

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 29<sup>th</sup> November 2017

The House met at 2.30 p.m.

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

### PRAYERS

### ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:  
Mr. Onyonka Richard Momoima

*(Applause)*

**Hon. Speaker:** The new Member should be in the middle. Proceed.

*(Loud consultations)*

I congratulate Hon. Richard Onyonka for having been elected the Member for Kitutu Chache South. Another Member tells me for the third time. Very well, congratulations.

*(Applause)*

Very well. Hon. Members, it is advisable to congratulate the Member.

Next Order!

### COMMUNICATION FROM THE CHAIR

#### APPOINTMENT OF LEADER OF MINORITY PARTY

Hon. Members, you will recall that on 12<sup>th</sup> October 2017, I issued a communication on the status of the filling of the various leadership positions by the minority coalition in this 12<sup>th</sup> Parliament, namely; the positions of Leader of the Minority Party, Deputy Leader of the Minority Party, Minority Whip and Deputy Minority Whip. More importantly, I directed the minority coalition to comply with the provisions of Standing Order 20 (4) and the rules of the

Coalition in communicating to my office the names of the persons appointed as Leader of Minority Party, Deputy Leader of Minority Party, Minority Whip and Deputy Minority Whip.

Hon. Members, I wish to inform the House that by letters dated 16<sup>th</sup> November 2017 and 29<sup>th</sup> November 2017, which are supported by the minutes of the National Super Alliance (NASA) Parliamentary Group meetings held on 2<sup>nd</sup> November 2017 and 25<sup>th</sup> November 2017 respectively, the NASA Coalition has formally written to my Office communicating its leadership in the House as follows: -

- (a) Leader of the Minority Party – The Hon. John Mbadi, MP;
- (b) Deputy Leader of the Minority Party – The Hon. Robert Mbui, MP;
- (c) Minority Chief Whip – The Hon. Junet Nuh Mohammed, MP; and,
- (d) Deputy Minority Chief Whip – The Hon. Chris Wamalwa MP.

Hon. Members, the NASA coalition has now fully complied with their Coalition procedures in submitting the names of its leadership in the House. In this regard, I confirm that the said names now constitute the coalition's leadership in the House in the respective capacities as advised. In the circumstances, I hereby call upon the Majority and Minority Leadership in the House to move with speed and submit the names of the Members they wish to serve in the Committee on Selection, the Committee on Appointments and thereafter, the various other Committees of the House. This will enable the House proceed with its usual business in the fulfilment of its constitutional mandate. Indeed, I am aware that the Clerk has previously formally communicated to the party leaderships on the need to submit their nominees to the said committees for subsequent prioritisation by the House Business Committee and consideration by the House.

Thank you.

Next Order.

**Hon. Wandayi:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Member for Ugunja, what is your point of order? I hope it is not---

**Hon. Wandayi:** --- (*Off record*)

**Hon. Speaker:** Petitions are handled in a different way. You may be advised to look at your Standing Order No. 225. Nevertheless, the Member for Ugunja will be heard.

**Hon. Wandayi:** Hon. Speaker, thank you very much. I was just seeking your indulgence so that I may pass a message of congratulations to the four Members of the House from the NASA Coalition who have been duly appointed to the leadership of the House.

As all of us are aware, NASA has a very robust parliamentary wing. We have this wing as a way of furthering our broad agenda. Therefore, today is a very important day for us and our agenda is that of fighting for a positive change for the country. We are confident that the four persons named to lead the NASA Parliamentary wing in this August House are more than equal to the task. I take this opportunity to congratulate them most heartedly and wish them all the best.

Thank you very much, Hon. Speaker.

**Hon. (Ms.) Mbarire:** On a point of order.

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

**Hon. (Ms.) Mbarire:** Hon. Speaker, I also just want to say we are happy that at last NASA has decided to play their rightful role in the Opposition. We look forward to working very closely together with them. One thing I cannot help but notice is that out of the House leadership of the NASA side is not a single woman. The NASA coalition has boasted of being the ones that follow the Constitution more than the Jubilee coalition but you can see for yourself. Actions

speak louder than words. It is such a shame that in a party such as NASA, where we have serious women leaders who are able to take up leadership in this House, there is not a single woman out of the four Members who have been appointed to the leadership of the House. I think the NASA coalition should be ashamed of letting down the women of this country.

**Hon. Speaker:** I see one leader who has forgotten that we do not raise hands here. What is it, Member for Homa Bay?

**Hon. (Ms.) Gladys Atieno Nyasuna:** Thank you, Hon. Speaker. This is the first time I am speaking in this Parliament, and my card is not working. That is why I raised my hands. I thank you for noticing me.

Let me join my colleague, Hon. Wandayi, in stating that bringing our leadership on board has been long overdue. We believe that the four individuals who have been given these positions are capable of driving our coalition forward. On the matter of gender that has been raised, I would like to note that these are not the only positions within the coalition. The NASA coalition has capable women, and we will be bringing them forward in very serious positions moving forward, in fact overwhelmingly so.

On the matter of leadership, we have been going around in cycles. Let us settle it. Let the leadership work in furthering our agenda of bringing change to this country.

Thank you.

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members! You are at liberty to express disgust and jubilation but that is the communication that I have received. I want to make it clear to the House. Remember, it is not meant for voting. It is a matter that has been sorted out by the NASA coalition. I read to the House a letter from the Registrar of Political Parties indicating that there is a coalition called NASA, and they have communicated to my office. Therefore, my business is to communicate to the House that now that matter is settled. If the party desires otherwise, they know the ways to deal with that matter. It is not for me to say who should be in which position.

Hon. Members, I have received the communication and those who feel aggrieved know where to seek redress.

Member for Msambweni?

*(Loud consultations)*

**Hon. Ramadhani:** Asante sana Mheshimiwa Spika. Nimesimama kuhusu orodha kamili ya majina yaliyotolewa, ambayo yanawakilisha mrembo wa NASA kwenye uongozi wa Bunge hili. Msimamo wangu ni kwamba ninaupinga moja kwa moja.

Kwanza, suala la jinsia halikuzingatiwa kabisa. Pili, hii imeashiria wazi kwamba uongozi wa chama umeelekezwa Nyanza pekee na sehemu nyingine zote zimeachwa nje.

*(Applause)*

Hali hii inatuonyesha wazi kwamba uongozi wa muungana wa NASA unapopangwa ni lazima wanachama waitwe kwenye kikao. Ni wazi kwamba taratibu inayotakikana ifuatwe wakati kunapangwa uongonzi haikufuatwa. Nilazima wanachama waitwe kuhudhuria kikao, kwa lugha ya kimombo cha *Parliamentary Group* (PG). Na hii haikufanyika. Kwa hivyo, mimi kama

mwenyekiti wa wabunge wa Pwani hili swala tunalipinga kwa sababu sisi kama Wapwani tumechangia sana mlengo wa NASA. Mhe Spika, hii ni wazi kwamba sisi kama Wapwani na watu wa sehemu zingine hatutambuliwi katika hii chama. Tunasema wazi kwamba kama Wapwani tunayapinga haya majina kikamilifu na tutasimama kuyapinga na hatuyatambui tutaresist kama vile wao wanaresist. Asante sana.

