I wanted to say.

One is about the emergency funds which we have allocated to the counties. There are some counties where emergency comes frequently and sometimes the county governments do not respond, unless we go back to the CDF Kitty to respond to those emergencies.

On the issue of Equalisation Fund, we want to thank the Committee because some of the counties are behind in development and this Fund makes some of us to come to the same level with other counties. On county allocations; we need to see how we can curb the issue of wastages in county governments. People are there and they will go. We are giving them good money and we must have institutions that will deal with wastage of

resources in our counties. Let us not reduce the allocation to counties. Let us give them enough money. We must make sure that those resources which we give to counties are used well and according to the needs of the people. Finally, we have some facilities that CDF has already established like dispensaries in different parts of the counties; we are appealing and requesting the county governments to furnish those dispensaries because they are closer to the people. Like in Turkana County, we do not have any referral hospital that is equipped. Health function is devolved, so we want to make sure that the county governments are supporting those projects, as Members through CDF try to make sure that health facilities are available in villages and locations. County governments should make sure that they furnish those facilities and equip them with personnel and drugs, so that we can take medical services closer to our people.

Thank you, hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, you support. Let us have hon. Jared Opiyo, you can use the Dispatch Box. Hon. Members, before I call upon the Mover to reply, we have been debating for almost two hours now, at my discretion he is at liberty to donate time. Maybe you can donate to hon. Junet.

Hon. Opiyo: Thank you, hon. Temporary Deputy Speaker. Today, I have really come to appreciate that when you do not have your card in this Parliament, you are in great trouble, but I believe tomorrow I will come with it.

The situation we are faced with today is as a result of insincerity in national discourse. If you can remember very well how we came to this, the Senate had actually convinced this House that the Kshs.3.4 billion that had been set aside as conditional grants for the Level 5 hospitals would be dealt with by the Senate. But, again they turned round and said that there was no money and they proposed that the national Government avails money for the hospitals.

The Mediation Committee came up with a figure of Kshs.1.87 billion for the Level 5 hospitals, which in my own observation is far below what is required by those hospitals. Going forward, our health facilities at Level 5 and 4---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have one minute, hon. Opiyo.

Hon. Opiyo: I want to say that Level 5 and 4 hospitals should be funded directly from the national Government and the Exchequer. You will find that some monies that went to the counties were allegedly returned for lack of absorption, but the truth of the matter is that the Exchequer was not available for the counties on these monies. Therefore, the Government should also be sincere and give monies in good time so that service delivery can be in order.

Lastly, we must ensure that oversight organs of this nation enforce law at the counties; otherwise, we have devolved corruption and misuse of resources. We are also going to devolve centralization at the counties. Therefore, our organs of oversight must entrench themselves at the counties and ensure that the monies we avail as Parliament to those counties are properly utilized.

With those remarks, I reluctantly support this Report.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Hon. Members, we now call upon the Chairperson, hon. Musyimi to reply. He is at the discretion of the Speaker; given the urgency of the matter under debate to be

philanthropic enough to donate some of his minutes. Maybe a minute to the Chairperson of the Committee on Finance, Planning and Trade; you can catch his eye.

Hon. Musyimi, Chairperson of the Departmental Committee on Budget and Appropriations and Member of Parliament for Mbeere South.

Hon. Musyimi: Much obliged. I beg to reply.

But before I do so, let me do your job. You are asking me to donate my time. You have the liberty to catch the eyes of hon. Members who wish to contribute. My time is more limited than yours.

Therefore, I can only afford two minutes. I wish to donate one minute to hon. Joseph Manje, Member of Parliament for Kajiado North and one minute to hon. Benjamin Langat, Member of Parliament for Ainamoi; the Chairperson of Departmental Committee on Finance, Planning and Trade; in that order.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): One minute has been donated to you, hon. Manje.

Hon. Manje: Thank you, hon. Temporary Deputy Speaker. I take this opportunity to thank the Chairperson of the Budget and Appropriations Committee for giving me this opportunity.

I want to say that the work the Mediation Committee was very good. But entirely, I want to let my feelings be known by this country that we have to check the budget process and consider that we have to remain united as a country. If we give a lot of money to the counties, most likely the central Government will never hold them.

If you give more resources, you have to be very careful and ask yourself whether you want to remain united or you want the counties to go ahead. In future, I would like to let the Budget and Appropriations Committee consider generation of revenue. If you forget how this revenue is generated and you ignore those departments that are producing, you are likely to cripple the whole country. I know the budget that the national Government is sponsoring for 47 counties is very expensive.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over, hon. Manje. Hon. Benjamin Langat, you have the Floor.

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker. I support what the Committee did. I want to say that the way it looks, Level 5 hospitals have been orphaned by their father. I want to thank the Budget and Appropriations Committee and hon. Members of the National Assembly for bending backwards to ensure that these orphans get their rightful share.

This money is from the national Government. I thought the Chairman and Committee would have given us the formula for sharing this money; as a condition. This is because you are saying Kshs1.8 billion--- You cannot come and say again that the Senate can go and share the money which you have donated. This House should share the money allocated to Level 5 hospitals. Actually, we should have agreed on a formula in this House. There is no way you can say that the Senate---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over. Hon. Musyimi, do you have any other time to donate?

Hon. Musyimi: Thank you, hon. Temporary Deputy Speaker. I wish to take this opportunity to, first of all, thank hon. Speaker for appointing me together with my other

colleagues to sit in the Mediation Committee. It was not lost on us that those who were appointed were Members of the Budget and Appropriations Committee. The message to us was that we have the institutional memory and we did our best to represent this august House and the concerns of our people.

I also wish to thank all the hon. Members for the quality of debate and the depth of contribution. I was highly reflective and at times quite passionate. But we have taken note. We are a new dispensation. There may be mistakes, but they are honest mistakes. I want to assure hon. Members that we are also learning as Members of the Budget and Appropriations Committee. We have taken note of the advice and we will seek to do a better job next time.

I am also glad that there is a sense in which we are beginning to do a bit better with the Senate. I think this is something our people want to see and it is something we should certainly encourage. Let me inform hon. Members in this august House that this morning I spent a long session with the Auditor-General. The Auditor-General as the head of the Kenya National Audit, Mr. Edward Ouko, was tasked with the responsibility of leading a process of a working group of seven persons to help audit the Constitution of this Republic.

Hon. Temporary Deputy Speaker, I am reminded of the words of the former Minister for Justice who was also a colleague in the Justice and Legal Affairs Committee, the hon. Eugene Wamalwa. We should be careful to talk about the referendum, having not audited the Constitution that we are implementing.

I come from a programme based background. I know the dangers of rushing into major decisions without an audit of the process that you have tasked yourself with. Therefore, I want hon. Members to know that we have seized the responsibility as Members of the Budget and Appropriations Committee.

Indeed, I have asked the Auditor-General to come together with the entire working team to meet the Budget and Appropriations Committee through whom they related with the National Assembly on Tuesday, 5th August, 2014, at 10.00 a.m. at County Hall.

With those few remarks, I thank you and hon. Members for their contribution.

I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I will not be in a position to do the necessary because of the reasons known better to you. But the necessary will be done during the next sitting, when we will have the numbers.

ADJOURNMENT

Hon. Members, the time being 6.30 p.m., this House stands adjourned until tomorrow, Thursday, 24th July, 2014, at 2.30 p.m.

House rose at 6.30 p.m.