

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 15<sup>th</sup> March 2018

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

NOMINEE FOR APPOINTMENT AS DIRECTOR OF  
PUBLIC PROSECUTIONS

**Hon. Speaker:** Hon. Members, I have two Messages. The first Message is on the nominee for appointment as the Director of Public Prosecutions.

Pursuant to the provisions of Standing Order No.42(1), I wish to report to the House that I have received a Message from His Excellency the President, conveying his nomination of Mr. Noordin Mohamed Haji for appointment as the Director of Public Prosecutions. His Excellency the President, having exercised his powers under Article 157(2) of the Constitution and Section 8 (5) of the Office of the Director of Public Prosecutions Act, 2013, now seeks the approval of the House. Section 8(6) of the Office of the Director of Public Prosecutions Act, 2013 provides that the National Assembly shall within 21 days, vet and consider the nominee and may approve or reject the nominee.

The Public Appointments (Parliamentary Approval) Act, 2011 requires the relevant Committee of the House to consider the suitability or otherwise of such a nominee and table its report for consideration by the House. The Act further requires that the public be given seven days' notification to submit their views regarding the suitability or otherwise of the nominee proposed for appointment to an office requiring parliamentary approval. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011, the seven days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

This Message together with curriculum vitae of the nominee, therefore, stand committed to the Departmental Committee on Justice and Legal Affairs for consideration. Considering that the House is scheduled to proceed on a short recess from 30<sup>th</sup> March, 2018, it is advisable that the Committee expeditiously proceeds to notify the nominee and the public; commences the approval hearing after the seven-day notification period and tables a report on or before Wednesday, 28<sup>th</sup> March 2018, to enable the House to consider the matter within the statutory timelines available.

NOMINEES FOR APPOINTMENT AS  
PRINCIPAL SECRETARIES AND AMBASSADORS/HIGH COMMISSIONERS

**Hon. Speaker:** The second Message from the President is on the nomination of principal secretaries, high commissioners and ambassadors.

I wish to report to the House that I have received a Message from His Excellency the President conveying his nomination of persons for appointment as principal secretaries, high commissioners and ambassadors. His Excellency the President, having exercised his powers under Articles 132(2)(e) and 153(3)(b) of the Constitution, is now seeking the National Assembly's approval of the following persons for appointment to the offices of principal secretaries and ambassadors/high commissioners.

(a) Principal Secretaries:

- (1) Mr. Harry K. Kimutai - State Department of Livestock.
- (2) Mr. Alfred Kipkorir Cheruiyot - State Department of Correctional Services.
- (3) Mr. Jerome Okoth Ochieng' - State Department of Information, Communication and Technology.
- (4) Ms. Susan Komen Koech - State Department of East African Community.
- (5) Mr. John Morangi Omenge - State Department of Mining.

(b) Ambassadors and High Commissioners:

- (1) Ambassador Richard Titus Ekai.
- (2) Eng. John Okuna Ogango.
- (3) Hon. Wilfred Gusuka Machage.
- (4) Hon. Mohamed Mukhtar Shidiye.

In accordance with the provisions of Standing Order No.45(1), which requires that upon receipt of notification of nomination for appointment such nomination shall stand committed to the relevant departmental committee for consideration, the nominations for appointment to the positions of principal secretaries and ambassadors/high commissioners are hereby referred to the respective departmental committees as follows:

1. Departmental Committee on Agriculture and Livestock - Mr. Harry K. Kimutai.
2. Departmental Committee on Administration and National Security - Mr. Alfred Kipkorir Cheruiyot.
3. Departmental Committee on Communication, Information and Innovation - Mr. Jerome Okoth Ochieng'.
4. Departmental Committee on Environment and Natural Resources - Mr. John Morangi Omenge.
5. Departmental Committee on Defence and Foreign Relations shall vet the nominees proposed for appointment as principal secretaries for the State Department of East African Community together with all nominees for appointment as high commissioners and ambassadors.

Section 8 of the Public Appointments (Parliamentary Approval) Act requires that a Committee shall consider a nominee and table its report for debate and decision of the House within 14 days from the date of notification. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with Section 5 of the said Act, the seven days' notification to the public shall start running on the day following the day when the notice is

published in the dailies. It is advisable that the departmental committees expeditiously proceed to notify the respective nominees and the public, commence the approval hearings after the seven-day notification period, and table their reports on or before Wednesday, 28<sup>th</sup> March 2018 to enable the House to consider the matter within the statutory timelines and before the short recess.

This Message together with the curriculum vitae of the various nominees, therefore, stand committed to the five departmental committees as enumerated above for consideration.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table:

Business transacted by the 4<sup>th</sup> Assembly of the East African Legislative Assembly at its 2<sup>nd</sup> Meeting of the 1<sup>st</sup> Session at the Parliament of Uganda as follows:

(a) Resolution of the Assembly to adopt and operationalise the administrative and financial autonomy granted to the East African Legislative Assembly (EALA).

(b) Resolution of the Assembly seeking special leave of the House to use records of the House for court purposes in the East African Court of Justice (Case Ref.No.2 of 2018).

(c) The East African Community Statistics Bureau Bill, 2017.

(d) The East African Community Monetary Institute Bill, 2017.

(e) The East African Community Oath Bill, 2017.

Performance Audit Report on the provision of Financial and Business Support Services to Women by the Women Enterprise Fund (WEF) from the Office of the Auditor General for the period March, 2018.

Performance Audit Report on the Implementation of Efficient Lighting Project by the Kenya Power and Lighting Company from the Office of the Auditor-General for the period March, 2018.

Performance Audit Report on Operationalisation of Constituency Industrial Development Centres by the Ministry of Industrialisation and Enterprise Development from the Office of the Auditor-General for the period March, 2018.

The Annual Report and Financial Statements of the Kenya Pipeline Company for the year ended 30<sup>th</sup> June, 2017.

Report of the Auditor-General on the Financial Statements of the State Department of Special Programmes in respect of the following programmes for the year ended 30<sup>th</sup> June, 2017 and the certificates therein:

(a) The Relief and Rehabilitation Cash Transfer Fund.

(b) The Street Families Rehabilitation Trust Fund.

The Annual Report and Financial Statements of the Kenya National Examinations Council (KNEC) for the year ended 30<sup>th</sup> June, 2016.

Report of the Auditor-General and Financial Statements of the Moi Teaching and Referral Hospital for the year ended 30<sup>th</sup> June, 2016 and the certificates therein.

### STATEMENT

BUSINESS FOR THE WEEK COMMENCING 20<sup>TH</sup> TO 22<sup>ND</sup> MARCH 2018

**Hon. A.B. Duale:** Hon. Speaker, pursuant to the provisions of Standing Order No.44(2) (a), I rise to give the following Statement on behalf of the House Business Committee (HBC). The Committee met on Tuesday this week to give priority of business for consideration.

On Tuesday next week, we shall consider the Second Reading of the following Bills:

1. The Nairobi Metropolitan Area Transport Authority Bill, 2017, if we will not conclude it today.
2. The Computer and Cybercrimes Bill 2017.
3. The Irrigation Bill 2017.

I have spoken to the two Chairs. I hope by then, they will be in a position to table their reports of both the Computer and Cybercrimes Bill, 2017 and the Irrigation Bill. Through you, Hon. Speaker, I also wish to urge all the committee chairs who have Bills before them to fast-track their considerations and table their respective reports, so as to guide the debate of the House during the Second Reading of those Bills.

Finally, the HBC will reconvene on Tuesday, 20<sup>th</sup> March at the rise of the House to consider business for the coming week. I now wish to lay this Statement on the Table of the House.

**Hon. Speaker:** Hon. Members, before we go to the next Order, allow me to recognise the presence of students from the various institutions which I will name. We have students from Kimng'orom Girls High School from Mogotio Constituency, Baringo County and Noonkopir Girls High School, Kajiado East Constituency, Kajiado County, in the Speaker's Gallery. There are students from Mogotio Girls, Mogotio Constituency, Baringo County, St. Paul Karucho, Gichugu Constituency, Kirinyaga County, and St. Jeremiah Gitau High School, Naivasha Constituency, Nakuru County, in the Public Gallery. They are all welcome to observe the proceedings in the National Assembly this afternoon.

Next Order.

## MOTION

### BIPARTISAN RESOLVE TO SUPPORT THE INITIATIVE ON "BUILDING BRIDGES"

**Hon. Ng'ongo:** Hon. Speaker, I beg to move the following Motion:

THAT, acknowledging that the meeting between His Excellency, The President, The Hon. Uhuru Kenyatta and the distinguished Leader of the NASA Coalition, The Right Hon. Raila Odinga of Friday, 9<sup>th</sup> March 2018 putting aside political differences through building bridges marked an important and historic moment for the country; Aware that this extraordinary opportunity will enable Kenyans to face and address the challenges currently faced, and openly and honestly discuss successes and failures and finally formulate and implement the necessary corrective measures for the country to move forward; Cognisant that, ahead of and immediately after the 2017 general elections, Kenya witnessed a number of political upheavals including and not limited to the demonstrations and hate speech which threatened to polarise the country along political and ethnic differences; Recognising that, the Initiative by His Excellency the President and the Leader of the NASA Coalition made on 9th March, 2018 on 'Building Bridges to a new Kenyan Nation' and aimed at ensuring an all inclusive and cohesive Nation will require facilitation and support from all arms of government and relevant institutions; Committed to the determination of all Kenyans to live in peace as one indivisible sovereign nation; Further

recognising that there is need to roll out and implement programmes on shared objectives in a bipartisan manner as was agreed by the two distinguished Leaders-

NOW THEREFORE-

(a) the thanks of this House be recorded in commending the H. E The President, The Hon. Uhuru Kenyatta and The Right Hon. Raila Odinga for providing leadership in the patriotic task of promoting unity, peace and harmony in the country and initiating the move towards 'Building Bridges to a new Kenyan Nation'; and

(b) this House commits itself to support and advance, within its mandate, the aims and objectives of the initiative of 'Building Bridges to a new Kenyan Nation'.

*(Hon. Mbadi on 14.3.2108)*

*(Debate concluded on 14.3.2018)*

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded last evening. What remains is for me to put the Question which I hereby do.

*(Question put and agreed to)*

## **BILL**

### *Second Reading*

#### THE DIVISION OF REVENUE BILL

**Hon. Ichung'wah:** Hon. Speaker, the Division of Revenue Bill was read for the First Time in the National Assembly on Tuesday, 13<sup>th</sup> March 2018 and then it was committed to the Budget and Appropriations Committee, pursuant to Standing Order No.127(2) of the National Assembly.

The Division of Revenue Bill, 2018 provides for the equitable sharing of nationally raised revenue between the two levels of Government, as well as additional resources to counties in form of conditional allocations, in terms of grants and loans and the Equalisation Fund as provided for in our Constitution. The enactment of the Division of Revenue Bill, 2018 is critical in setting the stage for the preparation of the County Allocation of Revenue Bill for the Financial Year 2018/2019, which will inform the firming up and completion of the preparation of the annual Budget Estimates for the 47 county governments. Article 224 of the Constitution requires that county governments prepare and adopt the annual Budget and Appropriations Bills which are passed on the approved Division of Revenue Bill. To this end, the timely approval of the Bill will go a long way in facilitating the county governments process the budget-making in a seamless manner. I must take this opportunity to thank the HBC for allocating time for this Bill to have both the Second Reading and Third Reading this afternoon, and to complete and relay it to the Senate. It is worth noting.

The Budget and Appropriations Committee wishes to thank your Office, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office for the committed

assistance which was received as it discharged its mandate during deliberations on this Bill. On behalf of the Members of the Budget and Appropriations Committee, most of them are in this Chamber this afternoon, and as required under Article 204 and 221(5) of the Constitution, as well as Section 18(4) of the Public Finance Management (PFM) Act, 2012, it is with great pleasure that I table this Report for the House to note its contents, and then debate the approval of the Division of Revenue Bill for the Financial Year 2018/2019.

On the sharable revenue, the Division of Revenue Bill, 2018 provides that the projected total sharable revenue between the national Government and the county governments for the next Financial Year 2018/2019 will be Kshs1.688492 trillion. It comprises of the national Government's share of Kshs1.369792 trillion, further Kshs4.7 billion towards the Equalisation Fund and Kshs314 billion that will go to the equitable share of revenue to county governments. Furthermore, the national Government share of revenue for 2018 as provided for additional and conditional allocations to the counties amount to a total of about Kshs17.231 billion. These allocations have been earmarked for the following purposes: Kshs9.4 billion towards the leasing of medical equipment for the leased medical equipment programme that has been going on and compensation of visa fees foregone which is about Kshs900 million.

A further Kshs4.326 billion towards Level 5 hospitals across the country, a supplement of Kshs605 million for construction of county headquarters and Kshs2 billion for rehabilitation of youth polytechnics. It is worth noting that the county headquarters allocation of Kshs605 million is going to specific counties. From the Report, the Members will note a number of counties that will benefit from this allocation. They are Isiolo, Lamu, Nyandarua, Tana-River and Tharaka Nithi counties. It is also worth noting that this allocation is part of a three-year plan which began in the 2016/2017 Financial Year to supplement the five counties to construct their county headquarters. The funds will be shared equally, with each getting an allocation of Kshs121 million in the 2018/2019 Financial Year. This marks the second phase of the agreement whereby the national Government will contribute 70 per cent of the budget while the county governments contribute 30 per cent. The national Government's contribution will be spread over three financial years. This allocation marks the second bit. I hope that as the county governments prepare their budgets, they will factor in the 30 per cent over the three year period so that when the national Government completes its disbursement, they shall have disbursed their 30 per cent and complete the county headquarters since this is critical. These are some of the counties that ideally had no offices. Nyandarua County has been using rented offices. The same is true for Tharaka Nithi County, which has not had offices. I had the opportunity to visit Tharaka Nithi and I can confirm that the project of constructing the county headquarters is ongoing.

Hon. Speaker, on the county government allocations, the Division of Revenue Bill, 2018 proposes to allocate Kshs372.741 billion to county governments as follows: A sum of Kshs314 billion equitable share to county governments, an additional conditional allocation of the share of national revenue of Kshs17.231 billion; a sum of Kshs4.7 billion towards the Equalisation Fund, Kshs8.269 billion from the fuel levy and Kshs33.2 billion conditional allocations for loans and grants.

Besides these five areas, there is a provision of Kshs4.5 billion from the national Government share as a special grant to the National Hospital Insurance Fund (NHIF) to cater for free maternal healthcare to be disbursed as reimbursement to county governments. This will allow expectant mothers, both for pre-natal and post-natal care, to access maternal healthcare free of charge in any county government-managed hospital across the country. Previously, free material healthcare was reimbursed directly to county governments, but there is a policy shift in

the administration of free maternal healthcare where the service shall be administered through the existing NHIF framework.

Hon. Speaker, this is worth noting. You will remember that during the 11<sup>th</sup> Parliament, we always had issues with the disbursement of these funds to county governments. The county governments complained of delays in the release of this money to them. Therefore, many expectant mothers were unable to access free maternal healthcare on the argument that a number of public hospitals run by county governments were not able to offer these services because they had not been reimbursed the money. The Government has now put in place a more efficient system through the NHIF. An expectant mother will now be expected to walk into a public hospital and the NHIF will cater for the cost of her treatment. It will be done on reimbursement basis just like every insurance policy works in this country.

This departure in policy will not just help county governments in getting timely reimbursements, but it will also help our expectant mothers. It is also in line with the promises made by His Excellency the President during the campaigns, that not only will expectant mothers be given free delivery services, but even a year after delivery, both the mother and the child will be under the care of the NHIF in pursuant to that promise which was in the Jubilee Manifesto to offer free maternal healthcare for the mother and the child for the first one year of life. This will encourage mothers to continue to enlist these children and even their families in NHIF.

Hon. Speaker, the Committee noted that the most recent audited accounts, which are the basis of sharing revenue in accordance with Article 203(2) of the Constitution, are those of the Financial Year 2013/2014. This is on account that the National Assembly is yet to approve audited accounts of revenues of Financial Years 2014/2015 and 2015/2016. I am sure the Auditor-General is now working towards 2016/2017. We implore the relevant committee and the House to fast-track the approval of these accounts, so that the Division of Revenue Bill is based on the most recent audited accounts of the Government. We are three years behind in terms of approved financial accounts.

The Committee observed that despite the allocation for leasing of medical equipment having increased to the current Ksh9.4 billion, there was need to audit the beneficiaries of these equipment as well as the details of the contracts. The Committee observed that some of the 94 hospitals in respective counties that were expected to receive the specialised equipment are yet to receive them. Some lack the relevant skills and reagents to operate them. Therefore, there are many hospitals with machines, but simple things like reagents or skills to use the machines are lacking and, therefore, they remain unutilised. To this end, the Committee has resolved to engage with the Chairperson of the Committee on Health to discuss the matter before making recommendations on the 2018/2019 Budget Estimates. In addition, while we will be conducting public hearings in May this year for the 2018/2019 Estimates, we will visit some selected counties to specifically have an understanding of the leasing of medical equipment programme, including Garissa County, as the Leader of the Majority Party is suggesting.