*(Applause)*

**Hon. Speaker:** Order Members! Order Members! I want to remind the House that I am not presiding over a party parliamentary group meeting. Therefore, this is not a matter for debate. This Member here is from which constituency?

**Hon. Baya:** I am the Member for Kilifi North Constituency. Thank you, Hon. Speaker. I would like to address the issues which have been raised and support the Chairman of Coast Parliamentary Group (CPG) on this matter. As people from the Coast we voted overwhelming for NASA and we are not going to be humiliated by the party. It comes a time when people break ranks and this is the moment where a party gets destroyed because of the kind of bias we are seeing.

As the Coast people we deserve a seat among the top four leaders. We cannot have two Members from the same county sitting as leadership of the minority party. I want to state clearly that we have suffered marginalisation and exclusion in many ways but this time as the Coast people we are not going to accept this whether from the Government or within the party. I also want to make it very clear to the people who sat down and came up with this list that we do not recognise it. There are certain Members of the Orange Democratic Movement (ODM) who think they are more ODM than others. I want to make it very clear that as the Coast people we will not and shall not accept party dictatorship.

*(Loud consultations)*

**Hon. Speaker:** The Member for Kilifi North.

**Hon. Baya:** Hon. Speaker, because this communication came to you, I want to urge you to write back to whomever wrote it and tell him that the Coast people have resisted the list. Thank you very much.

**Hon. Speaker:** Hon. Members, this is not a matter for debate. I will advise that the discontented Members who maybe opposed to the list are at liberty to raise the matter in their parliamentary group meetings. Let us move to the next Order.

*(Loud consultations)*

Order Members! Order Members! Members, I have called for the next Order. That was merely a communication. I have received minutes from the Coalition as a way of communicating. Therefore, you are at liberty to go and challenge those minutes. There is nothing out of order, this was just a communication. Let us move to the next Order.

*(Loud consultations)*

Hon. Sankok! Order Members! Member for Budalangi! Hon. Kaluma! The Hon. Members who are standing please take your seats, you may not have been in the Chamber for long. Hon. Members, we are on the Order of messages. This is Message No.2 of 2017.

## MESSAGES

### THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL (SENATE BILL NO.9 OF 2017)

**Hon. Speaker:** Hon. Members, Standing Order No. 41(4) requires the Speaker to report to the House any message(s) received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Wednesday, 15<sup>th</sup> November 2017, I received a Message from the Senate regarding the passage of the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017), which was published in the *Kenya Gazette Supplement* No.167 of 2017. The Message reads in part, and I quote:

“The Senate considered and passed the said Bill on Thursday, 9<sup>th</sup> November, 2017 without amendments.”

Hon. Members, given the urgency of the passage of this Bill and in accordance with the provision of Standing Order No.143, I have directed that the Bill be read the First Time today. Thereafter, should the House agree with the Procedural Motion, the Bill may be considered in all stages in the course of today or tomorrow. A copy of the Bill and the advice from the Parliamentary Budget Office have since been circulated by the Clerk.

Thank you.

Hon. Members, there is a second Message No.3 of 2017, again from the Senate.

### ESTABLISHMENT OF JOINT SELECT COMMITTEE ON ELECTION OF MEMBERS TO EALA

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order No.41, I wish to convey to the House a Message received from the Senate on Friday, 17<sup>th</sup> November 2017 regarding the resolution of the Senate on establishment of a Joint Select Committee on the Election of Members to the East African Legislative Assembly (EALA). The Message states in part and I quote:

“On Thursday, 9<sup>th</sup> November, 2017, the Senate resolved to establish a Joint Select Committee consisting of five Members of each House to undertake the functions contemplated under the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017.”

Hon. Members, I wish to inform the House that the Senate has appointed the following Members to represent it in this Committee, in addition to those appointed by the National Assembly:

1. Sen. Aaron Cheruiyot;
2. Sen. (Dr.) Abdulahi Ibrahim Ali;
3. Sen. Millicent Omanga;
4. Sen. Mutula Kilonzo Junior;
5. Sen. Rose Nyamunga.

Hon. Members, in this regard, when we get to Order No.7 on Statements, I will give an opportunity to the Co-Chairperson of the Joint Select Committee on Election of Members to EALA, the Hon. Katoo ole Metito, MP, to apprise the House and the public on the progress of the activities that the Joint Committee has been undertaking, the timelines and the next course of action regarding the EALA elections.

Thank you.

### PAPERS LAID

**Hon. Speaker:** Let us have the Whip of the Majority Party, Hon. Washiali.

**Hon. Washiali:** Thank you, Hon. Speaker. Before I lay the papers on the Table, I request that you allow me to congratulate the new leadership of our counterparts on the minority side on their appointment. We have had this problem for some time. I am sure that the appointments will help us move forward. I want to be more specific that I congratulate Hon. Junet Mohamed, who is now the Chief Whip of the Minority Party. As usual, whips have always supported each other. I invite him that immediately after this, we may take some tea together so that we agree on the way forward. I am aware that he is in the House. I also invite the Deputy Whip of the Minority Party, Hon. Chris Wamalwa.

I was of the feeling that the House leadership also needs to bring out the face of Kenya. As the Jubilee Coalition, we have to admit that we did not do very well in Coast in the last general elections, but our NASA counterparts have 17 Members of Parliament from the Coast region. We were thinking that they would use that opportunity to, at least, bring somebody from Coast so that we have the face of Kenya in the House leadership. That said and done, Hon. Wadayi talked of robust leadership on the NASA side. I just want to inform you that also in the Jubilee Party side, we have robust Members of Parliament who are ready to articulate Government business in this House.

Hon. Speaker, I beg to lay the following Papers on the Table of the House:

A list of nominees to 17 National Government Constituencies Development Fund (NGCDF) Committees from the National Government Constituencies Development Fund Board.

The Annual Report and Financial Statements of the University of Nairobi for the year ended 30<sup>th</sup> June 2016.

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

1. Kerio Valley Development Authority;
2. Kenya School of Government;
3. Moi University;
4. Information and Communication Technology Authority; and,
5. Rongo University College.

The Report of the Auditor-General on the Financial Statements in respect to the following constituencies for the year ended 30<sup>th</sup> June 2016 and the certificate therein: -

1. Kerio North Constituency;
2. Igembe Central Constituency;
3. Mbeere North Constituency;
4. Marakwet East Constituency;
5. Aldai Constituency;
6. Emgwen Constituency;

7. Turkana South Constituency;
8. Turkana North Constituency;
9. Chesumei Constituency;
10. Kacheliba Constituency;
11. Cherangany Constituency;
12. Saboti Constituency;
13. Mbeere South Constituency; and,
14. Loima Constituency.

Thank you, Hon. Speaker.

## NOTICES OF MOTION

### APPROVAL OF NOMINEES TO NGCDF COMMITTEES

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

THAT, pursuant to the provisions of Sections 43 (4) and Regulation 5 (10) of the NGCDF 2015, this House approves the list of nominees for appointment to the following 17 constituency committees of the NGCDF, laid on the Table of the House on Wednesday, 29<sup>th</sup> November 2017: -

1. Isiolo South Constituency;
2. Msambweni Constituency;
3. Mwingi North Constituency;
4. Rangwe Constituency;
5. Starehe Constituency;
6. Ugenya Constituency;
7. Luanda Constituency;
8. Balambala Constituency;
9. Embakasi North Constituency;
10. Emuhaya Constituency, which will need additional names;
11. Hamisi Constituency;
12. Homa Bay Town Constituency;
13. Kitutu Chache North Constituency;
14. Nyakach Constituency;
15. Saboti Constituency;
16. Wajir North Constituency, which also has additional names; and,
17. Lagdera Constituency.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Omar Mohamed Maalim.

### SALARY INCENTIVES/DECENT HOUSING FOR POLICE OFFICERS SERVING IN HARDSHIP AREAS

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

THAT, acknowledging that the Kenya Police play a very important role in proving assistance the public when in need of maintenance of law and order, preservation of peace, protection of life and property, investigation of crimes, collection of criminal intelligence,

prevention and detection of crime, apprehension of offenders, enforcement of laws and regulations with which it is charged among other roles as provided for under Section 24 of the National Police Service Act; concerned that many police officers across the country especially those working in northern Kenya and other high risk and hardship areas continue to work under very difficult environment characterised by, among others, inadequate, inhabitable, deplorable and congested living quarters, insufficient tools for work and poor salaries and allowances; further concerned that the difficult working environment for the police officers has often led to frustrations, demotivation and occupational stress among officers with many of them exiting the force in search of other jobs; this House urges the National Police Service Commission and the Salaries and Remuneration Commission to provide salary incentives and adequate and decent housing for police officers who are deployed to serve in northern Kenya and other hardship areas.

Thank you.

## STATEMENT

### ELECTION OF MEMBERS TO EALA

**Hon. Katoo:** Thank you, Hon. Speaker. I rise to give a statement on the progress made in the process of the election of Members to represent Kenya in the East African Legislative Assembly (EALA) on behalf of the Joint Parliamentary Select Committee on the Election of Members to EALA.

As Members are aware, the Joint Committee comprises of 10 Members drawn from the Jubilee Party (JP) and the National Super Alliance (NASA) Coalition in both Houses. Members may as well be aware that the election could not be held as scheduled during the term of the 11<sup>th</sup> Parliament as the Houses proceeded to the *sine die* recess in June 2017 to allow Members ample time to participate in campaigns ahead of the August General Election. In this regard, the Joint Committee has the privilege of building on the gains made by its predecessor Committee, which reviewed the procedure and rules for the election of Members of the EALA to accord with the Constitution of Kenya, 2010 and the bicameral nature of our Parliament.

The Joint Committee embarked on its task in earnest by convening its first meeting on Wednesday, November 15, 2017, where we agreed to embark on an immediate roadmap that would expedite the election of Kenya's Members to the regional Assembly. As the first step, the Committee directed the presiding officers, who are the Clerks of the Houses of Parliament, to immediately place an advertisement regarding the vacancies as required under Rule 4 of the EALA Election (Election of Members of the Assembly) Rules, 2017. Consequently, the presiding officers published an advertisement in the *Kenya Gazette*, the *Daily Nation* and *The Standard* newspapers of November 16, 2017, inviting interested qualified candidates to submit their applications. At the close of business on Thursday, 23<sup>rd</sup> November, 2017, which was the final day for the submission of applications, the presiding officers had received a total of 208 applications as follows:

From the JP, there were 111 applicants, the Orange Democratic Movement (ODM) had 43 applicants, the Wiper Democratic Movement (WDM) had eight applicants, the Amani National Congress (ANC) had four applicants, the Economic Freedom Party (EFP) had four, the Kenya African National Union (KANU) had four applicants, the Forum for the Restoration of Democracy, Kenya (FORD-K) had three, the Kenya Patriots Party (KPP) had two, the Party of



Development and Reforms (PDF) had two, the Frontier Alliance Party (FAP) had one, the Democratic Party had one, the Party of National Unity (PNU) had one and independent candidates or those who applied as independent candidates were 24. These brought a total of 208 applicants. It is good to note that out of the 208, only nine will go to Arusha to represent the nation. Parties intending to vie independent of political parties are required to present their nomination papers tomorrow, Thursday November 30, 2017, which is the nomination day.

Recognising that Kenya is entitled to a total of nine slots in the membership of the EALA and in accordance with the provision of Rule 6 which provides for the number of candidates each political party should submit for election, the Joint Committee analysed the representation in the Houses of Parliament to determine the proportionate entitlement for each of the 20 political parties in our Parliament. We have a representation of 20 political parties in both Houses. To do so, we summed up the total number of Members in each of the political parties in both Houses as a proportion of the total membership of Parliament which is 416 members and multiplied the resultant figure by nine. The Committee was also conscious of the fact that there are 15 independent Members in both Houses of Parliament and these are 14 from the National Assembly and one independent Member in the Senate. As approved by this House in the 11<sup>th</sup> Parliament through a report of the predecessor Committee on the same, independent Members are independent of one another and that was the Motion adopted. Therefore, they cannot be construed to be a political party for purposes of computing the proportional entitlement for parties.

Before proceeding to determine the allocation, the Committee undertook a due diligence with the Office of the Registrar of Political Parties to establish the existence of any pre-election or post-election coalition agreements among parties. In this regard, the Committee confirmed that there were only two coalition agreements deposited with the said Office. The first one is by five parties - that is the ODM, WDM, FORD-K, ANC and Chama Cha Mashinani (CCM) - coalescing into the NASA Coalition. The second coalition agreement is by two parties and that is the WDM and Muungano Party.

Pursuant to Rule 6 of the EALA Elections (Elections of Members of the Assembly) Rules 2017, it requires political parties eligible to nominate candidates for election of Members of EALA to present to the presiding officers, nominees equivalent to three times their entitlement. As required under Rule 7, today, Wednesday 29<sup>th</sup> November 2017, at 4 p.m., the presiding officers are scheduled to hold pre-nomination briefing with the Leaders of the Majority and Minority Parties in Committee Room No.7 in the Main Parliament Buildings ahead of the nomination day which is tomorrow, Thursday 30<sup>th</sup> November 2017, between 9 a.m. and 4 p.m. Thereafter, the timelines will run as follows:

First, there will be submission of nomination papers to the presiding officers. That is in accordance with Rule 10. It will be on 30<sup>th</sup> November between 8.30 a.m. and 4 p.m.

Then there will be public inspection of the documents and that will act as public participation as required by law, which is in accordance with Rule 12. It will be from Friday 1<sup>st</sup> to Monday 4<sup>th</sup> December 2017.