Finally, the Committee observed that county governments continue to receive allocation of the fuel levy despite having no clear framework in place to support the allocation. It was noted with concern that the Kenya Roads Bill, 2017 had not been approved by the House by the time we were writing this Report, but we are now past that. I take this opportunity to commend Hon. Pkosing, the Chair of the Departmental Committee on Transport, Public Works and Housing, for fast-tracking this Bill. It creates the legal framework for sharing the Kshs8.2 billion from the fuel levy. The Committee, therefore, requests the House to approve the Division of Revenue Bill, 2018 as read the Second Time.

Further to that, over the last few years, it has been a custom or a tradition that every time we pass this Bill in this House and we send it to the Senate, we find them coming up with different figures. It is worth noting that the Inter-Governmental Budget and Economic Council held meetings where the Senate, the Commission of Revenue Allocation and the CoG were invited. They unanimously agreed on the figures that got to this House through the Budget Policy Statement (BPS) that we approved. It is also worth noting that immediately after we passed the BPS, there were reports that the Commission on Revenue Allocation went to the Senate with different figures far from the ones agreed.

I take this opportunity to ask our friends in the Senate to adhere to the agreed figures because these figures have an implication on the fiscal deficit that we were talking about during the debate on the BPS. You can remember how heated the debate was in terms of our national debt. If you were to allocate any extra coin other than what has been agreed on, it would have a negative impact on our national fiscal deficit and, therefore, affect our national debt. I hope Members in this House will support this Bill even as we go to the Third Reading this afternoon and pass it on to the Senate. I hope Senators will stick to the figures as agreed. In the new spirit of building bridges, we would also want to take this opportunity to shake hands with our colleagues in the Senate, so that for the first time in five years, we pass this Division of Revenue Bill without wasting a lot of time going into mediation. I want to speak to the other House and ask even those of us who have opportunity to speak to our Senators to pass this Division of Revenue Bill as it is, so that they are able to fast-track the County Allocation of Revenue Bill and move forward towards our estimates later this year.

With those few remarks, I want to invite Hon. Moses Lessonet to second. I do not see him. Let me invite Hon. Makali Mulu to second on behalf of the Vice-Chair.

Thank you.

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

**Hon. Mulu:** Thank you, Hon. Speaker, for this chance to second this important Bill. The Division of Revenue Bill is a follow up to our approval of the BPS. Most of the figures which you find in this Bill are the same figures which this House approved on the BPS. This Bill helps this House to approve what we call the vertical division of our Budget. That is sharing the budget between the national Government and the county governments. So, it is a very straightforward Bill. If the Members want to appreciate this Bill, the best thing is to look at the explanatory notes. That is where most of the details are captured.

Let me make a few observations. Clause 5 of this Bill says that in a situation where the revenue generated falls short of expectations, then, the only money you can change is the figure for the national Government. That means that the figure for the county governments is fixed. That is important because it ensures that the programmes and projects for the county governments are fully funded in terms of what is in this Bill.

The other important bit which I want to put more emphasis on is what my friend and Chair, Hon. Ichung'wah said. That is the issue of this House being up to speed in terms of approving our Public Accounts Committee reports. We are already about three years behind schedule. It is important as a House to fast-track this important national exercise so that the figures we use in these Bills are up to date.

I do not want to say much about the leasing of medical equipment. It has been captured very well. We are now in the fifth year of leasing equipment. Hon. Members, because we represent people in our constituencies, I do not know how many of us would stand in this House and say the level of medical services in their constituencies would give an indication of use of

these resources we are allocating every year. To make things worse, we are increasing this figure from about Kshs4.5 billion to Kshs9.3 billion. I agree with my Chairman that it is important we do an audit of how this important programme is being implemented. It does not make sense to allocate resources where the actual implementation does not take place. If you go to most of our Level 4 hospitals, you hardly see signs of this money. Some have equipment which are in stores. They cannot use them because they do not have the capacity and the required skills. Others have not got the equipment. Medical healthcare in this country is below expectation. As a House, it is our work - because we oversee this Ministry- to make sure that this important equipment benefits Kenyans.

As we look through the conditional grants which have been given to the county governments, generally, we need to agree that it is important for us to have a follow up and make sure that this money reaches the people. For example, there is some allocation here to support national agriculture and inclusive growth project. This programme is very important for food security in this country. If it is implemented, it will go a long way in trying to achieve one of the Big Four agenda items on food security. So, it is a matter of ensuring that we monitor the implementation.

The other thing is the issue of resources. We have some resources here which have been provided under the Kenya Devolution Support Programme to build capacities of the county governments in terms of public financial management, human resource management and most importantly, planning, monitoring and evaluation. If this money is utilised well, it can go a long way in supporting these county governments to make sure that the resources allocated end up being used for the right purpose.

Clause 16 of this Bill talks about public debt. It indicates that debt is going to increase from about Kshs450 billion to Kshs687 billion. If you look at notes 11 and 19, you see the impact. Note 19 says because of all these requirements to pay - because some of these are first charged to the Consolidated Fund - the only amount the Government is left with to plan for our roads, defence and energy is only Kshs143 billion out of a total collection of Kshs1.8 trillion. You can see the impact of some of these things we keep on talking about in this House. It makes the Budget so inflexible that even in terms of planning for other important national projects, our hands are tied. The hands of the Budget and Appropriations Committee and even those of the National Treasury are tied. They have only Kshs140 billion which they can allocate freely. The rest of the money is tied. It is a matter of saying this must go here and this one there. It means we need to help this country as we move forward, to start releasing more resources into this account of free resources which can be allocated for purposes of our roads, defence, energy and other important national programmes.

There is the issue of National Treasury explaining why they have not met some of the requirements of the Commission on Revenue Allocation. There is also the issue of the cancer regional centres. There was a recommendation in the last Budget that we build two cancer regional centres. This House approved Kshs4 billion for that purpose. This year, CRA is proposing that we provide additional Kshs5 billion for the same purpose. The National Treasury is saying that it cannot approve this because the policy on that matter has not been finalised. I ask myself how we were able to allocate resources last year and this year we are being told that the policy needs to be discussed in the sectoral meetings. To me, this is a contradiction. To some extent, it shows poor planning in that some of the projects we allocated resources in this House might not have been done to the level expected in terms of project appraisal. I urge the technical

people in the ministries to make sure that before they allocate resources for any of these programmes, thorough appraisal is done to make sure that Kenyans get value for money. As I conclude, generally, I like what my Chairman said on this issue. Since the 11<sup>th</sup> Parliament, every time we discuss the Division of Revenue Bill, it always ends up at the Mediation Committee. There is always a mediation committee to finalise the discussion. I plead with both Houses to make sure that this time we approve this Bill without going to the mediation process, so that we do not delay its passage. If we delay it, counties would have a challenge in terms of preparing their annual estimates.

With those few remarks, I second and urge Hon. Members to support this Bill, so that we move the process forward.

**Hon. Speaker:** Order, Members!

*(Question proposed)*

Member for Garissa Township, the Leader of the Majority Party. Sorry, Hon. Members. My screen is not working. Today you can just smile at me then you will catch my eye. Do not wave.

*(Laughter)*

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I was wondering because Junet Mohamed is my junior in terms of the leadership of the House, but you have righted it.

I beg to support the Division of Revenue Bill. The primary objective of this Bill is to provide for equitable distribution or division of revenue raised nationally between the two levels of government. This is in so far as Financial Year 2018/2019 is concerned. It is also in accordance with Article 218 of the Constitution. This Bill draws its existence from Article 218 of the Constitution. This Bill is entitled to promote an equitable society by providing for the sharing of revenue that has been raised by the national Government among the national and the county governments in principle of public finance as set out in Article 201(b)(ii) of the Constitution.

Article 202(1) of the Constitution requires that the revenue raised nationally be shared equitably between the two levels of government, that is, the national and the county governments. Article 203(1) of the Constitution provides and gives the criteria that will be used in making a determination how these resources will be shared. So, all these are anchored in the Constitution. The criteria are the very ones provided in Article 202(1) of the Constitution which is that national interest of the country must be taken into consideration. The public debt must be provided for and the needs of the national Government. There is also need to ensure that county governments are able to perform their assigned functions and also to provide the development vote for the county governments as well as to ensure a stable and predictable allocation of revenue to counties.

If you look at Article 203(2) and 203(3) of the Constitution, it says the equitable share of revenue raised nationally that is allocated to the county governments shall not be less than 15 per cent of the audited revenue accounts collected by the national Government. The Chairman of PAC is not here. This is a matter that was raised by the Chairman of the Budget and Appropriations Committee and Hon. Makali Mulu. We are behind in terms of the national audited accounts approved by the House. We are now dealing with the 2013/2014 records. It is very bad and it looks very bad on the Committee. I can see the great lady, who is the Vice-

Chairlady of PAC, Hon. Jessica. I am sure we can burn the midnight oil and provide the most recent audited resources which have been approved by this House.

This Bill allocates the county governments an equitable share of Kshs314 billion for the Financial Year 2018/2019. If you compare this with the Financial Year 2017/2018, it reflects an increase of 4 per cent. So, the amount of money given to the county governments increases every year. It has increased by 4 per cent from last year. It means the allocation is twice what the Constitution anticipates. But what are we using? We are using the audited revenue of Kshs935 billion for the Financial Year 2013/2014. If we had audited accounts for the Financial Year 2017/2018, we could be talking of Kshs1.2 trillion which will enable us to give more to the county governments.

There is an institution called the Intergovernmental Budget and Economic Council chaired by the Deputy President. In our opinion, they sit with the Commission on Revenue Allocation, the Senate, the National Treasury and all stakeholders. This time, the CoG is in agreement. We are putting this Commission on Revenue Allocation on notice. Its membership was vetted and passed by this House. Once they leave the IBEC, they give the Senate's Committee on Finance, Commerce and Budget different figures. I hope the chairperson and commissioners of the CRA are watching. You cannot play games. They agree at the IBEC where the CoG is represented, the Budget and Appropriations Committee of the National Assembly, the Finance Committee of the Senate, the Executive, the National Treasury and all the stakeholders are represented, but when they come before the Senate, they give them a different figure. They are public officers who are vetted. They should either agree at the IBEC or disagree. That is why the two Houses will always have a problem in as far as the Division of Revenue Bill is concerned.

I also want to speak to the Senate. We want to support them this financial year in giving them some resources to make sure they audit the county governments. This year, I want to really ask them not to take us the route of mediation. If you take us that route, there are consequences. Yes! Do not take us the route of mediation. We are magnanimous. We want county governments to be audited. We want Senators to go to every county and see whether this money is there. Out of that magnanimity, we want to give them some resources in this year's Budget. But if they take us through the process of mediation, they have a price to pay. We also reneged on our promise. As Hon. Mbadi said yesterday, time for blackmail is over in this country. We either agree or move apart. Blackmail and intimidation are over. We got over that when the two leaders shook hands. So, the Senate, let us agree on the Division of Revenue Bill. It is Hon. Mbadi who said that Kenya is now new; the culture of unity and cohesiveness.

Article 202(2) of the Constitution provides for additional allocation to county governments. I want to talk about the money allocated to Level 5 hospitals which is Kshs4.3 billion. The problem we are facing at the Kenyatta National Hospital is because county hospitals are not working. The KNH and MTRH are meant for specialised treatment. If a guy gets injured during a demonstration and he is bleeding, he rushes to KNH. We want to ask our governors to equip county hospitals. We have Mbagathi and Mama Lucy hospitals. Even for simple stitches, people go to KNH. The casualty is full. In any country where you have a referral hospital of KNH status, and medical doctors in this House will agree with me, it is only used for specialised treatment. But now, even for a small thing that can be done at a dispensary, you are rushed to KNH. Then you see the kind of confusion in that hospital. The KNH should not have a maternity wing. Caesarean operations can be done in county hospitals. Every year, the national Government gives specific resources of Kshs4.5 billion to Level 5 hospitals. I really want to ask

the governor of Nairobi, Hon. Sonko, please, make sure the county hospitals in Nairobi such as Pumwani, Mama Lucy, Mbagathi and many others are functioning, so that we can reduce the traffic going to KNH. The same should apply for the Level 5 Hospital in Machakos and all former provincial headquarters hospitals, such as the Coast General Hospital and the one in Kakamega. The MTRH is also a specialised facility for the whole of that region which includes Nyanza, Western and the Rift Valley. We have made KNH to serve the function of a village dispensary. That is why we have all characters. The whole country is discussing the KNH.

The other amount of money which has been allocated and is done every year is Kshs8.3 billion from the Road Maintenance Fuel Levy. The little money allocated to Members of Parliament through the Kenya Rural Roads Authority (KeRRA) is felt in our constituencies. Where is this Kshs8.3 billion that is given to county governments? The first five years of devolution are over. Now the systems are there. We need value for our money. We cannot be sending billions of shillings to county governments and today our hospitals, roads and water systems have not changed. Some of us changed those kinds of governors. Now we have a very good governor in Garissa County. He is working. I am sure Members of Parliament from northern Kenya will agree with me. This time, the northern Kenya five counties, namely, Mandera, Marsabit, Isiolo, Wajir and Garissa, must invest in water and healthcare.

Hon. Speaker, there is Kshs2 billion for rehabilitation of youth polytechnics given to county governments. Youth polytechnics are in bad shape in most of the counties and constituencies. We must give money to the Senate this time. I want to lead from the front. Since the two leaders have agreed to bury their hatchet, the Senate and the National Assembly must also agree in principle to bury our five years differences. They must accept that the Speaker of the National Assembly is more senior than the Speaker of the Senate in as far as the Constitution is concerned. They must also accept that the only two people who are provided for in the Constitution is the Leader of the Minority and the Leader of the Majority in the National Assembly. The ones in the Senate are found in the Standing Orders. This is the truth of the matter. I believe in the Constitution. I want to go on record. It is true.

Article 108 of the Constitution gives the order of precedent in the Legislature. The hierarchy is the Speaker, the Leader of Majority and the Leader of Minority in the National Assembly. Last Friday is the time we started to follow the Constitution. Hon. Raila Odinga said that, that was a mock swearing in. He said: "Let me go and see the true president." He saw him and they shook hands. He said: "I am the true leader of the Opposition, deal with me." So, there is no other opposition. The leader of the Opposition is Raila Odinga who is supposed to critique the Government and is represented by Hon. Mbadi in the House. Let us also have a good working relationship with the Senate. I really want to ask my colleagues... We cannot oversee the counties if we do not empower the Senators. Let us empower the Senators by giving them resources. Let them leave Nairobi, go to our counties and follow each and every penny. So, when that allocation comes to the House, I urge you colleagues, this time round; let us support our colleagues on the other side.

An amount of Kshs605 million has been given to five counties to build headquarters. We want to see headquarters in Isiolo, Lamu, Nyandarua, Tana River and Tharaka Nithi once this money is released. The Chair himself has gone to those areas.

Article 218(1) (a) of the Constitution, it says:

"At least two months before the end of each financial year, there shall be introduced in Parliament

- (a) a Division of Revenue Bill, which shall divide revenue raised by the national Government among the national and county levels of government in accordance with this Constitution”.

Hon. Speaker, this House has, however, realised that in order to facilitate planning and budgeting at the national and county levels of Government, it was necessary to make a determination on the Division of Revenue Bill early in the year. Thus, this House enacted the Public Finance Management Act 2012 and the Division of Revenue Bill will be submitted to Parliament by 15<sup>th</sup> of February each financial year.

I am sure that this time, at the IBEC level, everybody has agreed, namely, the CoG, the National Assembly, the Senate and the Commission on Revenue Allocation. As for the CRA, we will not entertain its shenanigans. The Chair must listen to me. The Chair of the Budget and Appropriations Committee should call the CRA and ask them why they are playing games with a very important Bill; the Division of Revenue Bill.

With those many remarks, I beg to support.

**Hon. Speaker:** Very well. Earlier on, I told you that my screen is not working, therefore, I can use smiles. I see the Member for Suna East who was smiling broadly. You can take to the microphone.

**Hon. Nuh:** Thank you, Hon. Speaker. I had already spoken to the Leader of the Minority Party to give me a chance because I want to attend to some business outside there and he has agreed. It is not Harambee House.

**Hon. Speaker:** Proceed.

**Hon. Nuh:** I rise to support very important Bill for this country. I do not know if it is possible that before this Bill is enacted, an agreement is made between the two Houses. The Senate can agree early enough that this is the right thing, we also agree and then we pass it. I was here during the last Parliament when the present Leader of the Minority Party spoke very well about this issue of the Division of Revenue Bill. Taxation measures are done in this House. This is where budgets and all the estimates are done. The Finance Bill is passed here, but in the end, the Senate tells you that you must give county government a certain amount when they do not know how much money is available. In spite of an opinion from the Supreme Court being in place, we must come up with mechanisms to agree because this is the House that knows exactly how much money is available and how much can be shared. I think those are supposed to mainly concentrate on sharing of revenue between counties.

Counties have been given a lot of money from 2013/2014 Financial Year when it began with Kshs190 billion up to Kshs314 billion in 2018/2019 Financial Year. The million-dollar question that Kenyans are asking themselves is whether the money that is given to counties has been felt on the ground. The essence of devolution was to have a scenario of equitable distribution of resources in our country. The soul of the new Constitution is devolution, but now from Kshs190 billion to Kshs314 billion in this financial year, that money is not being felt on the ground. You can say it is not the amount that they wanted, but it is a lot of money. When you go to many counties, you will find a lot of pending bills. Most of the contractors are suffering in our counties. There are contractors that have not been paid for three financial years and money has been going to the ground. I do not know what the Senators are doing. I thought their Public Accounts Committee should investigate those pending bills. They should hold those counties accountable. The essence of taking money to the counties was to stimulate the economies using the county funds. When funds go there but the contractors are not paid, then the economy of that place will not work. That is why you are seeing over-reliance on the national Government and

there is a lot of focus on Nairobi because Kenyans believe money is not in the counties, but still in Nairobi. The Senate must come out clearly to address that matter because that is their function, unless they are doing other works. We used to say that, that is the House of old men. I have seen new young men who have come there. They can take over those jobs. Hon. Kang'ata is there. He left us here, a place with young people. I do not know what he is doing there.

Hon. Speaker, county governments nowadays rely only on funds transferred from the Exchequer. They are not collecting funds from the counties. I used to be a mayor and people used to collect a lot of funds from markets and everywhere, unless they are misusing those funds. There is no proper mechanism for accounting for the internal revenues county governments generate. Nobody is looking after that money. That is the money that is misused so much on the ground. It is not little money. It is a lot of money.

Secondly, county governments are supposed to develop county development plans. Five years is a long time. There is something they call the County Integrated Plan and County Development Plan. They do not integrate all these things when they do their budgets. Their budget committees just sit in hotels. Members of the County Executive Committees (CECs) appear before the MCAs and tell them that they want to do a certain cattle dip or a dispensary somewhere. By now, they should be able to operate effectively. Five years is enough time for a county government to mature and operate the way the National Treasury is operating in terms of budgeting and preparing financial estimates. For how long will they be building capacity? They have done bonding. They have gone to all the countries that you can mention in the world to bond and see how financial estimates and budgets are done, but still their financial estimates are not properly done as required by the Public Finance Management (PFM) Act and other laws.

Hon. Speaker, devolution is the most important thing for our country. If devolution is strengthened, all the wars of resources we are seeing in the country will end because everybody will be getting money in their counties. The only problem that we can talk about that might be giving them issues is the issue of late disbursement of funds by the National Treasury. Also, the National Treasury takes a lot of time to disburse resources to the counties. They send money very late. They do not give county governments money on time. By the time the money is disbursed to the counties, a lot of debts would have accrued. All the issues we are raising should be addressed by the Senate. Why is the Senate there if they cannot make sure that county governments get their money on time? The Senate is supposed to make sure that county government functions properly. The Constitution says that the Senate is there to protect the counties and nothing else. If the Senate cannot protect the counties, it should be dissolved. What else are they doing?

Lastly, I want to address myself on Jubilee's Big Four agenda. Some of the issues that we want to achieve through the Big Four agenda are devolved functions. For examples, the health, water and agriculture sectors are devolved. There must be a mechanism and collaboration between the county governments and the national Government because the intention of the Big Four agenda is to make our country better, healthier, food-secure and turn it into a developed nation. That is what the President wants to achieve. Yesterday, you heard the Leader of the Minority Party say that we are going to support the Big Four agenda as the ODM. The Big Four agenda is supposed to be pursued at the county level. County governments must play their roles in making sure that the Big Four agenda is achieved as this is what is going to change the lives of Kenyans.

In conclusion, this Bill is timely. It came immediately we passed the Report on the BPS. It has been done very fast, but I pray and hope, just as the Leader of the Majority Party said, that

the Senate will not raise issues and put us in mediation. You do not argue in a case where you do not know how the money has been raised. This is the House that approves taxation and everything. So, take what you are given. If you want to add more, come with *heshima* and say, “please, add for me more”, but it is not their right to demand. The National Assembly is where national Government resources are administered. A Member said that the Senate is a junior House, but I am told that after the handshake, the Leader of the Majority Party and the Leader of the Minority Party are now equal in the House.

With those remarks, I beg to support.

*(Laughter)*

**Hon. Speaker:** Of course, according to Article 96 of the Constitution, the Senate represents the counties and serves to protect the interests of county governments. I also want to give some guidance because I may be leaving the Chair.

Hon. Members, I appreciate that this particular financial year, this Bill, even though Article 218(1)(a) says that the Cabinet Secretary shall table the Division of Revenue Bill not later than 30<sup>th</sup> of April, we should be happy that we are discussing this Bill today, 15<sup>th</sup> March. Nevertheless, it may be desirable that, in keeping with that effort, you remain a bit more in the Chamber because in order for you to move to the Committee of the whole House, you must not be less than 50 Members when the Question is put. That way, you will be able to cover the two stages of the Bill. That is not to say that anybody is being denied an opportunity to contribute.

If I turn to the Majority side, because I told you that my screen is blurred, I can see the Member for Mwea, Hon. Wachira Kabinga, smiling. The Member for Dagoretti is permanently smiling. So, I do not know when he is smiling to catch my eye. If I look at the Opposition side, it would be obvious that the Leader of the Minority Party will have the first bite of the cherry. It is also in the Constitution. There is nothing we can do about that, Hon. Wamalwa. The Leader of the Minority Party will have the first bite of the cherry.

**Hon. Josphat Wachira:** Thank you, Hon. Speaker. I stand to support this Bill.

Looking at this Bill, there is a clear indication of the commitment of the national Government to see to it that devolution has really succeeded in our country. I was quite touched to notice from the Bill that the amount of money allocated to the counties is fixed, whether the national Government collects the amount of revenue that is projected or not. This is a clear indication of its commitment. I hope county governments can also reciprocate the national Government’s goodwill by also sharing their resources equitably among the sub-counties. I am talking about the sub-counties because more often than not, resources are shared according to constituencies not knowing there are some constituencies that are so large with more than one sub-county. As a result, we end up seeing development that is not equitable in most of the counties.

It is also important to note that throughout the history of this country, some constituencies or sub-counties in this country have been left behind within the counties themselves. For instance, the development in Mwea Constituency, which I represent, compared to other sub-counties or constituencies in Kirinyaga County is quite different. For that reason, I want to request my own county to look at my constituency keenly in the spirit of ensuring that development is equitable in all the areas that I represent.

Hon. Speaker, I also notice that under Article 217, we have the Equalisation Fund, which ensures that we also look at those counties that have been left behind in development. I am

hoping that the counties can also emulate the same principle and allocate some resources specifically to bring up some of those sub-counties that have been left behind. My constituency, for example, has been left behind over time.

Hon. Speaker, I am quite confident that this year the national Government will realise the projected revenue and especially with the recent development in our country through the 'Building of Bridges Initiative' by our two leaders, namely, His Excellency the President and the Right Hon. Raila Odinga. They have shown this country the right way to go and we expect that we will have investment in our country and more investor confidence which will bring in more revenue, so that our country can collect enough money to realise this Budget.

For those of us who are laymen in budget-making processes, we can only see a Budget that is one. Both the national Government and the county governments rely on one national Budget. However, when you go on the ground, you find projects labelled 'county' and 'national' with very little coordination when it comes to the implementation of these projects. I hope that our colleagues out there in the counties will coordinate with the national projects, so that, overall, we can realise the development that we desire for our country.

I noticed that the Commission on Revenue Allocation is acting in bad faith by going to the Senate with different figures. I was touched when the Chairman of the Budget and Appropriations Committee narrated how after they agreed, they went to the Senate with different figures. These are the people who want to divide our country. They want to reflect some bad faith on the part of the national Government by not strengthening devolution. We ask some of these commissions to strengthen this country and not to divide it or take advantage.

Therefore, I ask our colleagues on the other side to support. On this note, I will talk to my Senator in the evening that when such things happen, they should see this country as one. When we talk about Senate or the National Assembly, we are all working towards the same thing. We want to see this country develop. We want to see our people's lives improve. We do not want people who go shouting that the national Government does not support devolution and is curtailing what is supposed to go to the county governments. This Budget is very clear, that our national Government is for devolution just like the rest of us. Let no one come in between to try and play a "Mr. better" than the national Government. I urge these commissions to stop what they are doing.

I end by urging all systems, national and county, to work together without necessarily wanting that common man out there to keep on wondering which is national or county. Whenever I go home, the question which I am getting is whether this or that road is for the county or the national Government. We are all working towards their development and it is important that we coordinate and work towards that, so that overall, all of us can be happy when everything is moving in the right direction.

I urge county governments and the national Government, especially when I am talking behind the Chair of the Budget and Appropriations Committee, that we have constituencies in this country. I want to tell my brothers who have been talking about marginalisation and how some counties and constituencies in certain regions are being favoured and not others. I invite those colleagues to some of our constituencies and especially mine in Mwea. Of course, they will go back with a few kilos of the best rice in Africa. They should come and see that we really are in need of some of these developments. I have only four kilometres of road and I am expecting that through this Budget, by the end of the year, I will be a proud person to have added several kilometres within that constituency. I am also aware that the Departmental Committee on Agriculture and Livestock is working on a new Bill for the irrigation scheme, which will

improve the lives of our farmers in Mwea. I can assure the nation that the constituency is ready to contribute towards feeding our people in this country.

With those few remarks, I support this very important Bill.

**Hon. Speaker:** Let us have the Leader of the Minority Party. The Member for Nyando is not smiling. He is just opening his mouth to catch my eye.

*(Laughter)*

**Hon. Ng'ongo:** He is probably shocked. Thank you, Hon. Speaker, for giving me this opportunity to contribute to the Division of Revenue Bill 2018.

I want to start from somewhere, but before I do that, there is something that I need to point out given that I heard the Leader of the Majority Party speak about. I also heard one of my colleagues speak about it regarding the CRA and the fact that CRA sits in IBEC and the figures they give should be the same as the figures that come from the National Treasury.

Hon. Speaker, and with due respect, I want to disagree. I want to be very clear that CRA has a responsibility and a function to perform. There is a reason why CRA was created by the people of Kenya under Article 216 of the Constitution.

Even though in IBEC, CRA is represented, all counties are represented through their County Executive Committees (CECs) responsible for finance. The National Assembly and the Senate are represented. I want to read the Constitution that gives CRA responsibility. That their function is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national Government between the national Government and county governments and among the county governments. This is a very specific responsibility given to the CRA. Even though they are represented in IBEC, they need to come out with their own independent recommendations of what they think and feel that can finance both the national Government and the county governments. That recommendation can be taken or rejected. So, CRA is not forcing the National Assembly or the Senate or IBEC to take their recommendations. Bashing CRA for making recommendations that are different is missing the point. I do not want to say lack of understanding of their responsibility, but I want to be a bit careful and say that we should appreciate their role more.

Hon. Speaker, Article 218 is very clear on how we need to treat the Division of Revenue Bill. This Bill divides revenue as has been said vertically between the national Government and county governments, but before, as a Parliament, what we need to look at is the provisions of Article 203 of the Constitution.

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

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

Those principles of...

*(Loud consultations)*

What is it, *Mheshimiwa*? You seem to be shouting. Madam Speaker is now in the Chair. It is clear to me that there is a criterion to follow when we evaluate the Division of Revenue Bill.

One of them is national interest. We need to look at the provision for payment of public debt. We must look at how county governments are supposed to run among other issues. As a Parliament, what we need to interrogate is whether the suggestion on how to divide revenue that is supposed to be raised nationally follows the principles of Article 203 of the Constitution. Looking at the figures, it is clear that counties will get an equitable share of Kshs314 billion out of the total shareable revenue, which is Kshs1.688 trillion. Therefore, this leaves the national Government with Kshs1.369 trillion.

This percentage share of Kshs314 billion is actually 18 per cent of the shareable revenue. I know we are looking at the historical data which the Constitution has spelt out as at the last audited and approved accounts of Kshs935 billion which gives 33.6 per cent. Looking at it in terms of sharing between the national Government and the county governments, county governments will be taking shareable revenue of about 18 per cent and leaving the rest to the national Government. The question we need to ask is whether this is enough or sufficient to finance all the functions that have been devolved to the counties.

The equitable share has increased from Kshs302 billion to Ksh314 billion, that is, 4 per cent. It is said that this takes into consideration the revenue growth, but if you look at it in terms of inflation, you will realise that we have not added counties any money in terms of shareable revenue. I think as a country, we need to sit down and discuss whether we are giving enough resources to the counties before even we talk about accountability. To me, this excuse of accountability is, at its very best, just an excuse. We have the machinery and infrastructure in this country to ensure that money that is allocated to counties is spent properly, effectively and efficiently.

We cannot deny resources going to counties because someone has decided to steal the same money. We have the infrastructure in place to deal with those thieves who are stealing in the counties. The theft is rampant. That cannot be denied. I just want to appeal to our counties. Another question we need to ask concerns the MCAs. I wonder whether they have the capacity to interrogate the budget and also accounts. Most of them are lost. They also do not want to learn. We have a lot of capacity around, but they are not even taking interest to learn. In fact, in most of these counties, the worst happens in the county assemblies. They are in disarray. In fact, they fight from morning to evening. There are so many counties which are involved in corruption. How would you even oversee the county government if corruption is more rampant at the county assembly? We need to first ask our MCAs wherever they are to understand their role and mandate and leave excitement. I have seen some MCAs who were elected the other day and have bought big cars. You should see the way they drive in a convoy and the excitement they have. You wonder whether they know that four years is nothing and that very soon they are going to lose their seats. In fact, in my county, only seven of them retained their seats and some of them after some *ukarabati*. The majority of them actually lost.

We need to ask ourselves whether counties have that capacity. I have a problem with the conditional grants. The money that we give for leasing of medical equipment, I know my colleagues have talked about it. I want to ask the Departmental Committee on Health to help us. I think there is fraud and a lot of corruption in this project. I cannot understand why every financial year we allocate so much billions and when you go to our hospitals, you do not see equipment commensurate to the amounts that we allocate. Therefore, the Departmental Committee on Health, please, take up your role.

The other one is on youth polytechnics. These monies are being allocated, yes, but on disbursement, I am not sure whether it is made to the counties. I do not see any change in our

polytechnics. The youth polytechnics are just the same way they were before devolution. Something needs to be done to ensure that, that money actually reaches the intended persons and spent on the intended purpose.

The other question is who is responsible for county roads. Again, we need to be clear about that this financial year. At least, it is very clear that we are allocating about Kshs8 billion, which is 15 per cent of the fuel levy fund for the maintenance of county roads. I want to ask governors, county management and MCAs in our counties, please, this Kshs8 billion, once it reaches the counties, do not spend it for any other purpose. Use it to construct our roads. We are asked questions about roads which we are not responsible for. In my constituency, I have only two roads which I should be asked questions on. But those two roads, nobody even asks me a question because, at least, they are motorable. The roads I am asked questions about are the ones which squarely fall under the ambit of the county government.

Since 2013, the roads that are under county government in my constituency have not been maintained at all. The amount of money that was allocated for roads, what the MCAs did, I do not know whether they were opening new roads or clearing bushes. That is what they did. I do not know who gave them this idea that MCAs are the ones supposed to appoint contractors. I have information that MCAs, if they have, say, a budget of Kshs3 million, what they do is to go to a contractor and tell them, "I have a road for you for Kshs3 million, so give me Kshs1.5 million." How do you expect a contractor to construct a motorable road with Kshs1.5 million? It does not make sense!

County governments, please, do not allow MCAs to bring contractors to construct roads. Construct the roads properly, yourself. The roads which have been opened, please, make sure you maintain them. There is no logic in opening new roads when the roads that exist are not passable.

On my final comment, because I know my colleagues also want to talk about this Bill, I have two issues which I will mention quickly. We have ring-fenced the money for counties. Even if there is shortfall in revenue collection, it is ring-fenced and so the counties will just get the money that was meant for them, the Kshs314 billion. Let the national Government, through the National Treasury, release money in good time to counties, so that we do not have these excuse that money has not come.

The other one is asking fundamental question. Yes, we have this budget, but where is the money? We need to ask that question. Are we going to collect the revenue that we have projected? If we are not going to collect it, are we going to borrow? If we are going to borrow, two things have to happen. Do we have the capacity to pay back the loans? Secondly, once that money is released, let it be spent for the intended purpose. Let us not borrow money to pay salaries. It does not make sense. Let us not borrow money for our travels or to drink tea in our offices. No one should borrow money to buy sugar. If you borrow money to buy sugar in your house, then you should know you are facing financial distress. Let us be careful when we borrow money as a country and make sure that the money we borrow goes to the intended purpose.

My final plea, to us, as Members of National Assembly, and the Senate, is that there is nothing wrong with disagreeing, but let us disagree objectively. Let us not just disagree because we want to flex muscles or we want to show that we also have power. There was a financial year, I cannot remember exactly which one it was, when even after we had agreed with the Senate on how much should go to the counties and the national Government, because there was talk here that the National Assembly is superior to the Senate, the Senators went and changed the figure,

just to demonstrate that they have the power. By the way, that was the longest time that we served without the Division of Revenue Bill. In fact, we almost lost it. I think that was very irresponsible.

As the National Assembly, let us also respect the court which has said that both Houses will be handling the Division of Revenue Bill. Let us listen to the Senate and let the Senate listen to us. Let us listen to the Commission for Revenue Allocation (CRA) and let CRA listen to us. Let us listen to the National Treasury because they are the ones who manage our resources. Let us listen to everybody including the counties and let us work as a unit because no one is allocating this money for personal use. Whatever we are allocating is in the best interest of Kenyans. Let us read Articles 201 and 203 of the Constitution. Take your time to read those two Articles. Whether you are Member of the National Assembly, a Senator, a governor, Member of County Assembly (MCA) or whoever you are, those two Articles are very critical.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Very well said Leader of the Minority Party. Hon. Members, remember that the Speaker's screen is not functioning. So, we have an opportunity to employ the third parliamentary language, which is the sign language, so that you can catch the Speaker's eye but I will also make sure to balance the two sides.