Then there will be the transmission of the names of the duly nominated candidates to the Joint Committee by the presiding officers, in accordance with Rule 13, which will be on Tuesday next week, 5<sup>th</sup> December 2017.

Then the Joint Committee will consider the nominees and present its report to the Houses of Parliament, in accordance with Rule 13. It will be done between Wednesday 6<sup>th</sup> and Friday, 8<sup>th</sup> December 2017.

The presiding officers, thereafter, will gazette the election date in accordance with Rule 15 and this should be done by Monday, 11<sup>th</sup> December 2017.

The ultimate date is the election date. It will be done in accordance with Rule 15. This will be on Wednesday, 13<sup>th</sup> December 2017.

As I conclude, I challenge the political parties to ensure that their candidates meet the statutory qualifications for election as Members of Parliament. That is a requirement of the East African Treaty which states that those to represent the partner-States should be qualified to be Members of Parliament of those partner-States. It is also advisable for nominating parties to comply with the provision of Rule 6 (2). This has been canvassed this afternoon when we were talking about representation of the House leadership from the minority side.

Rule 6(2) says in nominating its candidate, each party shall as much as it is feasible take into account the need for fair representation of the various shades of opinions, regional balance, gender and other special interests groups in Kenya, and shall ensure that at least one-third of its nominees are women. Hon. Speaker, the Committee shall upon being seized of the names of the nominees under Rule 13 ensure the nominees fully meet the requirement of Article 50 of the East African Community (EAC) Treaty and Rule 6 of the East African Legislative Assembly (EALA) Rules 2017. That is what I have just explained on the qualifications that are required.

The fact that the submission of Kenya's members to the EALA is long overdue and has become a concern within the EAC cannot be overemphasised. As a matter of fact, Kenya is the only partner State of the EAC that is yet to present its members to the regional Assembly. Considering that the Assembly cannot be inaugurated without the representation from any of the partner States, Kenya cannot be the country holding the take-off of the regional Assembly in abeyance. In view of the foregoing, I request the House and political parties to note the key timelines of the election process and support the Joint Committee in steering the election of Kenya's representative to the EALA to its logical conclusion. The Joint Committee will convene next week on Tuesday, 5<sup>th</sup> December 2017 to receive a report from the presiding officers and the nomination papers of their candidates who shall have been duly nominated on 30<sup>th</sup> November 2017.

I thank you, Hon. Speaker.

**Hon. Speaker:** That was a Statement for information to both the House and the public. There is a key requirement which is a qualification to be a Member of Parliament. I recall that the 11<sup>th</sup> Parliament made some amendments to Section 22 of the Elections Act. I hope that will be strictly adhered to, particularly the educational qualifications.

Next Order.

## PROCEDURAL MOTION

### EXEMPTION OF BUSINESS FROM THE PROVISIONS OF STANDING ORDER NO. 40 (3)

**Hon. Washiali:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order No. 256 (Exemption of business from Standing Orders), this House orders that the business appearing under Order No. 10 be exempted from the provisions of Standing Order No. 127 (1) on referral of a Bill to the Relevant Committee upon First Reading.

Hon. Speaker, I want to take one minute to explain. If the Members have today's Order Paper, Order No. 10 which is being exempted from this procedure is the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017). The challenge that we have now and I am sure every Member of Parliament is aware is that as we speak today, we do not have committees in place. The county allocation of revenue is overdue. We, as a House, were meant to have approved it long ago. It is important for Members to agree with me that it is important to overlook this step, so that we can go ahead and debate the County Allocation of Revenue (Amendment) Bill, so that county governments can continue to operate. In the spirit of working together like I had said earlier, I want to request Hon. Chris Wamalwa who is the Deputy Minority Whip to second this Motion.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to second this Motion. We know very well that we do not have committees. In line with Article 118 of the Constitution, we need to call for public participation. These are some of the stages which can be exempted. We know very well that this is a Senate Bill. For it to have reached this level, public participation was done by the Senate. In the same spirit, we know that the stakeholders are the same. Even if it were to be done by the National Assembly, the output will have a lot of convergence. We know very well that the counties are not operating optimally because of the shortage of revenue. We have had a lot of challenges this year. It is a year of elections and there were some ideological political differences. This has led to the delay of the full operation of this House. As you have just realised, the National Super Alliance (NASA) has given the names of the Coalition. We also have a way of resolving our own internal issues, but for now we will move on with work. In case of any changes, you will be notified accordingly.

For purposes of our counties to operate and this being a Procedural Motion, without much ado, I second the Motion. I will appreciate if we can just pass it, so that we move to the next business.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kibwezi West, take your seat. You can walk next to the Member for Hamisi. Hon. Members, both the Mover and the seconder have explained, but more importantly we appreciate both the National Assembly and the Senate during the 11<sup>th</sup> Parliament passed a Bill titled... One of those Bills which is exempted from many other processes under Article 218 is the County Allocation of Revenue Bill. There were mistakes in the first Bill. The funds which were allocated were not exactly what was given to various counties. Therefore, this Bill became necessary in the Senate to make adjustments. I am saying this because Hon. Members as you all know, to move a Bill from one stage to the other requires the concurrence of the entire House, so that if I hear one Member say no, that would be sufficient to stall it.

*(Question proposed)*

*(Question put and agreed to)*

Next Order.

## MOTION

ADOPTION OF SESSIONAL PAPER ON  
THE MINING AND MINERALS POLICY

THAT, this House adopts Sessional Paper No.7 of 2016 on the Mining and Minerals Policy, laid on the Table of the House on Wednesday, 11<sup>th</sup> October 2017.

*(Hon. A.B. Duale on 8.11.2017)*

*(Debate concluded on 8.11.2017 – Afternoon Sitting)*

*(A Member walked on the aisle)*

Order, I am on my feet. Hon. Members, it looks like we may have to do several induction workshops, so that Members can appreciate that when they are in the Chamber, there are rules. Debate on this Motion was concluded and what remained was to put the Question.

*(Question put and agreed to)*

## **BILLS**

### *First Readings*

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)*

### *Second Readings*

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

THE ENERGY BILL

**Hon. Speaker:** Hon. Washiali.

**Hon. Washiali:** Thank you, Hon. Speaker, on behalf of the Leader of Majority Party, I wish to stand down this Bill.

**Hon. Speaker:** Is that business appearing as Order No.12.

**Hon. Washiali:** That is Order No.12

**Hon. Speaker:** What about the next Order?

**Hon. Washiali:** The same thing applies.

**Hon. Speaker:** Are you standing them down or withdrawing them?

**Hon. Washiali:** Hon. Speaker, the Leader of the Majority Party left in a hurry. The information he left me with is that we defer these Bills to a later date.

**Hon. Speaker:** Business appearing on the Order Paper as No.12 and No.13 are deferred.

*(Bills deferred)*

Move to the next Order.