On the right side, let us have the Member for Dagoretti South.

**Hon. Waweru:** Thank you very much, Hon. Temporary Deputy Speaker. I do not know what caught your attention. I do not know whether it was my smile or my hand gesture. I take this opportunity to say thank you very much for noticing me.

First of all, I would like to say that I stand to support this Division of Revenue Bill 2018. The aspirations of Kenyans are well captured in the Kenya Constitution of 2010, where, as Kenyans, we decided that we want to have two levels of government. Our aspirations were to have two levels of government not that they work at cross-purposes but so that they can work in tandem. We do not have a better demonstration of putting our money where our mouth is than with this Division of Revenue Bill, where we agree how much we want to go to the national Government and how much of it should be devolved to the county governments.

I will also note that time is of the essence. I would like to commend the Committee that was at work, which is the Budget and Appropriations Committee, for realising that time is of the essence. The committee is under the able leadership of *Mheshimiwa* Kimani Ichung'wah, who is my neighbour. It made sure that operations in county governments do not stall or are sacrificed at the altar of government bureaucracy and was able to bring this Bill ahead of time. I also note the journey that has been taken by this Committee to arrive where we are. I would like to commend the extensive consultation that has gone on before this Bill was presented and the people they have been able to have consultation with up to and including the Council of Governors in this country, making it easier for us to actually implement what is captured in this Bill.

The sharing of the national cake is a big agenda and we, being an oversight House, never do we get a better opportunity to have a discussion that is of importance to the people who bring us to this House than when we are sharing this national cake, national *ugali* or whatever you would want to call it. Article 201 of our Constitution allows us to have this discussion as to how much shall be allocated to the national Government and how much will go to the county governments. This being an oversight House, I want to note that when the people of Dagoretti South Constituency sent me to this House, they, of course, wanted me to represent them here. They also want me to legislate but, most importantly, they want me to have my eyes very well

trained on how their resources are being used by these two governments, which is the national Government and also the county governments. As such, I would want to raise my little concern by first saying that with great power comes great responsibility. I say this noting that since the onset of devolution, which is now six years old, we are able to go on the ground and track the impact. I want to say this without any fear of contradiction that when you look at funds that are devolved through Members of Parliament, that is, the National Government Constituencies Development Fund (NG-CDF), you are able to pinpoint projects that have been put up using those funds. However, if you go to our constituencies you will have a problem pinpointing what it is that has been put up using funds that we are channelling through these county governments. In fact, it leaves us as Members of Parliament in a very precarious situation because as we are doing our work very well. People will expect us to be working beyond our mandate. We will have questions that will be raised on projects that should have been undertaken by county governments. Our people will ask us why it is that we are not attending to matters of health, roads and other issues that go beyond the mandate of NG-CDF.

Even as we pass this Bill, it gives us an opportunity, as a House to start having conversation as has been shown by our principals, His Excellency the President and also the leader of opposition, the Right Honourable Raila Odinga, as we talk about a national dialogue to also unpack this Constitution that we passed. We should have a conversation around the 20 per cent that we said was not quite good when we were passing it and said we shall revisit. I think this is the time to revisit because I see us putting in some money that will go to some roads. I see us putting some money that will go to health and youth development in this schedule in the Division of Revenue Bill 2018. There is a discussion which I will call the elephant in the room about some of the functions that we devolved. It is time that we reopen this discussion and ask ourselves as a country whether it was good wisdom for us to be devolving, for example, matters of health, seeing the issues that are coming up with the strikes by the nurses and the doctors and the inability of our health facilities to take care of the health of our nation.

I will not take more time other than to say that I would want to go on record that it is commendable that this Budget and Appropriations Committee was able to bring this Bill ahead of time. I hope that we will have a smoother implementation of the same. We are not expecting many problems from what I would want to call the lower house or the Senate as we implement what it is that we have here on the Division of Revenue Bill 2018.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have the Deputy Whip of the Minority Party.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Speaker. I stand here today, first, to congratulate the Cabinet Secretary of the National Treasury, Henry Rotich, for the work well done. We know very well that as per our Constitution, this is supposed to be tabled here before 30<sup>th</sup> April. He has made history that we are discussing this Division of Revenue Bill today when we have one-and-a-half months to go. I want to confirm that His Excellency President Uhuru Kenyatta did not make a mistake to retain Rotich as the CS of the National Treasury.

Secondly, I thank Hon. Kimani Ichung'wah. I was with him in the Public Investments Committee (PIC) in the last Parliament. I have no doubt he is up to the task and he is going to perform much better than the former chairman of the Budget and Appropriations Committee. He has done very well and he is up to the task. As earlier said, the Division of Revenue Bill provides a framework for sharing the national revenue vertically. Once the revenue has been shared vertically, then it gives room for the sharing of this revenue horizontally. The Division of

Revenue Bill is very critical. Once it passes, it gives stage for the County Allocation of Revenue Bill and the estimates.

Hon. Temporary Deputy Speaker, it is indeed important to note that even if the national Government cannot manage to collect taxes to reach its target, there is no way they can compromise on the allocation that has been made for the counties. In case of a shortfall, we can only sacrifice the amount that is going to the national Government, not that which has been allocated to the county governments. I want to make it clear to some civil society activists who have been going to court pertaining to the NG-CDF allocation. They need to understand that after vertical sharing, the NG-CDF allocation comes from the allocation of the national Government. They also need to know that we amended the law. That is why it is no longer called CDF but NG-CDF. Its primary function is to implement projects of the national Government as stipulated in the Fourth Schedule of the Constitution.

We have heard about the four agendas of the Jubilee Government, namely; housing, manufacturing, food security and universal health care. In order for us to move forward, it is important for the counties to align their integrated development plans with the four agendas that the Jubilee Government has adopted. They must also be linked to Vision 2030. If we have county development plans that deviate from the big four national agendas, we will not achieve the overall national agenda. The Division of Revenue Bill is very important. We are now in the presidential system of government, where the National Assembly is a budget-making House. That is why the Budget and Appropriations Committee is in the National Assembly, and not in the Senate. It is also important to note that the membership of the Budget and Appropriations Committee is high because of the critical functions that they have in this House. We had an issue last time, which went up to the Supreme Court. There was a Supreme Court advisory. It is high time we went back to the Supreme Court to review that advisory. I am saying so because we had issues many times last time.

We pass the Division of Revenue Bill and when it goes to the Senate, we normally have differences, and then we go for mediation. What happens after mediation? We do not have any provision in the law on what should happen after mediation. As legislators, we should come up with a legislation that explains what happens in case members of a mediation committee on revenue allocation fail to agree. If it fails, it is very dangerous; the counties will not have money. These are things we must look forward to and see how we will adjust them.

I am happy to note the issue of free maternity. It has not been happening in the counties. When mothers visit hospitals in the counties, the county governments complain because according to the initial policy, they are supposed to be reimbursed. However, there was a breakdown somewhere. They said that the reimbursement was taking forever to reach them. I am happy with the new policy of going through the National Hospital Insurance Fund (NHIF). I am assuming and hoping that NHIF will be up to the task. The NHIF appeared before the Public Investments Committee (PIC) today. I am very disappointed because we lack efficiency and effectiveness. This is a call to His Excellency the President. I wish the Leader of the Majority Party is here. The boards of parastatals are not functional. They are not well constituted. We know very well that the boards oversee the management. A board approves the decisions of the management. It is also there for purposes of supervision. We have some boards of parastatals, particularly that of the NHIF, which are not well constituted. We call upon His Excellency the President to move with speed and appoint a substantive chairperson of the Board of NHIF. The way it is constituted leaves a lot to be desired. The Departmental Committee on Health must be up to the task. I hope that Hon. (Ms.) Sabina Chege is listening to me because NHIF will play a

critical role as far as achieving the healthcare agenda and free maternity are concerned. When it comes to the governance structure, it must be well articulated.

The Constitution talks of a minimum allocation of 15 per cent for the counties. According to the Fourth Schedule of the Constitution, the functions that have been devolved to the counties are so many. This is the time we should be asking ourselves questions. Is the amount of money being allocated to the counties enough or must we increase the allocation? Devolution is a wonderful idea. As we move forward, we should devolve more funds to the counties to take care of these functions. The amount of money that is there for national sharing is based on the immediate last audited accounts that have been approved by the National Assembly. We are calling upon the Public Accounts Committee, which is headed by Hon. Wandayi, to move with speed so that as we move forward, the money that is given to the counties can be based on the latest audited accounts. We are talking of revenue sharing in 2018 but the accounts that have been audited and passed are three years behind. The two cannot move together. It is time we moved with speed.

I know the Members in PAC are up to the task. I am happy because the Vice-Chair is here. Hon. Bunyasi is an economist who has been working with the World Bank. He will provide expertise to the Committee. There are also Members who were in that Committee before. So, there is an element of the learning curve that you have, so that the Committee can take onboard the new Members to ensure that they move with speed and burn the midnight oil. If possible, we should talk of the accounts of Financial Year 2017/2018 next year.

As I speak here today, His Excellency the Governor of my great county of Trans Nzoia has put up a referral hospital. He is trying his best to equip it. This is a wake-up call to other county governors to emulate him and upgrade the Level 5 referral hospitals that are in counties. Some hospitals in some counties are in a sorry state. We are calling upon the respective governors to make more effort in terms of equipping the Level 5 referral hospitals in the counties, so that we can reduce the pressure at the national referral hospitals like Kenyatta National Hospital (KNH). We saw what happened at KNH recently.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Molo, what is your intervention for?

**Hon. Kimani:** Hon. Temporary Deputy Speaker, I am requesting you to call upon the Mover reply, so that we can proceed to the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): I can see that Members have expressed interest to continue. Member for Molo, you cannot have it both ways. You cannot want the Mover to reply and also want to contribute. You have to be genuine in what you are asking for. We will give an opportunity to a few more Members.

Hon. Members, somebody was trying to say that we reduce the time. Those of you who understand the Standing Orders know that you cannot purport to invoke Standing Order 97 when debate on the Motion whose time you intend to reduce is ongoing. You can only do that before debate on the Motion begins. Therefore, Members should be alert and make use of that particular Standing Order at the right time. Because of the amount of interest that has been shown, those of you who will have a chance to speak can be brief, so that we can have as many Members as possible to speak on this debate.

Hon. Atandi, you have the Floor.

**Hon. Atandi:** Thank you, Hon. Temporary Deputy Speaker, for noticing me. I stand to support this very important Bill. This Bill basically underscores the importance of counties and devolution.

Hon. Temporary Deputy Speaker, to see the importance of devolution, you only need to look at the Jubilee Government's Big Four agenda. Out of the four items in the agenda, three of them are to be accomplished through the cooperation of county governments.

Most Members have castigated the Public Accounts Committee for failing to approve the subsequent audited accounts to facilitate allocation of more revenues to counties. I disagree with them because the Government does not need to hide behind the law and fail to allocate more resources to counties. The law stipulates that a minimum of 15 per cent of approved audited accounts be allocated to counties. The Government has the option of allocating more resources to counties to facilitate devolution. This is something we need to underscore. We cannot fail to allocate resources to counties given that we have already assigned the functions like agriculture, healthcare and housing. Because it will take PAC a lot of time to approve all the subsequent audited accounts, let the Government be honest and allocate more resources to counties to facilitate devolved functions.

After my sojourn in this House, I am likely to move to the Senate. Therefore, I would like Members of this House to understand that the Senate's core mandate is to protect devolution. We should not expect the Senate to pass this Bill without looking at it thoroughly. We know the Senate has some of the most experienced legislators who are also interested in the success of devolution. Let us allow the Senate to go through this Bill properly and give us their advisory opinion whether they are comfortable with resources allocated to counties or not. In my view, castigating the Senate for performing its role is not in order.

The other issue I am concerned with is the Equalisation Fund that is supposed to be given to marginalised counties. There is a process of identifying them. As we talk, there are eight counties that are considered for the Equalisation Fund. I know counties like Siaya and Kitui are not in that classification. This is something the Commission of Revenue Allocation should look at to ensure that counties that deserve the resources are given. I do not think that it is only North Eastern counties that deserve the Equalisation Fund. Most counties even in Nyanza deserve the Fund.

Thank you for giving me this opportunity. I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, I still see Hon. Kuria raising his hand. He moved a Motion requesting the Mover to be called upon to reply. I would like to put that to rest.

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

Let us have the Mover.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Speaker. With your indulgence, I would like to donate two minutes each to Hon. Keynan, Hon. Kaman, Hon. (Ms.) Jennifer Shamalla, Hon. Ochanda and Hon. Jared Okelo.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us follow that order. Member for Eldas.

**Hon. Keynan:** Thank you, Hon. Temporary Deputy Speaker. Two minutes may not be enough but let me attempt and see what I can say. This is a very important Bill because in the past division of revenue used to be an exclusive function of the Executive. Currently, because of the Constitution it is an exclusive function of parliamentarians. Under the able leadership of Hon. Kimani Ichung'wah, I believe - it is a reality we have a bicameral system - we should do

whatever it takes to avoid some of the jurisdictional conflicts we have witnessed in particular between this House and the Senate. It is not in the interest of taxpayers, it is not in the interest of Members of Parliament and it is not in the interest of anybody. It only serves the interests of the corrupt and other cartels out there. Therefore, I appeal to the Chairman and other Members of the Budget and Appropriations Committee that we do not want to hear this Bill being subjected to a mediation process because that does not serve anybody's interests.

There are certain issues that we must take into account. A lot of resources have been devolved. Are they being overseen properly by Public Accounts Committee of the Senate, Public Accounts Committee and Public Investments Committee of the National Assembly and other relevant Committees?

On the Equalisation Fund, as a colleague has alluded, it was born as a result of the current Constitution which is a negotiated document. It is a Constitution of interests. There are some who wanted pure devolution and got it; some wanted a hybrid presidential system and got it; some wanted the Equalisation Fund and got it too. The only thing we are asking Members of this Committee is to move with speed and ensure that all funds allocated to this Fund from August, 2010 are released to the counties meant to be covered under this programme.

Because of the limited time and the Chairman of Budget and Appropriations Committee is somewhere, let me add something on the issue of the national resource basket. What brings us together and defines us as a sovereign state is simply we have shared national deal including how resources are allocated.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Your time is up. Let us have Hon. Kuria make his remarks.

**Hon. Kimani:** Thank you very much Hon. Temporary Deputy Speaker. There is another Kuria, but I am Kuria Kimani, Member for Molo.

I will start my contribution with the Equalisation Fund. In as much as we applaud this idea as a way of ensuring that there is equity in distribution of our resources, especially to counties that are behind in development, the criterion we use to determine the counties to get the funds needs to be revised. You may say that Nairobi County or Nakuru County, for example, may not be categorised as a marginalised area and, therefore, not benefit from the Equalisation Fund, but there are some sub-counties and wards, for example, Mariashoni Ward, in my constituency that would benefit from the Fund.

The Kshs2 billion we have allocated to polytechnics should be to tackle unemployment. We are not going to reduce it if we insist on white collar jobs. We need to empower Elburgon and Molo polytechnics so that our young people can make shoes we can wear and make suits we can wear so that we promote the local economy and we also create employment.

Let me also talk about the 4 per cent increase of allocation to our counties and health as a devolved function and as one of the items in the Big Four agenda. We need to revisit how our counties manage hospitals. We cannot continue to have people dying in hospitals for example, in Molo Sub-County Hospital where many issues have been raised. If counties are unable to account for money allocated for health, let the function be taken back to the national Government.

With that, I support the Motion. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Ochanda.

**Hon. Ogolla:** Thank you, Hon. Temporary Deputy Speaker and thank you Chairman for donating some of your time to me.

Conditional grants, by their very nature, have been increasing for the last number of years we have been here since it was started. It indicates that something is not right in certain sectors where we are sending the money to, particularly the health sector. The Bill has allocated Ksh17 billion to that sector as a conditional grant. It indicates that there is a problem as it has been said many times. There is a problem in the health sector. The route we have taken on conditional grants needs to be re-looked at just like conditional grants to village polytechnics. I remember sometime in 2013/2014 Financial Year, we channelled conditional grant through the then Constituencies Development Fund (CDF).

In that financial year, at least three health facilities were constructed in every constituency. If these conditional grants were to be utilised like the grants that target village polytechnics, and actually go through the NG-CDF, then we would see much more development than what is on the ground presently. Last year, we allocated Kshs2 billion. It is the same amount of money we are allocating this year. However, if you go to the constituencies you do not see any village polytechnic that has been done. This, again, is connected to the whole issue of capacity building. There is Kshs3 billion shown here meant for building capacity in the counties. It is a grant. It has been increased. There is need to indicate that counties could have a reversal role: whatever they are unable to do, they can take back to the national Government. In terms of this approach, some counties need to be isolated for purposes of renegotiating with the national Government. Some functions should be undertaken by the national Government at the county level for the purposes of educating others that, indeed, there are functions that can be reversed. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. (Ms.) Shamalla.

**Hon. (Ms.) Shamalla Jeniffer:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It is an important aspect for the development of this nation. I have also noted that over Kshs4.7 billion has been allocated to the Equalisation Fund. It is with deep concern - I heard it being said in this House - that the Constitution is a negotiated document and Equalisation Fund was negotiated for certain communities. Nothing can be further from the truth.

This Constitution was negotiated for all Kenyans. As I stand up, I express my concern that counties like Kakamega where 56 per cent of the population that live below the poverty line have never benefited from the Equalisation Fund. It is my humble submission that the Commission on Revenue Allocation needs to begin to check and study the kind of parameters that it is using in order to understand deeply how we are going to divide the monies in this Equalisation Fund. Clearly, in a county like Kakamega, which does not suffer from drought, there must be issues like infrastructure and value chains that are probably not put in place. Indeed, we need to improve the quality of services in a county like Kakamega. It is not only Kakamega, even close to Nairobi there are counties in which hundreds of thousands of people live below the poverty line.

With those few remarks, I support.

**Hon. Okelo:** Thank you, Hon. Temporary Deputy Speaker, and thank you Hon. Chairman for giving me two minutes to delve into this issue. Article 218 of the Constitution that talks about revenue allocation between the national Government and the county governments provides for additional resources to facilitate proper functioning of county governments. This is to ensure that ongoing services are catered for.

There is talk about additional funding. The law did not cap the monies to counties at 15 per cent; it gave that as an irreducible minimum. Therefore, additional funding that touch on the lives and welfare of our people must be considered even in this particular Bill that we are talking

about today. We understand that it takes a lot of time for disbursements to be made. However, delay in disbursement has the potential to delay services that are required in counties. We understand the stringent procurement procedures in line with the Public Procurement and Disposal Act. Therefore, it is my humble plea that we may have the liaison between the Council of Governors, the Senate and the National Treasury so that this kind of delay that affects our recurrent functions and expenditures can be avoided.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Members!

**Hon. Okelo:** They are eating into my time, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Members who are near the exit, please, take your seats and consult in an acceptable manner.

**Hon. Okelo:** Hon. Temporary Deputy Speaker, I hope I will get an additional one minute. The law is clear that you should not overtax the current generation for the comfort of the next generation. On the flipside, therefore, you cannot over-borrow in this current generation to overburden the generation to come. Even as we engage matters borrowing, we must also understand that we only borrow for specific functions that will accrue and generate better benefits for this country. I heard talk about “building bridges”. It must be done on utmost good faith. All the underlying issues must be thrashed out.

Finally, my constituency is heavily affected by floods but still not categorised as a hardship zone. It is my humble plea that it be made a hardship zone. Even though it sits right at the centre of Muhoroni and Nyakach constituencies and both constituencies have access to hardship allowances, I am losing public servants to those two constituencies. Just this year alone, I have lost 19 teachers going to other constituencies that have access to hardship allowance.

Therefore, I humbly ask you, Hon. Temporary Deputy Speaker, to make a pronouncement that Nyando Constituency, which is sandwiched by these benefitting constituencies, also be categorised as a hardship zone and, therefore, be considered for hardship allowance.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Ichung’wah, your donations have ended.

**Hon. Ichung’wah:** Thank you, Hon. Temporary Deputy Speaker. I am under intense pressure to donate two minutes to Hon. Rindikiri Mugambi, Member for Buuri, and Hon. Moroto. Hon. Moroto first then Hon. Mugambi Rindikiri.

**Hon. Chumel:** Thank you, Hon. Temporary Deputy Speaker and the Chairman, Hon. Ichung’wah, for giving me one minute. I congratulate the Members for contributing to this important item this evening. We need to be very careful. Whatever we pass here, there should be a follow up so that we know whether the money given to these people is used well or it is misused. I am a Member for Kapenguria Constituency and I have Kapenguria Hospital which is a Level 5 Hospital. The Hospital has a training college within it. People are suffering. If you check the records from the past years up to now, there is a lot of money given to that institution. People are dying day and night. Personally, I want to agree with the Members that we need to be more serious at this hour so that we make good use of the money given to these people.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Buuri.

**Hon. Rindikiri:** Thank you, Hon. Temporary Deputy Speaker. Let me first of all say I was becoming a bit agitated because I was the first in the Chamber and my attempt to ask for an opportunity to speak fell on deaf ears.

I support this Motion. The Committee has done a good job in its attempt to bring this Bill. I am aware that there are many issues that Members have raised. My concern just like the concern that has been raised by other Members is the way the money is being utilised at the counties. I want to agree with what everybody else has expressed. Our responsibility is not only to pass the Bills, but also to exercise a moral responsibility in ensuring that the money allocated to counties is spent in the right way. Over 70 per cent of the money allocated to the counties goes to Recurrent Expenditure. This leaves very little for development. At the same time, it is very prudent we ask the Commission on Revenue Allocation (CRA) to go into details to assess areas that need to benefit from the Equalisation Fund. My constituency borders Isiolo and Laikipia which enjoy the facilities of the Equalisation Fund. There is no reason Buuri should not benefit from that.

I support the Motion. When the Bill comes up, we will make the necessary amendments. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Mover, Hon. Ichung'wah.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Speaker.

Mine is just to thank Members for their very invaluable contributions to this Bill. I am sure the Senate, those in the Council of Governors (CoG) and even our Members of County Assemblies in the counties have been listening to these contributions. They should ensure the money that goes to the county governments goes into good use for the benefit of the people.

It is noteworthy the issues that are of concern to Members like issues to do with conditional grants. On the money from the fuel levy that is going to roads, MCAs should make sure this money is not put into any other use other than to repair roads in our constituencies. As the Leader of the Minority Party says, there are many roads that Members of Parliament are being blamed over for not maintaining yet they are roads under county governments. The Roads Bill has now been passed by this House. Therefore, it is well known which roads are classified under which government.

With those many remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Members. Hon. Members, with confirmation that we have the requisite quorum, I shall proceed to put the Question.

*(Question put and agreed to)*

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

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*[The Temporary Deputy Chairlady  
(Hon. (Ms.) Tuya) took the Chair]*

## THE DIVISION OF REVENUE BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Tuya): Take your seats. Hon. Members, we are considering the Division of Revenue Bill (National Assembly Bill No. 7 of 2018).

*(Clauses 3, 4 and 5 agreed to)*

*(Schedule agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Tuya): Mover.

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Division of Revenue Bill and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Tuya): Committee has ended.

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Tuya) in the Chair]*

**REPORT AND THIRD READING**

## THE DIVISION OF REVENUE BILL

**Hon. (Ms.) Shamalla Jennifer:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Division of Revenue Bill and approved the same without amendment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Mover.

**Hon. Ichung'wah:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request the Member for Gichugu, Hon. Gichimu, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Githinji** seconded.

*(Hon. (Ms.) Kasalu walked in the aisle)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Hon. Members. Order Member for Kitui County, Hon. Kasalu.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Ichung'wah:** Hon. Temporary Deputy Speaker, I beg to move that the Division of Revenue Bill be now read the Third Time. I request Hon. (Ms.) Millie Odhiambo to second.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, we can allow a few people to ventilate on this. Hon. (Ms) Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Speaker. I want to congratulate the Budget and Appropriations Committee and the House for passing the Division of Revenue Bill, 2018. Members have spoken to the issue of the Equalisation Fund. I sit in the Budget and Appropriations Committee. One of the things that we have said is that we must review the policy around the Equalisation Fund so that it takes into account areas like my constituency of Suba North, which has differentials within the constituency.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Oluoch

**Hon. Oluoch:** Thank you, Hon. Temporary Deputy Speaker. I wanted to comment on the one that is coming.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): You were in anticipation?

**Hon. Oluoch:** Yes, I was. Otherwise I support and congratulate the Chair in the Budget and Appropriations Committee.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): The hon. Member talking to Hon. Nassir, do you want to contribute on this one?

**Hon. Ibrahim Ahmed:** Thank you, Hon. Temporary Deputy Speaker. I would like to congratulate this House for passing this Bill. However, as it has already been said, I think it is important that county governments become cognisant of the vulnerability level of the different sub-counties in the counties, just like the national Government is doing. The idea of giving funds to the county governments is to ensure that they fully undertake their mandate. As already said by Members, if you look at the health and road sectors, they are in a sorry state. The whole idea of devolving funds is to ensure that service delivery is devolved so that the lives of Kenyans at grassroots level can be improved. This seems not to have been realised in the last six years. It is

my hope that accountability at the county level will improve. It is my hope that, as this House passes this Bill, the accountability level will improve.

I am shocked that there is a high level of maternal deaths as a result of poor health services and poor roads. The two functions happen to belong to county governments. It is my hope that transparency and accountability will improve at the county level. Having said that, I am happy that this Bill has been passed by the National Assembly. I hope the Senate will do the same.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, you will note that at this stage, we do not have allowance for extensive debate like we had during the Second Reading. Therefore, you will minimize your contributions.

Let us have the Majority Whip.

**Hon. Washiali:** Thank you, Hon. Temporary Deputy Speaker. I want to use this opportunity to congratulate the Committee for the work they have done. I also congratulate the rest of the House for passing the Division of Revenue Bill, 2018. There were notable issues that were raised by this Bill, especially the increase in county allocation from 34.6 per cent in the 2017/2018 Financial Year to a whopping 39.8 per cent in the next Financial Year, which is over and above the constitutional requirement of 15 per cent. We hope that the expected census that will be taking place soon will be done in a proper manner that will enable us to have a true reflection of the population trends across the country. Kakamega County, where I come from, is the most populous county. We expected the money that is supposed to be shared out on the basis of population, which is 45 per cent, will make a difference in Kakamega. In most cases, you have seen that money being shared almost equally with other counties.

As Government, we have four main pillars we want to focus on. Those of us from the western region are especially interested in value addition, which involves manufacturing. We expect the Government to support us revive the sugar sector, which is domiciled in the western region. Those of us in some parts of Nyanza and western Kenya appreciate the pillar that is responsible for value addition.

I thank this special Committee, which has 27 Members. If you compared it with other committees that oversee other departments, you will find that they have 19 Members each. This is a very special committee. That is why they have 27 Members. I am happy that they have done a good job. We expect the best when we move to the next stage.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Naivasha.

**Hon. (Ms.) Kihara:** Thank you, Hon. Temporary Deputy Speaker. I may not have a lot to say.

I just want to thank Members of the Committee for a job well done as I support what has been said by many Members on strengthening the Senate. We realise that there has been a lot of money going to the ground. I know that at some stage, there were supposed to be county service boards. I do not know what happened to them because the money that is not being put to use is the money that goes to county governments. Much of the allocation within the national Government, especially the allocation to NG-CDF is skewed in a way I have never been able to understand. A constituency like Naivasha is big with very many people. I do not know what happens when it comes to resource allocation. All said and done, I am happy with the job that has been done by the Committee.

*Asante sana.*

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Hon. Mbalu.

**Hon. (Ms.) Mbalu:** Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to add my voice to this debate.

First, I want to congratulate the Budget and Appropriations Committee for coming up with this Bill. As a Member of PAC, I want to promise the House that in the next revenue allocation, we will ensure that we use the most recent audited accounts as presented to the House. We are working hard to ensure that all the accounts that come to Parliament pass through our Committee to ensure that we have the most recent audited accounts.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Very well, we shall leave it at that. Hon. Members, for obvious reasons, we shall not put the Question on this debate. We shall defer it until the next sitting of the House.

*(Putting of the Question deferred)*

We can now move to the next Order.

## **BILL**

### *Second Reading*

#### THE NAIROBI METROPOLITAN AREA TRANSPORT AUTHORITY BILL

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

THAT, the Nairobi Metropolitan Area Transport Authority Bill, 2017 be read a Second Time.

Hon. Temporary Deputy Speaker, we had a good agreement with the Chair of the Departmental Committee on Transport, Public Works and Housing that he is going to be here. I hope he is watching and will rush to the House. This Bill seeks to establish an Authority under Article 189(2) of the Constitution. This Article is the one that provides for a framework of cooperation between the national Government and the county governments in the performance of the functions and exercise of powers. So, this Bill draws its powers from Article 189(2).

The process of establishing the Authority began long time ago before this Government came into place for a second time. In the last Government, on 21<sup>st</sup> October 2014 when a Memorandum of Understanding was signed between the governments of the five Nairobi metropolitan area counties which include Nairobi, Kajiado, Machakos, Murang'a and Kiambu on one hand and the Cabinet Secretaries for Transport, Infrastructure, Housing and Urban Development on the other hand, this paved way for establishment of the Nairobi Metropolitan Area Transport Authority Steering Committee through Gazette Notice No.1093 of 2<sup>nd</sup> February, 2015. This Committee drew its membership from both the counties involved and the national Government. The same Committee developed a Bill with the assistance of the secretariat. That Bill went through all the stakeholders in the five counties and then went to the Cabinet which approved it for onward transmission to the Legislature which made us publish it.

The purpose of this Bill is to establish the Nairobi Metropolitan Area Transport Authority whose objective is to oversee the establishment of an integrated, efficient, effective and sustainable public transport system within the Nairobi Metropolitan area. Nairobi is a serious economic and investor hub and has what it takes. It has the best financial services. It has the

entire infrastructure needed as a city in Africa and East Africa whose transport system must be up to date, efficient, effective and sustainable and you must have seen what we go through.

Hon. Temporary Deputy Speaker, our friends, the Ethiopians have done better. They have serious transport system in the City of Addis Ababa. They have metro trains. They have built a passenger train from the City of Djibouti to Addis Ababa, which is over 700 kilometers. So, this Bill basically wants to create that public transport system within the Nairobi Metropolitan area that is integrated, fast, effective and efficient which is sustainable in the long run.

These are the highlights of this Bill: Clause 5 of the Bill states that the headquarters of the Authority shall be in Nairobi City: Clause 6 provides for the function of the Authority. What are the daily functions of this Authority? It includes development of an integrated mass rapid transport system and development of a bus rapid transit system which shall be a priority. So, even within metropolitan city of all these five counties, there must be development of a bus rapid transit system. The Authority will have the function to handle the implementation of a comprehensive traffic management plan. Even our traffic flow in the city and within the neighbouring countries is not organised. So, this Authority will come up with a comprehensive traffic management plan. It will have the powers to regulate and enter into agreements with the operators and service providers within the transport system. This Authority will also have the powers and the function to regulate the parking of transport facility on specific declared corridors among many other functions.

Clause 7 provides for the powers of this Authority which includes entering into agreement or partnership with other institutions and bodies for the purpose of carrying out its mandate. So, this Nairobi Metropolitan Area Transport Authority has a function under the proposed law to enter into partnership with other bodies. It has the powers to protect, maintain and improve all declared public transport corridors. So, the free flow of transport corridors, the efficient flow and the sustainable flow of traffic within those declared public transport corridors are powers given to this Authority. It has been given under this proposed law the powers to charge levies on the users of this transport system. It has the powers to establish companies for the purpose of carrying out its functions among others.

Clause 8 talks about the establishment of Nairobi Metropolitan Area Council which shall be the apex body. It shall consist of the Governors of Nairobi, Machakos, Kajiado, Kiambu and Muranga; the Cabinet Secretaries for Transport, Infrastructure, Housing and Urban Development and Cabinet Secretary for National Treasury.

Clause 9 talks about the function of the Council which is the apex body. Its function includes among others, declaring by gazette notice the specific Nairobi Metropolitan Area Transport Authority transport corridors. So, the power to gazette is with the Council.

Clause 10 establishes the Board of the Authority which shall consist of the Chairperson, Principal Secretaries responsible for Transport, Roads and Finance, County Executive Committee (CECs) responsible for transport in each of the five counties and three independent persons with the knowledge and experience in specific areas of expertise.

Hon. Temporary Deputy Speaker, there was a time when there was an outcry in the country because the Minister appointed three persons. I am told he is supposed to appoint three independent persons with knowledge and experience in specific areas of expertise. Those three persons happened to come from one region and one community. I urge the Minister in the good spirit of the famous handshake of last Friday that sets the ball rolling for inclusivity to reappoint those three members. If they come from Muranga, he should put one from Kiambu and one from Garissa; or one from Kiambu and one from Mombasa; and/or one from Meru and one from

Machakos. I saw it in the social media. I think it did not look very good that three independent persons with knowledge and experience in specific areas should come from one community and one area. That is not the Kenya that we intend to build.

Clause 11 provides for the qualification of the Chairperson and members of the Board. Clause 12 provides for the circumstance under which the Chairperson and members of the board will vacate office. Clause 14 is about the oath of office; Clause 15 provides for the various committees of the Board; Clause 6 talks about delegation by the Board, Clause 18 is about the appointment of the Board Secretary; Clause 19 talks about the appointment of the Director-General (DG), his qualifications and competitive recruitment; and Clause 20 provides for the qualification for the appointment as the DG a person who must have knowledge and experience in the following areas: transport, economics, civil engineering, traffic engineering, urban planning and management. I have never heard of traffic engineering – It is a new thing, but I am sure it is there.

Clause 21 provides for the tenure of office of the DG; Clause 29 provides for the licensing of the public transport operators, that is, how they should be licensed, and what kind of application they are supposed to fill and so on. They must be given a certificate of operators. Indeed, all operators must be issued with the certificate before rendering service within the metropolitan area.