*Second Reading*

COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

**Hon. Speaker:** Hon. Mbarire.

**Hon. (Ms.) Mbarire:** Hon. Speaker, I beg to move that the County Allocation of Revenue (Amendment), Senate Bill No.9 of 2017 be read a Second Time.

Hon. Speaker, the Bill was passed by the Senate without amendments on Thursday, 9<sup>th</sup> November 2017 and is before this House now in accordance with the provisions of Articles 110 and 111 of the Constitution.

The County Allocation of Revenue (Amendment) Bill, 2017 seeks to rectify an error in the County Allocation of Revenue Act, 2017 as passed by the Senate and the National Assembly of the 11<sup>th</sup> Parliament on 15<sup>th</sup> June 2017.

The County Allocation Act, 2017 reflects that the total conditional grants from development partners, in particular the World Bank to supplement financing of health facilities, Kenya Devolution Support Programme from the World Bank and the World Bank loan for transforming Health Systems for Universal Care Project, World Bank loan for National Agricultural Inclusive Growth Project, Danish International Development Agency (DANIDA) grant for Universal Healthcare Development Systems Programme, European Union (EU) grant for devolution advice and support and other loans and grants amount to Kshs16,407,826,139. The conditional loans and grants should have been in tandem with the amount stipulated as conditional allocation from loans and grants in the Division of Revenue Act, 2017.

The Division of Revenue Act, 2017 as passed by the 11<sup>th</sup> Parliament and the total conditional allocation from loans and grants amounts to Kshs20,407,826,130. Comparing this with the County Allocation of Revenue Act, 2017, there is a discrepancy of Kshs3,999,999,991. The Bill before this House therefore seeks to correct this by ensuring that all the amounts obtained from loans and grants are correctly reflected as conditional allocations as had been provided for in the Division of Revenue Act, 2017. In this regard, once the County Allocation of Revenue (Amendment) Bill, 2017 is passed by this House, the total conditional allocations from loans and grants will be Kshs20,407,826,130 in line with the Division of Revenue Act, 2017.

I beg to move and ask Hon. Gikaria to second.

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

**Hon. Gikaria:** Thank you, Hon. Speaker. It has been well explained by our able dear sister, Hon. Cecily Mbarire regarding this Bill. Rightly as indicated earlier, this Bill was brought to the 11<sup>th</sup> Parliament and we approved it. But it is good for us, as Parliament and as a House of records that we correct any error in differences that have been noted to have occurred when we were approving it so that this issue does not crop up, particularly with the Auditor-General. He has work to do. If this error is left uncorrected, a discrepancy of over Kshs3 billion might raise many questions. The National Assembly has the responsibility as the Senate has done to correct any anomaly that arose in the past. As far as figures are concerned, chances of having errors are high and accounts people take care of them. This anomaly is corrected in a sitting like this.

The counties have been suffering and therefore we need to pass this Bill. It is important that the conditional grants and loans given remain as such. We have seen counties that have been

given money under conditional grants, particularly in the health sector, use that money elsewhere through amendments by their county assemblies. The Auditor-General needs to look at that. Conditional grants are given for a purpose. They are ring-fenced for a purpose which must be realised. So, it is important for the respective, both new and old governors to understand that conditional grants have a purpose. When the Senate and the National Assembly allocate those funds, they must be used for the purpose they were intended. It is important for all county governments to take that into account. It is good for us to approve this with speed so that the county governments can be operational and we arrest the situation where they lack money all the time.

With those remarks, Hon. Speaker, I second.

*(Hon. Kilonzo shook the hand of an hon. Member)*

**Hon. Speaker:** Member for Yatta, you can shake hands later. You appear to be unduly interested in shaking hands.

*(Question proposed)*

**Hon. Speaker:** Going by the list that is here, Hon. Tum Chebet is the first one.

**Hon. (Ms.) Tum:** I am not ready for this debate, Hon. Speaker.

**Hon. Speaker:** You do not just put your card. The next one is Hon. David ole Sankok.

**Hon. ole Sankok:** Thank you, Hon. Speaker. Let me state from the beginning that I support this Bill.

There are some issues that we have to address as a House. We sweep some of them under the carpet. This House makes the laws of this country. Some of the laws, if I can remember, touch on the issue of the two-thirds gender rule. If today I do not say that I am shocked by what happened when the names for leaders of the Minority Party were tabled, I will be misleading this House because it is a total mockery to democracy. There was neither gender balance nor regional balance. To speak the truth, the individuals who form the leadership of the NASA Coalition in this House come from within 25 km radius of each other. This is a mockery to democracy.

**Hon. Wakhungu:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is it, Hon. Wamalwa?

**Hon. Wakhungu:** Hon. Speaker, is the hon. Member in order, under the Standing Order on relevance? I know that this is a technical Bill. If he has nothing to say, like the other hon. Member, instead of diverting attention by going back to the issue of the leadership of the Minority Party, he should relax. It seems he is not prepared. He should let those who are prepared to debate this matter to proceed and move forward instead of talking to things which are not relevant to the subject matter.

Thank you.

**Hon. Speaker:** He may be doing it in the context of equitable distribution of resources.

**Hon. ole Sankok:** There are people who have been marginalised. I cannot stand here and watch as people from the Coast, the Wiper Party community, and the Maasai people, being used and dumped. It is a mockery to democracy for these people to be tabling names of people who come from one region, and from within 25-kilometre radius of each other. This House is supposed to implement the laws. One of the laws says that in any appointment of elective position, there must be regional balance and gender balance. The NASA is a coalition but the

appointments do not show balancing amongst their own political parties. I refer them to read 1<sup>st</sup> Samuel 16 Verse 1, which states: “When will my people realise that I have rejected Saul to be King of Israel?” When will our people know that we have rejected somebody to be king of Kenya? Even today, early in the morning, somebody was using the words *tibim, tialala* and even saying “His Excellency Raila Odinga.” We should be straightforward. In fact, the coastal people have resisted; they have moved out. The Maasai have also resisted and moved out.

To come back to the Motion, the counties are suffering. We need to approve this amendment as quickly as possible. We need to be very specific because we need the Auditor-General to know the amounts allocated so that we are not mistaken in terms of accountability.

Thank you.

**Hon. (Dr.) Oundo:** Hon. Speaker, I rise to support the amendment Bill. However, before I do so, I must say that my heart bleeds when an educated Member like Hon. Sankok diverts from the business before the House and wastes parliamentary time on irrelevant issues. Nevertheless, it is not surprising. Probably, we need to start asking questions. This Bill is long overdue. The challenges and the problems that the county governments are facing are becoming embarrassing to some extent. Services have generally come to a halt. Hospitals are suffering, schools are suffering, roads are not being repaired and basic services are not being rendered. Therefore, it is important for us, as Members, to support the expeditious passing of this Bill to enable the county governments to get funds. On the same note, we ask the national Government to act in good faith and ensure that they do not punish some counties because of their political affiliation. The national Government should not be disbursing funds in a discriminatory manner because doing so is against the law and against the principle of ensuring public equity. In the same vein, I want to join my colleagues in calling for accountable use of these so that their multiplier effect can be felt throughout the country. As we embark on the second phase of devolution, devolution should be the hallmark that will solve the perennial complaint of marginalisation and unfair distribution of resources. In the same vein, we ask the national Government to pull up their socks and collect the relevant revenues so that we can increase the total national revenue to enable us devolve more funds to the counties. The counties ought to be the engine to run this country.