Hon. Temporary Deputy Chairlady, this piece of legislation is good. This will set the ball rolling in terms of managing our traffic systems. Even the many owners of *matatus* and buses that ply in these five counties can put their resources together and form a partnership with, say, an international company that is known for managing this kind of a transport system and they would still own 60 per cent of it. At the end of the day, the transport system in our country would be improved.

Clause 32 provides for the funds of the Authority which shall comprise of the monies that will be allocated to them by Parliament for the purpose of the authority, the Metropolitan County Exchequers and such monies and assets that may accrue to the Authority in the course of the exercise of its powers and its performance.

Hon. Temporary Deputy Chairlady, Clause 39 is about the annual financial reports and their obligation to the Auditor-General and to Parliament; Clause 41 provides for the establishment of a museum; Clause 42 provides for the declaration of our transport corridors by the Council; and Clause 43 provides for dispute resolution in case the Authority has a conflict in its functions with other institutions.

The First Schedule of this Bill sets out the procedure for the appointment of the Chairperson and members of the Board. The Second Schedule of the Bill contains provisions as to the conduct of business and affairs of the Authority. The Third Schedule contains the oath and affirmation to be taken by the Chairperson and the members and the Director-General of the authority.

In conclusion, it is important to note that in order to solve any conflict with other Government agencies during the implementation of this law if passed by Parliament, it is imperative and necessary to have consequential amendments accompanying it because the relevant Ministry has drafted consequential amendments which are currently being subjected to stakeholder consideration and consultation. They will be presented to Parliament in due course.

I am yet to see the Chairman of Committee on Transport, Public Works and Housing, a man I respect a lot. We had agreed with him that at 1.00 p.m. he would be here to second. Since I am a Muslim, I keep my word. I thought he is a good Christian, but I have the honor to give an

opportunity to - and thus be saved - the active and always-present Chairman of the Budget and Appropriations Committee to second on his behalf. This is the last day we are going to do that. In the absence of the Chairman of the Committee, there was the Chairman of Public Investments Committee who was also ready to second me. However, next time when he comes in you must read the riot act.

I beg to move and ask Hon. Kimani Ichung'wah, Member of Kikuyu to second.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Thank you, Leader of the Majority Party for moving the Bill. Let us have the Chairman of Budget and Appropriations Committee, Hon. Ichung'wah.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Chairlady. My thanks to our Hon. Leader of the Majority Party for the opportunity to second on behalf of my colleague Hon. Pkosing. It is in the spirit of collective responsibility as Members of the Jubilee Coalition that I second on his behalf.

This Bill on Nairobi Metropolitan Area Transport Authority is very important for this country and more so for those of us who live in the metropolis area, that is, Nairobi, Kajiado, Kiambu, where I come from, Machakos and Murang'a. The establishment of this Authority as a body corporate speaks volumes about the intention of Government. It is intended that we have in place an authority that is a body corporate with the powers to sue and be sued and also one that would implement policies that will govern the transport in the metropolitan areas.

Anybody who lives in this city must have experienced difficulties this morning. Personally, I arrived late to the Budget and Appropriations Committee meeting which I was to chair by about 20 minutes. It was all because of the gridlock that was there this morning. Just because of, say, one-and-a-half hours period of rain, a great gridlock was created in town. Nobody was able to move. Therefore, when you talk about managing transport in the metropolitan area, we are not just looking at the Central Business District (CBD). We are opening up this management to the counties surrounding our capital city and that will go a long way to resolving many of the problems that afflict this City of Nairobi in terms of traffic management. This Authority is being given powers under this Bill to regulate, license and manage public service transport operators. They will be given licences to operate for five years. They will have designated routes where to operate from. Therefore, the chaos that we have been seeing in the *matatu* industry will be a thing of the past once this Authority comes to be.

If transport is managed well in the capital city and the outlying counties, that will greatly help ease the congestion in Nairobi. It will also reduce the proliferation of slum areas. It will even open up new cities in the outlying districts. Think of the Konza City in Machakos, which is just a few kilometers from here. For you to commute from Westlands, through the CBD, to Konza, it would probably take you more time than you would move from Westlands to Eldoret! It is true! At one point, I had a meeting scheduled somewhere on Mombasa Road near Mlolongo. From Westlands, it took me more time than it would take a person to travel to Nyeri. In fact, a friend who was travelling to Nyeri got there well before I reached the junction to the airport. It was all because of a traffic gridlock along Mombasa Road.

So, when we finally set up an Authority to help manage these issues we would also be addressing what was in the sessional paper on housing, which we passed here. This Government has committed to build 500,000 houses in the next five years. The thing is that we cannot have all those houses in Nairobi; we must look at opportunities to build part of those houses in Kikuyu, Mlolongo, Murang'a, Kajiado, Isinya and all those outlying areas. For people to go and live in those far-flung areas and for me to commute from Isinya and attend Parliament by 9.30

a.m. on a Wednesday morning, there must be a good public transport system. Therefore, this Nairobi Metropolitan Area Transport Authority Bill is not just speaking to the question of urban transportation within the metropolis, but it is also creating an effective and efficient means of interconnecting our cities and small towns around the capital city. It is even allowing Kenyans to buy property and houses in outlying districts, so that we all do not cramp within the city and create slum areas.

You can imagine the number of people who live in Mathare, Kibra, Korogocho and other slum areas, people who can afford housing which will be built under this new housing scheme. At the cost of Ksh600,000 for what is called a studio or a one bedroom unit that will be sold for even Ksh1 million or a two bedroom unit going for Ksh2 million and you pay it over 20 years, that will be good. Today, they can only live in a slum area because that is where they are able to afford rent which is charged for housing in Nairobi.

Therefore, we will be helping a lot of people with the enactment of this Bill and also creating order in the transport system within the metropolitan area. With that, you will notice in the Bill, they are also creating a council which will have the core mandate of developing a policy and set goals for the metropolitan area and determine the financial contribution of each county to the funds of the authority. The Bill creates a framework where it is not just money being appropriated from the national Government by the National Assembly but also the county assemblies and governments in the outlying districts of Machakos, Kiambu and Murang'a. They will contribute to this Fund that will enable us to create a seamless and efficient transport system.

I have noticed the Chair of the Departmental Committee on Transport, Public Works and Housing has just walked in but, I am happy to do what he should have been doing now. Therefore, other than the questions of just management of the transport system we are also looking at the development of what are called freeways. There is a freeway which will be constructed from Mombasa all the way to the city through Machakos, Kajiado and Kiambu counties and Naivasha in Nakuru County which will be done by an American company. It needs to be interconnected with urban transportation such that anybody living in Emali or Mtito Andei can get to this capital city through that highway and probably exist at Mavoko or Mlolongo and come to the Central Business District (CBD) through a bus rapid transit system, the mass transport system with high capacity buses. When we are able to build those roads, a farmer from Mtito Andei or far-flung areas of Ukambani will bring their produce to markets in Nairobi within a very short time.

People from Western Kenya... I have seen proposals from the Kenya National Highways Authority (KeNHA). We should get about 30 acres of land around Kikuyu, Sigona or Gitaru for a bus terminus, where we can terminate all public and private transport for somebody who has driven all the way from Kakamega. You do not need to come and struggle to get parking space within the CBD. You can park in Kikuyu where we will have a seamless connectivity to the CBD through the bus rapid transit system. Also through the light rail system which is in all other developed countries and a few of the developing counties in Africa like South Africa, you do not necessarily have to drive into the CBD. You are able to take a mass transport system through the mass commuter buses, from Kikuyu to Nairobi which will take you about 10 minutes, since it will use a dedicated bus lane in between the two highways. I hope that the Ministry of Transport, Infrastructure, Housing and Urban Development and the Chair of the Departmental Committee on Transport, Public Works and Housing will ensure that with the expansion of Waiyaki Way all the way to Rironi, and the construction of the over-pass from Waiyaki Way, ABC Place all the

way to the Airport, they will provide a meaningful bus corridor where we will move people *en masse* to the CBD.

Since I can see I am short of time let me say that this Bill will facilitate not just the efficient system of public transportation within the metropolis but also make housing cheap for Kenyans who are living within Nairobi.

With those few remarks, I beg to second this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Very well, you beg to second.

**Hon. Oluoch**: On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member, you cannot raise a point of order before the Question is proposed. Hon. Members, the Bill having been moved and seconded procedurally, I will therefore, propose the Question.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, Hon. Andrew Oluoch, you can now raise your point of order. But, procedurally, you must allow the Bill or any business in the House to be owned by the House after being seconded.

**Hon. Oluoch**: On a point of order, Hon. Temporary Deputy Speaker. This being my first time in Parliament, I may be pardoned. I will look through the Standing Orders with a tooth comb.

Being a Member of Parliament for Mathare Constituency in Nairobi, this is a Bill which ordinarily would interest me and a lot of Nairobi residents. As a matter of fact MPs from Nairobi recently agreed that they could caucus to try and find out the import of this Bill and its implication. However, this is a House of records and whose duties are guided by the dictates of the Constitution, the statutes as well as the Standing Orders. It is for this reason that I rise on Standing Order No. 83(3), which states:

“(3) The speaker shall either give a decision on the point of order forthwith or announce that the decision is deferred for consideration after which the Member who was speaking at the time the point of order was raised may continue to speak.”

I am also raising this pursuant to Standing Order No.89 which deals with the *sub judice* rule. This House has the benefit of a number of rulings which guide it. The subject matter of this Bill is the establishment of the Nairobi Metropolitan Area Transport Authority. I have in my possession evidence, in cognisance of Standing Order No.89 (4) where a Member who alleges that a matter is *sub judice* and pending before court shall produce the evidence.

Yesterday, 14<sup>th</sup> March, 2018, a Kenyan citizen by the name Wanjiru Gikonyo filed Petition No.94 of 2018 and I have authoritatively established that this particular matter is now seized before a court of law and has a hearing date of 20<sup>th</sup> March 2018. The subject matter of this Petition is precisely the establishment of the authority under this Bill. The Petitioners in this matter question the manner in which the agreement leading to the establishment of the authority under the proposed Section 4 was arrived at. This matter may be determined in a manner that touches on this Bill, and that is why I am asking that a ruling be given pursuant to Standing Order No.89(4), if I am allowed to table these documents.

The second limb of my point of intervention is anchored in the provisions of the Standing Orders as well as the provisions of the Constitution itself. I will begin with the Standing Orders. Standing Order No. 117, on Memorandum of Objects and Reasons, states that a Bill will be accompanied by a Memorandum which, among other things, does two things. One of them is that

it should give an indication as to whether the Bill concerns county governments. It should also specifically say whether it will affect county governments adversely. In the Fourth Schedule of the Constitution, transport and roads fall within the metropolis; in this case, the Nairobi metropolis of Kiambu, Kajiado and the rest. Transport and road matters fall squarely under the Fourth Schedule and the county governments must be involved in the process.

Secondly, Standing Order No. 117 (a) and (b) says that every Bill shall be accompanied by a memorandum containing a statement of the objects and reasons of the Bill, and a statement of delegation of legislative powers and limitation of fundamental rights and freedoms, if any. In order for those functions to be transferred from the Fourth Schedule, where they belong, to the county government, there must be an indication under Standing Order 118 that there has been a delegation and transfer. That is governed by Articles 187 and 189 of the Constitution as read together with Section 26 of the Intergovernmental Relations Act, 2012, which states that where there is a transfer or an agreement to transfer a function, there must be a legal instrument and a legal agreement that underpins that.

I have in my possession a Memorandum of Understanding that was signed on 21<sup>st</sup> October, 2012, and which is also the subject of the matter that is before court. It was signed by Eng. Kamau, the then Governor of Nairobi, Dr. Evans Kidero; the then governor of Kiambu, Hon. William Kabogo; the then governor of Kajiado, David Nkedianye; the then Governor of Murang'a, Hon. Wa Iria, and Dr. Alfred Mutua. Clause 1(2) is very crucial for me here. It says that the parties will negotiate in good faith, formal instruments or agreements with each other and unless and until the final agreement is approved and executed by the parties, this MoU is not intended to and shall not create legal obligations. So, two gazette notices emanated from MoU which was an intention to create an agreement. That is my second last point.

The last point is that the legal instrument - which is the State Corporations Act - where now this Authority is intended to be anchored, will not create a joint venture, which is what is intended when the transfer of one function or collaboration between two levels of government on the performance of a particular function is actualised. This is sought to be created under the State Corporations Act, which essentially would make a government act. Then you look at Articles 174 and 175 of the Constitution. County governments exist to make money. We have just gone through the Division of Revenue Bill here and people have impugned county governments for not being able to generate revenue. We are now creating an Authority whose effect will be to cripple the ability of this very county to generate monies without following the relevant provisions of the Constitution.

So, it is based on this that I wish to humbly request that a ruling be rendered as to whether this matter can continue to be debated in terms of Standing Order 89; and, secondly, as to whether this Bill breaches the provisions of the Constitution and the relevant statutes in terms of Standing Order 118.

Hon. Temporary Deputy Speaker, I thank you for your time, and I beg that a ruling and decision be given in terms of Standing Order 83.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Hon. Tom Oluoch, the Member representing Mathare Constituency. Mathare Constituency is in Nairobi County. You must have a lot of interest in this matter. I have listened to your issues. First, table the papers and anything you have as your evidence. Advised by the same Standing Order 83, I defer the decision to this consideration. I will allow Members to debate the matter until such a time that we will get the ruling after looking at your issues. At that time, we will make an informed

decision and issue communication. Therefore, I will allow Members to continue debating the same as we look into the issues you have raised.

Allow me now to give the Chairman a chance to make his contribution. I must announce that the Chairman is present in the House.

**Hon. Losiakou:** Thank you, Hon. Temporary Deputy Speaker. As I make this contribution, I would like to also make some little responses that might also help the Speaker in considering what my colleague has just raised.

Firstly, there is separation of powers amongst the three arms of Government, and that aspect needs to be considered. Secondly, this Bill is already before the House and somebody went to court only yesterday. So, who should have been prejudicial? It should have been the person who has taken the matter to court. He should have waited until this House considered either way and then proceed to court to, maybe, challenge the constitutionality of the resultant law. My colleague has raised fundamental issues, which have also been addressed in Article 189 (2) of the Constitution. For the benefit of the country and my colleague, there is nothing unconstitutional in this Bill. Otherwise, it would not have been tabled here in the first place. For the benefit of our colleague and the country, Article 189 (2) provides for government at each level. Different governments at the county level shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

This is also one of them in terms of forming the Authority that will be bringing both county governments and the national Government together. So, there is nothing out of order. However, the question would be: How did they arrive at this? If you go back to our Report – and I ask my colleague to also go back to that Report – in Annexure II, you will find that the development of this Authority, and particularly of this Bill, was done so procedurally and it started by having an MoU. That MoU, as he has rightfully read, was done among all the governors that form the Nairobi metropolis. That was done properly. It was sanctioned properly and it moved on to create a gazette notice because the governors and the national Government, having the power under Article 189 (2) of the Constitution, came up and formed that agreement and signed it. However, that was not enough. They came up with a committee. Gazette Notice No. 1093 of February 2015 established the committee by the counties. That is addressing the issue of public participation and in terms of getting the public and even county governments to make contributions whether they agree or not to this matter. It is the counties themselves. They came up with that committee and went around in all the counties. When they were going around all the counties, that was public participation in making sure how the formation of...

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Chairman of the Departmental Committee on Transport, Public Works and Housing. Yes, Hon. Oyoo. What is out of order?

**Hon. Oyoo:** Something is gravely out of order. The Chair, in her wisdom, has ruled that this matter will be conserved and a ruling will come from the Chair. I believe that in view of the very pertinent complaints that my colleague, Hon. Oluoch, has raised, if there are those answers that Hon. Chairman is purportedly giving to this House, he should work with the Speaker and prepare answers which can be released officially through him.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Hon. Oyoo. I know you just wanted to speak. That is the Chairman of the Departmental Committee on Transport, Public Works and Housing. He is making his contribution. He is not even replying to Hon. Oluoch. He is already reporting in his contribution. We will use all his information. A

consideration will be done for the official communication as raised very well by Hon. Oluoch. Nothing was out of order, Hon. Oyoo.

**Hon. Losiakou:** Hon. Temporary Deputy Speaker, I thank you for protecting me. He knows me, and he is my friend. That is why he is saying that. In making my contribution to support this Bill, I want to go through the role of the Chairman which you have told us. The Chairman will be sharing with the House and the people of Kenya the contributions from the public. As a Chairman, I am doing that now for the benefit of the House. That is why I said that Gazette Notice No. 1093 gazetted the Committee that brought together all these five counties that we are talking about. These are Murang'a County, Kiambu County, Nairobi County, Machakos County and Kajiado County. This Committee did not rest. It went through the five counties to get their views. My colleague on the other side did not have an opportunity at that particular time to make contributions, but he can do it in this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Chairman, there is a point of order from Hon. Njomo.

**Hon. Njomo:** Thank you, Hon. Temporary Deputy Speaker. I support this Bill but I want to question the statement that has been made by the Chair that there was full consultation and public participation. I am the Member of Parliament for Kiambu which is directly affected by this Bill. Nobody has consulted me and asked for any opinion. I have even talked to other Members of Parliament, including Members from Nairobi County. They were not consulted about this. This is a very good idea. It is an action that will change the way life would be in Nairobi and in the metropolitan area. However, we need proper consultations and participation by the public, so that they can give their views and opinions.