*As I conclude, I suppose the issue of the House leadership on the side of NASA is our business. We ask our friends on the other side to mind their business. They should let us resolve our issues in the manner we know best.*

*Thank you.*

**Hon. Speaker:** Member for Dagoretti South.

**Hon. Waweru:** Thank you very much, Hon. Speaker. I would like to state at the outset that I support the expeditious passing of this Bill.

We have an opportunity, as Parliament, to play our role in enhancing the functions of devolution in this country. Being an important organ of Government, as a standalone autonomous organ of the Government, we have the role to supporting the business of the counties and by extension according required services to our constituencies. More importantly, we recognise the situation we are coming from. As a country, we have had an extended period of campaigning and electioneering that grounded to a halt the provision of important services by both the national Government and county governments. It is in that vein that I stand to support that we expedite the passing of this Bill. While at it, I also call upon the Members of both sides of the House to see the need for us, as Members of Parliament, to put aside some of our small differences when it comes to dealing with issues of national concern.

Hon. Speaker, it would not be in order for anybody to say that the national Government has been inequitably allocating resources to counties on the basis of the perception that some counties are national Government-friendly while others are not. There are many instruments in our Constitution that ensure national resources are equitably distributed amongst all the counties in this country.

Even as we speak about this we also should, as Members of Parliament, put some little pressure on our devolved governments to see to it that those who have a role to play in collection of revenue do their work. This is revenue which can also be shared equitably among all other counties. That is so that, when we come to the discussion of how we share the national cake, we do not only talk about the revenue that comes from the national or central Government. We can also be talking about an increased collection of revenue from the counties.

Hon. Speaker, I think we all agree that a quick passing of this Bill will enable some critical functions within the counties to resume as normal. I pray that we will not find ourselves in a situation of delay as we have in this time.

You will allow me to spend my last minute to put my voice in a discussion that has come up this afternoon. I note that some of the names that have been presented here by Members of the National Super Alliance (NASA) coalition are of able leaders. They are people we know; people of integrity; people who we know mean well for this country but, it should not end there. We also have a Constitution that urges us to observe some rules. If they are not just constitutional rules, they are also humane rules. We should be seeking equity not only by just saying it but also by practising it. While it is not in my purview to tell the NASA what they can do, I would like to urge them to kindly reconsider the list that they have tabled in Parliament this afternoon and try to bring in a bit of some regional and gender balance. If possible, let them consider the younger non-radicalised members of the NASA coalition who will push the agenda a bit further for this country and even for their party.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, just to remind you, you have 10 minutes on a Motion like this; not five. So, organise your thought processes.

Member for Narok North. Member for Chepalungu.

**Hon. Gideon Koske:** Thank you, Hon. Speaker.

I stand to support the Motion on the County Allocation of Revenue (Amendment) Bill. County governments play a key role in stimulating the economy of this country. The national Government should not be the one putting on hold the services that are required by county governments. Since the Senate has already passed this Bill to us, the honourable thing we can do is to pass it.

One of our MPs who have spoken before mentioned about the resources being allocated or released to all the counties at once. For me, I strongly believe that the Governors who have not accepted the leadership of Uhuru Muigai Kenyatta should go public and accept that the duly elected President of this country is Uhuru Kenyatta then they will be given the allocation. Before they do that, I do not see any reason they can be given the allocation to the counties. The people have spoken and have elected Uhuru with a majority of votes. So, if Governors have not accepted that Uhuru is the President, there is need for them to seek funds elsewhere.

I stand to support the Bill. Thank you, Hon. Speaker.

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

**Hon. Wakhungu:** From the look of things, you can see Hon. Members speaking for one minute or two minutes. The motive of this amendment Bill was just to bring the consistency,



particularly of the grants between the Division of Revenue Bill and the County Allocation of Revenue Bill. May I call the Mover to close because there is nothing new. This had already been debated. That is so that we move on to other business.

I thank you.

**Hon. Speaker:** Ideally, Hon. Wamalwa, having spoken to this....

*(Hon. Wakhungu gestured)*

You mean you did not speak on this? I had seen the Member for Kwanza had put an intervention. Maybe he has something to say about county allocation of revenue. Even the Member for Bondo is desirous of contributing. I thought this should be serious business. I am surprised that....

**Hon. F.K.Wanyonyi:** Hon. Speaker, I just want to support my colleague Hon. Chris. I realise people are using this as a platform for lecturing to us. I want to take this opportunity to tell them we do not need any lecture from a biased Jubilee side. We know what we are doing. There is a saying in Kiswahili, if you allow me to, which says; *“Pilipili usoila yakuwashiani?”* Why are you involved in things that do not concern you? We have heard of it. Let us talk about this one.

My take on this is that, we are....

*(Hon. Kigano stood in his place)*

**Hon. Speaker:** Do not rise on a point of order, Hon. Muturi Kigano. Just put your intervention.

**Hon. Kigano:** Thank you.

I am on a point of order, Hon. Speaker. Whatever is being discussed here is not apportioned between Jubilee or the NASA. We are talking of a very serious issue on appointments. This is a constitutional institution; this House is a constitutional institution. The first duty you have, with a lot of respect, is to ensure that this House, in its deliberations and processes, obeys the Constitution.

My point of order is this: You cannot apportion and say “this is your part” or *“pilipili sijui nini...”* or what it says. Everything here, whatever is brought to this House is appropriated by the whole House. Now, the Constitution of Kenya is being traversed by disobedience to Article 27 and Article 81 which are on gender parity. The rules of this House under Standing Order No. 20 say that gender should be taken into account. We cannot move any further because whatever will become unconstitutional...

As far as we are concerned, there are no appointments under the Constitution from the Minority Party. Even before one is lead to support or oppose the Bill, you must rule on this. Rule on this and say that we cannot be unconstitutional as a House to deliberate on unconstitutional matter and matters that are supervised by parties that are disobeying the Constitution.

**Hon. Speaker:** For avoidance of doubt, let me just read Standing Order No. 20(2)(a) The Minority Party or coalition of parties in the National Assembly shall elect-  
(a) any existing coalition agreement entered into pursuant to the Political Parties Act;  
(b) the need for gender balance”.

It just says it shall take into account. Maybe in the Parliamentary group of the coalition, they took into account and found nobody in the opposite gender deserving of any position. I assume that they took into account. In a different forum you can ask them whether they took into account. They might have and found none of the opposite gender is capable of performing any of the leadership positions. So, I cannot be the one to police them. Should anybody feel aggrieved, obviously like we have seen some famous gentleman proceed to the High Court and seek some interpretation, whether they took into account, it is there, they will explain. Since I do not operate a court of law, I am unlikely to now call the leadership and ask them whether they took into account. Who knows?

**Hon. Wakhungu:** (*Off record*)

**Hon. Speaker:** You can hear honourable Wamalwa saying that it was taken into account and then they arrived at the decision that nobody from the opposite gender merited any of the positions. So it is up to their membership to deal with the issues, of course you are at liberty to comment on the issue because it was not a debate, it is just a communication that I delivered to the House which was also brought to me from the coalition. What is required of me is to notify the House that this is what I have received. Anybody feeling aggrieved can use their own party mechanisms to raise those issues if they so desire, and present a Motion seeking the House to express itself one way or the other. Certainly, it will not be in my purview to be policing the parties. This cuts across both sides of the divide. Hon. Wanyonyi, were you through with your contribution.

**Hon. F.K. Wanyonyi:** No. I had just started and I was interrupted by a point of order which had no head or tail. I did not even know what he was talking about.

**Hon. Speaker:** Maybe you could look for the tail somewhere.

(*Laughter*)

**Hon. F.K. Wanyonyi:** Most obliged Hon. Speaker. I think I need an apology from my good brother. My take on this is, I want to thank whoever noted the error. I think it was well explained by Hon. Cecily Mbarire. She explained what happened. There was an error that was noted and I think it is good. We should pass this Motion. Look at the areas it is affecting, one is the health sector which is very important. Two, agriculture and I come from agricultural area and the other one is devolution. I believe that we should pass this Motion as amended which was by error passed in the 11<sup>th</sup> Parliament and ensure that funds are taken to the counties.

My take on this is that the counties now are employing executives and Cabinet Secretaries there. We hope and pray that these monies will be used properly because the temptation is; some of the counties are employing their cronies who may not be qualified to appropriate these funds properly. We and particularly the Senate should be able to look at some of this allocation which may be misused and reallocated to other functions that are not key in those areas. I support this amendment and I think we should pass it this afternoon so that the funds can be taken to the counties. I have been to the rural areas and I think the counties are suffering. They are not moving yet there is a lot of money. We should pass this as soon as possible.

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

**Hon. Dido:** Thank you very much, Hon. Speaker for this opportunity. This is a money Bill. We are here because of the Constitution. Article 114 (1)(2) and (3) talks of the roles of the National Assembly. In the 11<sup>th</sup> Parliament we rejected this particular Bill on the grounds that the

Senate had no capacity to allocate monies to any institution that will not have passed through this House. That is the import of it. It is the Constitution. So, when any of us sitting in this House thinks that we can use the Constitution on the right hand and reject it on the left hand, is wrong. That is principally even on those appointments. We say we bite and live by the Constitution, and then I think the constitutional order is good all the time. We use it when we think and feel that we can use it and get away with it.

I support this Bill and I think we should pass it with necessary speed on the grounds that the counties are cash struck. By the time we were rejecting this Bill, we were going for elections and there was the general feeling in the 11<sup>th</sup> Parliament that some of these monies were going to be used for electioneering purposes. Now that we are all beginning afresh, the counties are starting afresh, and then we believe that these monies should go for the purposes they were meant for. I want to go further and say that, the Senate should not in any way hide behind allocation of resources without having proper oversight over the counties. In the 11<sup>th</sup> Parliament, one of the areas we were talking about was the issue of corruption where monies allocated properly from this House does not end up with our people at the grassroots. This is basically defeating the sole purpose of devolution. For that reason, we feel that whatever is given in terms of grant, whether it is conditional or unconditional grant must be fully accounted for. The Auditor-General must take proper cognisance that, that is public money that must be fully accounted for by our counties. One of the honourable Members who spoke before me talked about inequity. I think devolution in itself is one way of curing inequity where today almost all the counties across this Republic receive close to between Kshs 5 and Kshs 11 billion. That hitherto was not there. For that reason, as Members of this House, instead of appearing politically-correct, we should oversee that the monies allocated reaches our people in the villages and towns.

Finally, it is on the issue of tax collection. In the 11<sup>th</sup> Parliament, there was a lot of talk of what counties should be allocated in terms of what is defined as the Commission on Revenue Allocation formula. On the other hand, what we have failed to do, or to realise is tax collection by our counties. It is said by the taxman, that what they used to collect before devolution in the municipal councils supersedes what counties are collecting today. This is an act that must be corrected. It is this House that oversees how taxpayers' money is collected and disbursed. Therefore, counties must begin to remit their tax collection and must meet the threshold given.

Finally, on the issue of devolution, equity and marginalisation, I have made that point before, but I want to repeat. Marginalisation, in the long run, is going to be a perception because areas that used to get very little allocation through districts or provinces are today getting those monies directly into their treasuries. What we want to ask, even the other side which is NASA, is to try and collate how much money arrives in counties that politically belong to them and check whether those monies are properly utilized by those governors.

Thank you, Hon. Speaker.

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

**Hon. Ogolla:** Thank you, Hon. Speaker. One thing that I want to bring out very clearly is the whole issue of the corrective value in the proposed amendment. Sometimes it really becomes unfortunate when some institutions or some individuals out there realise that there are certain mistakes that Parliament made, particularly when it comes to figures. I could remind the House that, for example, last year when the courts were calculating the National Government Constituencies Development Fund (NG-CDF) money, we eventually lost Kshs10 billion just because in terms of their own ways of doing the mathematics of the sharable revenue they said

we were not supposed to get the additional Kshs10 billion over the Kshs25 billion. So the corrective value in this Bill is very important.

It would be my prayer that if you were able to remind the House every single time we have figures and statements that border on budget and stuff like that, we really need to be very careful so that people do not correct us out there. Right now we are talking about a Kshs3 billion mistake. Imagine it would have escaped us, both Houses, and it would have gone out there and somebody would be talking about how Parliament could not be able to look at the issues of Kshs3 billion. So I think it is important that we keep reminding ourselves that when figures come around we really need to be very careful.

The other thing that I wanted to bring out is that counties are grinding to a halt. And when they grind to a halt for a moment, a lot of our rural economies are more dependent on the monies that get to the counties. In one way or the other, the monies that are transferred to the counties support our economies in a much bigger way to an extent that when months pass without money getting transferred to the counties, there is a very big problem, and a genuine one for that matter.

The other important thing is the issue of conditional grants. I remember in the first year of the last Parliament, monies were given. We gave monies to the counties. And these monies were given in terms of the functions, which included the issue of polytechnics. If you checked around, it is like no county put any money on those village polytechnics, to an extent that we had to go to the second or third year to make sure that we placed conditional grants for purposes of village polytechnics. So it is important that we keep reminding ourselves of what should make counties behave well, particularly when it comes to funding for conditional grants, such that we are sure that certain services and activities are carried out the way they are supposed to be done in a single year.