I am foreseeing a situation where it will rain like it has done today, and then all that we will have done will be destroyed because it was not done properly. I believe proper public participation, including participation by Members of Parliament and Members of the County Assemblies (MCAs) should be conducted.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Member for Kiambu. Are you insinuating that the Chair should confirm whether there was public participation? Is he out of order for saying that there was public participation? Chairperson, as you contribute it is important for you to address the issue that has been raised by Hon. Njomo.

**Hon. Losiakou:** Hon. Temporary Deputy Speaker, I will confirm. I was giving facts and it is good for Hon. Members to appreciate. I am giving facts which have been tabled. I am giving laws which are gazetted. These Members can access them.

Let me just finish something and then I will address Hon. Njomo's request for public participation. As I was building this case, there was a lot of work that was done by the two levels of Government. I am saying this, so that it can be very clear to the House how this matter came to life. That is what I was building legally, so that it is properly understood. If you allow me, I want to tell Hon. Members to read Gazette Notice No. 1093 which is in our Report. It formed that committee that brought together Members from all the five counties. They went round all the five counties. Hon. Njomo and other Members might not have participated in the public participation, but they also have an opportunity to make contributions here because this is their property. It is not mine. It went on after they came up with the proposal of this matter which is the five counties.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Chairman, take your seat first. Hon. Members, as you debate sometimes, it is important to have copies of these Reports. I have looked at the Report, and on page 10, there is evidence of public participation, Hon. Jude

Njomo. I can see submissions from Mr. Gitonga. Let me protect the Chair. There are also submissions from the Council of Governors and from the Ministry of Transport, Infrastructure, Housing and Urban Development. We have the Report. It is always good to refer to it, so that we do not look like we make reports without public participation.

Let the Hon. Chair continue. Member for Kiambu.

**Hon. Njomo:** Maybe my point was lost, Hon. Temporary Deputy Speaker. What I was trying to drive home is that this metropolitan area involves counties around Nairobi which are represented by governors, Members of Parliament and MCAs. Being in leadership and having been elected to represent the people, it would have been a very good idea for the whole leadership to be called together and discuss it even before it goes for public participation.

**The Temporary Deputy Speaker (Hon. (Ms.) Mbalu):** Hon. Jude Njomo, I hear you. I know the Committee had a way of doing the public participation. I am sure you can consult after this. I am sure the Chairman has listened to you. It is important for us to report to the public. This is a House of records, rules and procedure. There is evidence of public participation in the Report. It may not have satisfied you.

Yes Chairman.

**Hon. Losiakou:** Hon. Temporary Deputy Speaker, this is the greatest wisdom I have ever heard from you since I was born. This is the best. I thank you for leading the House within the law.

I want to plead with Hon. Members to read the Report, as you have said. People know how Bills are done. When it was committed to the Committee, we advertised for public participation. It is provided for in the law. I want to ask Hon. Members to look at the newspaper which advertised for public participation. It gave enough time for people to make contributions. Even Members from this House who come from those counties were not blocked from making submissions. At that level, they are considered as members of the public. If they made the requests which they are making here, then we would have invited all the MCAs to come and listen to this, but it was outside there. What would we have done? We had given them the opportunity which is provided for by law. It was there. People made submissions.

If you look at my Report in Annexure 1, it contains a memorandum from the public. It came from five counties that form the Nairobi Metropolitan Area. They appeared before our Committee and made submissions orally. Every county was represented. The person who brought the views is none other than the Governor of Kiambu County, on behalf of all the other governors. They came with their views, and we listened to them. The Ministry of Transport, Infrastructure, Housing and Urban Development also came. Other members from the Ministry also came and presented their views to the Committee. They really agreed with the proposal, particularly Members from the five counties. For the record of the House, they had two concerns. They had a problem. They said that the Chair of the Nairobi Metropolitan Area Transport Authority who is proposed in this Bill to be the Cabinet Secretary for the Ministry of Transport, Infrastructure, Housing and Urban Development should be co-chaired. This concern is captured. It is on record. They said that they want an amendment in the Bill. They agreed with most of the other proposals. They had only three issues. One of the issues was to allow the Chair of the Nairobi Metropolitan Area Transport Authority, who is the CS in charge of transport, to be co-chaired by one governor. They were represented by governors. We argued with them, and listened to them. When the Committee retreated, it agreed that it is better to have one leader. If we have two people co-chairing, it might be very difficult to drive the agenda forward.

We agreed as a Committee. We have proposed an amendment and I will table it during the Committee of the whole House. We decided to let the Cabinet Secretary (CS) for Transport, Infrastructure, Housing and Urban Development to continue chairing the Nairobi Metropolitan Area Transport Authority, but the vice-chair should be one of the governors of the five counties on a rotational basis for one year. If the Governor for Kiambu is the vice-chair this year, then the following year, it will be another governor.

The governors also raised the issue of consultation. They stated that they want to be consulted at every level of implementation by the Authority. We also declined to include that in the Bill. If the governors feel that they need to be consulted by the Authority, then who is in the Authority? The membership of the Authority is made up of all CECs in charge of transport in the five counties. The Authority is made up of all the CECs in charge of roads from all the five counties. They are joined by the Principal Secretaries in charge of Transport, Infrastructure, Housing and Urban Development and the National Treasury. When the governors who make up the Council say that they want to be consulted... We declined to put that in the Bill because who would you be consulting if it is your CEC who sits on the Authority and runs the show? That is why it was good for hon. Members to listen and see that the Authority is not in conflict with the counties because it is run by members of the county. It is not made up of people from outside. That is why their views are on record in our report.

I have given you a list of the people who eventually appeared before the Committee. The people who appeared before the Committee are from every county. Public participation was well-done. Honourable Members who have issues are also encouraged to present them before the Committee during the public participation period, which is set aside for members of the public. This Committee is yours. I am the Chairman of the Committee, but I am there due to the blessing of the House and the Members. It is their Committee. They should have come. The Members of Parliament from Kiambu should have appeared before the Committee and contributed. This is their Committee. However, because of the laws, we will listen to them. We also listened to the Ministry. The Ministry gave us the legal basis of coming up with the Nairobi Metropolitan Area Transport Authority. In Annexure 2, we have attached all the documentation. It was done properly within the law as outlined in Article 189 (2) of the Constitution.

There was also one person, who is a good friend of ours, who came to the Committee and made a presentation. We listened to his memorandum. He suggested that the CS for Lands and Physical Planning should have been part of the Nairobi Metropolitan Area Transport Authority. We declined his suggestion because we felt that the CS for Transport, Infrastructure, Housing and Urban Development is in charge of urban planning. You will find all those urban planners at the Kenya Urban Roads Authority (KURA). That is how we considered this Bill. More importantly, this Bill - apart from giving instructions of how to run transport within the metropolitan area - creates two institutions which are very important for Members and the people of Kenya to understand. It creates a Council which calls the shots and is the most important institution. This Council has been provided for under Clause 8. It is good for me to tell the House and Kenyans that this Council is made up of five governors. People should know that the national Government and the National Assembly are not taking power away from the counties. They are not. I will quickly read Clause 8 for the House and Kenyans so that there is no confusion that the national Government is taking power from counties. Clause 8 (2) states:

The Council shall consist of-

- (a) the Cabinet Secretary responsible for Transport;
- (b) the Cabinet Secretary responsible for the National Treasury;

- (c) the Governor of Nairobi City county;
- (d) the Governor of Kiambu County;
- (e) the Governor of Machakos County;
- (f) the Governor of Kajiado County;
- (g) the Governor of Murang'a County;

It will also consist of the chairperson of the Authority because the Council is at the higher level and then it populates the Authority. The Authority is the one that engages in the running of the day-to-day activities of the Nairobi Metropolitan Area Transport Authority. The Council is made up of county personnel. There are only two people from the national Government and it is important for them to be there because you need resources to get things done in the counties. The Nairobi Metropolitan Area Transport Authority is a very important institution for the House and Kenyans to understand. People have the right to run to court but they should not say that the Authority is taking away the power of the counties since transport is a function of the county.

In the Fourth Schedule, transport is also a function of national Government. You can almost say it is a shared function. How do you run a shared function? Article 199(2) provides guidance in terms of running a shared function. The Article shows that both levels of government are allowed to co-operate. They can also co-operate and form institutions. That is why the Nairobi Metropolitan Area Transport Authority was formed. How is it undermining the counties? It does not undermine the counties. In fact, it enriches them.

What does the Council do? The Council establishes the Nairobi Metropolitan Area Transport Authority. I will state those who make up the Authority for the benefit of Kenyans so that they do not think that the national Government is micro-managing counties. It is not micro-managing the counties. Clause 10 shows you the members of the Authority which engages in the day-to-day activities or running of the Nairobi Metropolitan Area Transport Authority. Who are those?

- (a) The Chairperson of the Board who will be appointed by the President;
- (b) The Principal Secretary responsible for Transport;
- (c) The Principal Secretary responsible for Roads;
- (d) The Principal Secretary responsible for the National Treasury;
- (e) The County Executive Committee Member responsible for transport in each of the five counties making up the Nairobi Metropolitan Area.

If you take those three principal secretaries and five CECs, you will see the balance is in the counties. This Authority is actually theirs. They only require facilitation from the national Government. I will tell Kenyans that there is no way we can run away from the national Government. The national Government is ours. We are not a federal system. We are a unitary system. We require the mother and that is why the national Treasury is there to help. The Authority is made up of county personnel. Those are the people populating the Authority which will run the day-to-day activities of the Board in terms of how transport will be managed at that level. It is so clear that it is within the law and is county-based. The Council is made up of five governors and two CSs. The balance is tilted to the counties. It is a good idea and it will be upon honourable Members to discuss and debate it.

Everything was done within the law. Our Committee listened to everybody. We are also ready to listen. I want to help honourable Members. Nothing is lost. This Bill is still being debated. If there are amendments, they are welcome at the Committee of the whole House Stage. Hon. Njomo is a good friend of mine and I trust and respect him because there are some historic things we did together. I will say them during *kamukunji* and not here.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I hope it is on a light note that there are things you do together.

**Hon. Losiakou:** Hon. Temporary Deputy Speaker, of course it would not be cows because Njomo has no cows. He only has *warus*.

The baby is still with us. Hon. Njomo, nothing has been lost. We can meet. It is still at the debate level. If Hon. Njomo and others of the same mind like the Member from Nairobi here think that there are serious issues which have not been addressed in this the Nairobi Metropolitan Area Transport Authority Bill, they are free to propose amendments. Come to our Committee. We are still here. This is a Committee of the House. It is not my Committee. It is theirs. They are free to come to us. We can discuss and expand the amendments during the Committee of the whole House Stage. This will move our country forward. I encourage them to support this Bill.

In conclusion, I thank you for giving me this opportunity to clarify. I want to thank my Committee. This is one of the best and most cohesive committees. I also thank Hon. Ichung'wah who helped me. This is a very good spirit in Parliament that when a Chairperson of a Committee is held up somewhere in an important function which I was engaged in for the country, somebody else can step in to help. I also thank the Hon. Members. They are welcome to make contributions. This is a Committee of the House. We are still at the debate stage. Let us not kill the baby when we are about to give birth. This country is so fond of killing things which are very good. I urge Hon. Members to accept the Nairobi Metropolitan Area Transport Authority Bill. Let us not kill it. Let us move our country forward. It will be historic for us to pass this Bill. This will be the first co-relationship between the national Government and county governments. This will be the first law that will bring understanding and working together of counties and national Government.

Hon. Temporary Deputy Speaker, I plead with Members to let us give this Bill a chance so that it eliminates separation between the counties and the national Government. When there is too much separation, conflict is created. Members may try to bring political wars or political competition, but this Bill will bring harmony. It is a baby to be tried. I plead with Members here to give it a chance. It will be a test on how the national Government and county governments co-operate in law under Article 189(2). So, I plead with Members not to kill it. I thank Members of my Committee, the Office of Speaker and the Office of the Clerk for giving me the secretariat I head.

With those remarks, I support the Bill and urge Members to pass it because it will be historic in the Republic of Kenya and for the 12<sup>th</sup> Parliament.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Hon. Pkosing, the Chairman of the Committee for your well detailed articulation. Hon. (Ms.) Mukami, Member for Nyeri County.

**Hon. (Ms.) Rahab Wachira:** Thank you, Hon. Temporary Deputy Speaker. I would like to support the Bill. I applaud the Chair because he is ready to accommodate everyone.

There have been many accidents in Kenya due to reckless driving and many people have lost their lives because of that. I am impressed that this Bill requires all public service vehicles operating wholly or partly within the metropolitan area to conform to national standards and specification.

*(Technical hitch)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member, try to move slightly away from the microphone.

**Hon. (Ms.) Rahab Wachira:** Can you hear me now?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, I am now getting you clearly.

**Hon. (Ms.) Rahab Wachira:** I am impressed that this Bill requires all public service vehicles operating wholly or partly within the metropolitan area to conform to national standards and specifications by Authority. I am in the *matatu* business and I know exactly what happens in this town. Many accidents are occasioned by the poor state of vehicles. For example, an old vehicle that is out of shape may operate on our road and at times, brakes fail or some other part and it ends up causing an accident. Sometimes, the drivers give the turnboys the vehicle to drive and that causes many problems in our town. I am certain that with this law, public service vehicles will be fit for the purpose and will not cause accidents due to their poor state.

Nairobi Metropolitan Area Transport Authority Bill, 2017 also requires drivers of the public vehicles to be well trained and acquire a certificates as prove of professionalism. This professionalism will ensure that Kenyans are driven by safe hands. With sufficient training and examination of drivers, we can expect zero accidents due to reckless driving by unqualified drivers.

I am sure the board will bring sobriety in our cities and I know things will move in the right direction.

Thank you. I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Tuwei Kipkurui, Member for Mosop.

**Hon. Tuwei:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. First and foremost, I thank the Chair of this Committee for a timely and a well thought-out Bill that is going to solve our problem.

The counties surrounding this city are affected by disorder in the transport sector because of poor coordination. This Bill is going to be of great importance to Kenyans because it is going to bring order. If you ask anybody who has travelled worldwide, they will say that Kenya is a good country, but there is traffic jam disorder from the drivers, uncoordinated procedures and poor enforcement of rules that have become a serious impediment to our road development.

I got concerned with what was raised before us this evening; that a court can stop this House from deliberating and making laws. At the outset, I find it very difficult to believe that someone out there who has been given an opportunity by the provisions of the law and the Standing Orders of this House to come willingly and provide memorandum or present themselves in person and present whatever issue they consider important before a matter of this nature is brought before us, find it easier to go to court to stop this august House from doing its duty. The powers and privileges that have been bestowed on us by Kenyans and by the Constitution to make laws must be guarded. Let those who think that whatever that is passed is unconstitutional challenge it once it has become a law. Now that we still have a window for others who have input to make to this Bill, let them try their best before we pass it as a law.

I also find it interesting that even Members of Parliament can actually say things today that, if they were to justify them, it would be difficult to do that. Though we have the privilege of saying everything, I believe the courts should leave us alone the way we leave them to make their judgements. One has to understand limitations of *sub judice*. Let Parliament be independent to make laws and if anyone finds the laws we have passed are unconstitutional, we have the

courts which are mandated by the Constitution to interpret them and declare them unconstitutional if there is any unconstitutionality in them.

Lastly, I find that we have very many people who have vested interests, especially in matters to do with order. This Bill will bring order. There are people who enjoy driving in disorder. Their territory is now threatened. I would like all of us to go through this Bill and give more input and get more practices, if any, from other territories, institutions or countries that can enrich this Bill before we pass it.

I take this opportunity to express my concern on what I have seen. I am in the Departmental Committee on Defence and Foreign Relations. Surprisingly, few Members of our Committee on their own have issued a statement concerning a foreign country and an ambassador, without the knowledge of the entire Committee. We find the statement issued more personal than that of the Committee and is not reflecting well on us as a Committee. We feel that because the Speaker is not in the office, the message passed by three Members of our Committee is in their individual capacity and not as the Committee.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Member for Mosop. From the Speaker's Office, we will address those issues. Hon. Member for Kuria East.

**Hon. Kitayama:** Thank you, Hon. Temporary Deputy Speaker. At the outset, I support this Bill. One good thing about an idea whose time has come is that it cannot be stopped. There is no way you can stop this idea. It is an idea that should have happened several years ago. In fact, the very time it was mooted seven years ago was the time that this House should have passed it. We should have gone on with the business of restoring order in this city that was once called the "city in the sun".

This Bill also addresses a lot of other linkages that are brought forward and backward in terms of enriching the five counties that are affected by this Bill. There is an issue of harmonising or even equalising prices of land. This Bill indirectly addresses it. If we are going to have a good transport network that will enable people to easily access places where they can afford land, then we are going to address the issue of lack of housing or other factors that have been contributing to lack of adequate housing.

I know that any good thing will always face challenges. Busybodies will go to court. They will want to stop this programme. Players in any thriving business, like the *matatu* business, would not want order. There are so many businesses that thrive out of situations that are not progressive. For that reason, it is clear that if anybody wanted to stop this, they would use any form of system to stop it. That includes courts and other interventions that would otherwise not have seen the light of day.

This is a good thing that should be supported by everybody, especially politicians like governors. It is easier to have an authority that is going to address the problems that are related to transport in Nairobi City than a governor who is also looking forward to re-election. It is much easier for a CEO running an authority to deal with the mess that is in this city than a politician. Every five years, just before an election, we find the city of Nairobi in chaos because nobody wants to take the responsibility of restoring order because they fear that they would be voted out. That goes for all other sectors in addition to the transport sector.

This is a good starting point as it shows how the various county governments can collaborate and even incorporate the national Government and move the country forward. Actors in the two levels of government will share ideas to ensure that they effectively carry out all the functions together for the good of this country.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Roysambu.

**Hon. Ndirangu:** Thank you, Hon. Temporary Deputy Speaker. I join my colleagues in supporting this Bill.

The five counties involved in this metropolis are Machakos, Kiambu, Nairobi, Kajiado and Murang'a. It is important to note that these counties have a combined population of over 10 million Kenyans. That means almost 25 per cent of the total population of Kenya live within these five counties. It also translates to the fact that over 80 per cent of the national GDP is generated from these five counties. There are over 40 Members of Parliament representing these residents. Therefore, it is very important to note that the proposed Authority will positively affect the lives of many Kenyans.

If the programme by this Authority is executed, there will be seamless transport across all these counties, which will result in cheaper rent. It means Nairobi residents can move smoothly to Machakos and get houses to rent there. It also means that the farmers who feed the population in Nairobi from Limuru, Murang'a and Kiambu can deliver their produce smoothly and timely. This means the cost of living in Nairobi will go down by a huge percentage. It also means that the food produce will have access to markets, which will translate into better returns for our farmers who live in Kajiado, Murang'a and other places.

Even as the Chair confirms that there has been intense public participation in the formulation of this policy, it is still not too late considering the number of people who are going to be touched by the effects of this Bill. It is still not too late for the Committee to take time to consult the leadership of all the five counties. I say so because out of the five governors, only two have been re-elected – the Governors of Machakos and Murang'a counties. The others were sent packing. It is important that these leaders are consulted again. Members of the County Assemblies and Members of Parliament should also be consulted because they have direct consultation and contact with the 10 million residents I have talked about.

I support this Bill because it involves directly the leadership of the five counties. If you look at Clause 8, the governors of the five counties will be members of the Council. We also have the national Government represented by the Cabinet Secretaries for Transport, Infrastructure, Housing and Urban Development, and the National Treasury. This is a good example of the agreement and inter-dependence as articulated by Article 189 of our Constitution, which allows for agreement between the two levels of Government in the performance of duties. However, I have a query with the kind of qualifications the officials who will manage this Authority are required to have. For example, the people who will be employed by the Board will be required to have experience in transport management, transport systems and be civil engineers, traffic engineers, economists and urban planners. I think this is discrimination. We should also have space for financial consultants and even sociologists because when you are dealing with transport and members of the public, you need to know what people think.

Other areas that should be seriously thought about is the displacement of populations who will be affected by the establishment of the new corridors of transport, for example, the hawkers. The Committee needs to come up with a report indicating how hawkers are going to be affected and how existing *matatu* owners, people who have means of transport in buses are going to be incorporated in the new Authority so that when it starts operations, it does not mean that we are going to displace the people who had earlier invested in the transport sector.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mugambi. Hon. Members, I have seen all of you want to make contributions. You do not need to raise your hands. I have seven requests, Hon. Mugambi, you can spare some time for the other Members.

**Hon. Rindikiri:** Thank you, Hon. Temporary Deputy Speaker. I have had the privilege of being part of this Committee. It was our responsibility that we follow the right procedure of bringing this Bill to this Parliament. One of the challenges that we had is the criteria of involving the public, the so-called public participation. It becomes very difficult for any committee, particularly the Committees of this House to know who needs to be invited. It is either a deliberate action that we can take or we just do it through the newspapers. It was our belief that Members of Parliament who are part of this House had interests of giving their inputs at the committee level. I am also a Member of Parliament, and I am very keen in whatever business that is happening. I would like to urge Members of Parliament, majority of who are my friends, that this is a very important Bill that requires to be passed by this House.

We are aware that there are a lot of interests out there, but we have an obligation as a Committee and as Members of Parliament to ensure we give the Kenyan public the best transport services in this city. I have pledged to five Members of Parliament because I have interests in those constituencies. When I fight as an investor, whatever I have invested, I cannot have value because people are questioning the distance and the time it takes to move from one point to the other. That is because the infrastructure is not good to help people who want to invest. It is very important for us, as Members of Parliament, to keep our eyes open in whatever is happening. It is very unfortunate from my perspective that Members of Parliament can come and say they are not aware of this Bill right from the beginning. At this point, we have involved the public. We took time and gave them room to speak. I believe that if you keep aside the interests of each one of us, we are going to provide what we feel is the best system of transport and communication in this city.

I wish this was happening to Meru. I would not have been asked to participate. That said and done, it is estimated that by 2030, Nairobi City will have more than 20 million people. If you look at the statistics, people coming in and out of Nairobi every day are more than seven million. That gives you an indication why we need a very serious transport and communication system. We need to attract investors. How are we going to attract investors from out there when we have poorly managed infrastructure and systems of transport? We need to think beyond our political interests and inclinations, and beyond our business interests and give this noble idea in front of us the benefit it deserves. I know there are so many people who want to talk in support of this Bill. We are open and ready to listen, but let us move forward, fellow Members. Please. We need to connect with my in-laws in Machakos. I need to connect with my brothers in Kajiado. I need to go and visit my friends in Murang'a. How are we going to do it? We are saying we want development. How are we going to achieve this when we are slowing down the process?

Thank you very much NASA for joining Jubilee. This is what we intended to do and we are moving forward with our mission. This is one of the things that we want to do so that we can enhance business and travel for the comfort of our citizens.

Thank you, Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you Hon. Member. Hon. Members, let us be relevant to our debate so that we can have a constructive one.

Hon. Mose, Member for Kitutu Masaba, are you a Member of the Committee?

**Hon. Mose:** Yes. Thank you, Hon. Temporary Deputy Speaker for giving me a chance to also contribute to this extremely noble Bill that is before the House. As you have rightfully said, my name is Shadrack Mose, Member of Parliament for Kitutu Masaba and a Member of this Committee.

First and foremost, I know I am addressing this House after coming out of an election petition and, therefore, I want to thank my people of Kitutu Masaba and the Hon. Judge of the Court that dismissed the petition that was filed against me.

I will, therefore, proceed to make my contribution. This is a wonderful Bill and sometimes it is very strange that Members of this Honourable House, who are supposed to enlighten the public, appear before this House to contribute against the Bill. Many of us have been in this city for a long time and we know Nairobi has a serious problem in terms of transport. If you look at the people who operate from Kajiado, Machakos, Kiambu and Murang'a, they always experienced long traffic jams that give them lots of problems. The Nairobi Metropolitan Area Transport Authority Bill is going to provide a seamless way of transporting people from one end to the other.

Hon. Temporary Deputy Speaker, when you travel outside this country to the developed democracies, you will be shocked that people stay very far away from their working places. This is precisely what this Bill is all about. Nairobi Metropolitan Transport Authority is going to provide a seamless system of transport for our people. The net effect would be as follows: First and foremost, we would be able to have our people travel far distances and we would have the aspect of housing, which is one of the four agenda of Jubilee Administration, addressed. It means we will have housing far away from Nairobi. It also means that people staying in Korogocho, Kibra, Mathare and Mukuru kwa Njenga would be served by a transport system that is much cheaper.

I would like to urge my colleagues to give their contributions. I know, for a fact, that once we pass this Bill, the net effect would be increase in businesses. People would be able to transport their various merchandise and even move freely within this town. At the end of the day, the economy of this country would be improved. I, therefore, urge all the Members present to make their contributions.

With those very many remarks, I stand to support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Jude Njomo, the Floor is yours. We had requested Hon. Members to save on time because I have around six requests.

**Hon. Njomo:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. This is because as the Chairman was making his contribution, I also made mine that the method used, not for public participation but consultation among leaders in various areas, was not properly carried out. That does not mean that I do not support this Bill. I support it in its entirety because, for once, this Bill will be a game-changer. This will be the first time that the county governments would be coming together with national Government to put their heads together and think of how we can develop together without any competition. This is because, many a time, it sounds like there is competition between the county governments and the national Government. However, this time round, they will sit together and think of how they are going to bring development for the benefit of the people who are going to be in those areas, and other people who are going to enjoy the facilities that are going to be improved in the Nairobi Metropolitan Area Transport Authority Bill.

I am supporting this Bill in its entirety. When I talk of public participation, I was thinking of some of the projects that have been done before. Sometimes, when it is raining and you are

driving along Thika Road, you find that in such a magnificent project, the first one of its kind in East and Central Africa, there are bumps along superhighway causing kilometers of traffic jam. This is because the designers of the road did not do proper consultation to find where most people would like to cross the road. There are areas where bridges have been used and they are not busy. There are other areas like Witeithie in Thika which is so busy yet no foot bridges have been provided and those cause many kilometers of traffic jam.

I know with the Nairobi Metropolitan Area Transport Authority, we will have improved infrastructure. We will have a better controlled traffic system because the drivers and vehicles will be licensed by the Nairobi Metropolitan Area Transport Authority. We will have better control of Nairobi and its environment. The situation now where *matatus* park all of over will be a thing of the past and the Nairobi Metropolitan Area Transport Authority will manage the situation.

My challenge to the Nairobi Metropolitan Area Transport Authority is that they should go to other cities and see the kind of mass transport system that those countries have invested. I think Nairobi is long overdue for a metro transport system that will allow people to commute in and out of Nairobi. This will help in reducing traffic jam. People driving from Mombasa to Nairobi do not have to be dropped off in Nairobi. They can be dropped off anywhere else and they can use metro transport to Nairobi. So, if we pass this Bill, the Nairobi Metropolitan Area Transport Authority will help in making Nairobi a modern city, one that is well organised and a city that we will be proud to call our own.

With those few remarks, I support this Bill. If there will be any changes that we can propose as the leadership of those counties surrounding Nairobi, we will bring them to the Committee and discuss them. I believe there are some areas we need to look at especially on educating our people on how this the Nairobi Metropolitan Area Transport Authority is going to affect them. How will it affect the *matatu* business or our markets? Those are things we can put in this Bill to help our people.

Thank you

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Hon. Members, we will still have time to debate this Bill even in other sittings. So, I must tell the House that we are not completing debate on the Bill today. I will use my discretion to allow each Member speaking from now to have four or three minutes. I have six requests. Let us have the Member for Kinangop.

**Hon. Thuku:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Bill. It is long overdue. I wish it came in a few years ago. We would not be having the insanity that we see on our roads. I congratulate the drafters of this Bill because it has captured a wider area and I can tell you for sure that once this Authority comes into being, there are so many issues that are going to be solved especially traffic jams and the many hours that are wasted on the road. Once this Bill is operationalised, I am sure we are going to have influx of investors in this country. That is because one of the deterrence against investors is the many hours that we lose in traffic jam. Coming from a constituency where we do farming, we are the people who feed Nairobi. We have had issues over time whereby we cannot get our produce to markets within the right time. Therefore, we end up losing a lot of income as farmers. I wish to support this Bill and say that it should have come like yesterday, and it should be operationalised. I wish we had some budgetary allocation for the same, so that it can be operationalised as soon as possible.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): For the HANSARD record, that is Hon. Thuku Kwenya, the Member for Kinangop Constituency.

Hon. Maanzo, Member for Makueni.

**Hon. Maanzo:** Thank you, Hon. Temporary Deputy Speaker. I will be brief on this Bill. This is a very important Bill though it has ignored some very important issues. Like in the metropolitan area, you can see clearly that Makueni has been left out yet it is along Mombasa Road, which goes all the way to Konza City running parallel to Kajiado. So, I will be making proposals to take care of this anomaly during the Committee of the whole House. They have also left out the *Matatu* Savings and Credit Cooperative Organisations (SACCOs), which are a very integral part of the transport business in this country. Therefore, I also look forward to including the *matatu* SACCOs during the Committee of the whole House. Some of them brand themselves as SACCOs when they are not. All these should have been addressed by this particular Bill because it seeks to implement the Michuki rules which have been watered down. It is true that many people visit or operate around this metropolitan area.

In fact, this area should also extend to Nyeri because it is also a very busy route. That is what this Bill seeks to address. I believe it should be keenly looked at during the Committee of the whole House, so that we can make necessary amendments to ensure that the public transport sector is efficiently managed. Transport is integral to development. If the sector is not managed efficiently, and the roads are full of traffic jams, we waste a lot of time and fuel. We have to avoid such wastage and probably include town trains. If you visit many cities in the world, you will find that transport is made easy by trains.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, Member for Makueni. Hon. (Ms.) Shamalla.

**Hon. (Ms.) Shamalla Jennifer:** Thank you, Hon. Temporary Deputy Speaker. I rise to support.

Indeed, I want to applaud the Bill for having identified targeted categories. When it comes to rapid transport, bus lanes and buses have identified people with disabilities, the elderly, pregnant women and parents travelling with children under five years old. This goes a long way in enhancing the quality of life of our citizens, which is such an inherent aspect of Article 28 of the Constitution on the dignity of life.

Indeed, we know that the average Kenyan spends over 16 hours outside their homes. They wake up at 4.00 O'clock in the morning and get home after 10.00 p.m. At least six to seven hours could very well be spent in traffic, not to mention the economic cost of being stuck in traffic jams every day. It has been estimated we lose about Ksh58.4 million daily running into billions of shillings. As we go along and build the rapid transport system, we should take into consideration and not forget to construct pavements in counties, so that it is not dangerous and impossible for people to walk along the roads.

With these few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. John Mutunga, Member for Tigania West.

**Hon. Mutunga:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to add my voice to those who have spoken before me on this very important Bill.

Nairobi City is growing and according to the statistics, it will become a very large city. That is why we need to control our transport system. We tried to organise the transportation

using the Executive orders at the ministry level and it has not worked. Maybe, what we need is legislation and this is the right time to have it.

Many major cities always operate in an orderly manner. Being the capital city of Kenya, we would like visitors from outside this country to come and find order in this city and, therefore, be able to move around without a lot of impediments. We hope and believe that this Bill is also going to condition the way the transport system is applied, especially when it comes to the management of the different types of transport. I have in mind the emergency efforts, especially when we have to transport water from one point to another or when we have fire brigades moving to sites when there is a fire incident that needs to be taken care of.

In most cities, you will realise that there are designated emergency routes. I believe this Bill has taken that into context and if not, I think it is high time that it considers it. When it comes to fetching water in an event of an emergency, there are those hydrants. You will find along the roads there is a pillar written “H”. That means a hydrant. That is where you can easily get some water to take to an emergency point. I believe that is also going to be taken into context.

We need to have serious penalties because of deliberate refusal by most of the people who use roads in Kenya, especially in the metropolis to observe traffic rules. They should stop driving on the pavements, in the opposite directions and driving anyhow.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Waluke, were you trying to catch my eye?

**Hon. Koyi:** Yes, Thank you, Hon. Temporary Deputy Speaker, for also giving me a chance to speak on this Bill. It is a very important Bill and it is going to improve so many things in our country, especially infrastructure. If the Nairobi Metropolitan Area Transport Authority is going to improve on infrastructure in this town, I think many Kenyans will become rich, including me. This is because we waste a lot of money on fuel in traffic jams; even us as Members of Parliament. Hon. Temporary Deputy Speaker, I think you have experienced this. This Bill has included almost everything, including the four pillars that President Uhuru Kenyatta has mentioned.

I rise to support this Bill because it is going to improve the lives of many Kenyans and many of us who are in Nairobi and in other cities.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mule, you have also tried to catch my eye.

**Hon. Mule:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. This Bill is timely. For some of us who border Nairobi and are within the counties of Nairobi and Machakos, we know exactly the vision which was put into the transport sector under the then Ministry of Nairobi Metropolitan by the late Senator Mutula Kilonzo. I want to confirm that this Bill will harmonise the entire five counties to decongest Nairobi City. We need to be in a city whereby you do not need to spend your entire time of your working hours on traffic jams. I know there are some clauses which raise some concern but I urge Members to go through the Bill and put every possible amendment during the Committee of the whole House, so that we can have a Bill for prosperity for all those countries within the metropolitan.

I state very clearly that I know very well that in Matungulu, we have benefited from a road which is metropolitan sponsored by the World Bank, which is running from Mombasa Road all the way past my constituency. Hon. Temporary Deputy Speaker, it is high time we integrated the transport system.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kimunya, what is it? I will add Hon. Mule one minute as requested.

**Hon. Mule:** Thank you *Waziri* for adding me one minute. Hon. Temporary Deputy Speaker, let us use this Bill to bring law and order in Nairobi City and its environs. We also need to incorporate the metro system so that we decongest the city. I will be proposing amendments during the Committee of the whole House. Let us make sure that this Bill sees the light of day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, I saw Hon. Kimunya looking at me and I thought he was trying to catch my eye, but I confirm that he did not want to contribute. I also confirm that there is no other Member who wants to contribute on this Bill. For that reason, we come to closure of debate on the Bill. Before the Question is put, there will be Communication with regard to the issue raised by Hon. Oluoch on Standing Order No.83. We expect a Communication from the Speaker on that at an appropriate time.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, the time being 7.02 p.m., this House stands adjourned until Tuesday, 20<sup>th</sup> March 2018, at 2.30 p.m.

The House rose at 7.02 p.m.