The other thing that, as we talk about this is important we remind ourselves, is the numerous factors that are listed in Article 203(1) of the Constitution. They are a number. But apparently as we move on, in the last number of years as we implement this and as we share revenue, it is like some of these factors are not considered. One of them is the whole issue of optimising the revenues that can be collected locally and a reward is supposed to follow. When a county does very well, the Constitution allows that that county needs to be rewarded.

Right now we are talking about counties grinding to a halt, not because of anything but a lot of them are unable to collect levies from internal sources of revenue generation. A lot of them have not been creative. A lot of them are dependent on the national government to an extent that when there is a small technical problem like this, counties are unable to operate and yet it is a requirement in the Constitution. With time we need to check how many counties are able to do certain things beyond what ordinarily happens such that we are able to reward them. I remember what is happening in my own county and the neighbouring counties. They are unable to raise a quarter of what the local authorities were generating when we were under local government. So in the end they are almost 90 to 95 per cent dependent on what is coming from Nairobi. This is something that, in my view, if we were checking in terms of those factors, once you are able to generate more money, you are rewarded with more money in law because that is in the Constitution.

As I support this, for purposes of the county governments to be able to run in the next number of years, they need to focus on their own internal revenue sources beyond depending on Nairobi such that they are able to do certain things on their own.

Hon. Speaker, thank you.

**Hon. Speaker:** Hon. Mobo Mohamed, the Member for Lamu.

**Hon. Member:** He is not here.

**Hon. Speaker:** The Member is absent, not desiring to be present. Where is the Member for Ikolomani, Hon. Shinali? The Member for Narok North is also not here. Member for Mandera West, Yussuf Haji.

**Hon. Yussuf Adan:** Thank you, Hon. Speaker. I stand to support this Bill. It touches a lot on devolution support in that these monies we are now discussing are going to help the activities of devolution. Devolution has been seen as the key parameter to our development. Since devolution started in Kenya, a lot has changed in terms of development. Therefore, it is our interests, the interest of this country, the interest of the people of Kenya, that we make sure that monies meant to go to counties go to counties as per the scheduled times. Delays in sending money to counties lead to delays in implementing projects. And since a lot of activities have been devolved, including critical services like health and water, the earlier we move these monies to the county level the better. Since this financial year began, we have been doing a lot of politicking at the expense of development.

Also, look at the issue of accountability and transparency. As Members of Parliament, one key role that we have is to make sure that we oversee the implementation of projects and activities that are being funded through government coffers. It has been realised that there is a lot of mismanagement of funds, a lot of opaque activities, a lot of monies that are not accounted for when we look at the reports of the Auditor-General and other reports. It is the responsibility of this House to ensure that we enhance the oversight activity and to make sure that when these monies go, they are used for the intended purposes.

Finally, while supporting this Motion in regard to the issue of revenue collection, before devolution, the county councils, urban councils and municipal councils used to depend a lot on revenues that had been collected locally. However, with devolution, they started getting monies from the Government and the activity of internal collection went down. Is it the monster corruption that is there that the revenue being collected from the public do not go to the accounts it is supposed to go to? Still, it is our responsibility to ensure that our oversight activity is enhanced.

I support this Motion and request those revenues to be sent to the counties as quickly as possible. Currently, I think the situation at the county levels is very critical. They do not have money. No much activity can be done hence facilities have been run down.

**Hon. Speaker:** Member for Sirisia Constituency.

**Hon. Koyi:** Thank you Hon. Speaker for giving me this chance to also contribute. Let me start by appreciating Hon. Mbarire for having detected the mistake so that the public out there would know that, indeed, this House is working.

Hon. Speaker, indeed, there is a cry out there. The county governments are really crying for money. Money should be given. I have stood here to support this Bill so that the county Government can also move and do their development as needed.

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

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

However, there is a problem that this House needs to sort out. We all come from counties. To be honest, there is a lot of theft by some counties and governors. To give an example or evidence, I can openly say that last week on television, we saw - and this was I guess from the side of Tharaka-Nithi - a governor actually bought a generator worth over Kshs2.5 million. This is outright stealing. Even the world saw it on television. The governor took the generator to his hotel. So, even if we approve money, we also need to check. As Members, we do not have a way to check. But the members of county assemblies (MCAs) have. They are the ones that are supposed to play oversight. However, some of them are inferior. The Government or this House should look for a way of approving the money to the counties. We are just giving them money to enrich themselves and not actually bringing the money back to the Exchequer. I support the Member who has just spoken here and said that the collections have really gone down. Indeed, some counties are not even showing that they are collecting any revenue and bringing it back to the National Treasury so that it can be allocated back to other counties. This is because there are some counties that collect little money because of their areas. Where I come from, Bungoma County, there is no revenue collection because the Governor, after elections, went round and told the taxpayers not to pay revenue. So, I do not know how that one is going to be. However, due to the cry, because we are punishing the innocent *wananchi*, we are approving that counties should be allocated these monies. It should be urgent. The move should be quick so that operation should go on. I support.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You support. There is a point of order. What is it Hon. Member for Kwanza? Is it a point of order or point of information?

**Hon. F.K. Wanyonyi:** On a point of order. Hon. Temporary Deputy Speaker, I think this Motion is straight forward. I think the Mover made it very clear. It was just an error. Can I stand under Standing Order No.95 to end the debate so that you can be able to call the Mover to answer? It is a straight Order. We should not be offended. All we want is the money to be allocated to the counties.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): At least, you are rising on a point of order. Hon. Members, Standing Order No.95 is procedural and right. But it is with my discretion before I propose his Question. That is because the House has to take direction. Let me, at least, give a chance to the Member for Ikolomani Constituency. Unfortunately, he is not there.

Member for Mwingi North, the Floor is yours.

**Hon. Nzungu:** Thank you, Hon. Temporary Deputy Speaker. I take this opportunity to contribute to this Bill. As I make my contribution, I want to bring to the attention of the Members that, indeed, this Bill is long overdue. As a matter of fact, there is a lot of suffering in the counties. This is the only way money can go to the lower levels, especially now that the national Government has not been spending money on the lower levels. There is also the NG-CDF money which usually cushions the communities down where we come from, and the county money as well. I think it is important we pass this Bill.

I am aware there are contractors whose assets have been sold off by banks. Others have gone bankrupt. I think it is a serious matter that we must, indeed, pass it as a Bill. However, I want to refer Members to the table. I just want to ask this question; and my friend from Meru County, I beg your pardon because I see Meru County alone taking so much money from the allocation. For example from column A, Meru has got Kshs7 million compared to all these other counties where they are getting Kshs88,000. When you go to column D, you still find that Meru is getting Kshs3.92 billion as compared to other countries that are beneficiaries of column B

getting Kshs40 and Kshs20 million and Nairobi coming closer by getting Kshs2.1 billion. That is a question I wanted to bring for consideration of the House as we debate this Bill. Also, when you go to Section 5(i)(ii)(iii) and the last bit of it which says the conditional allocations amounting to Kshs4 billion financed by a grant from the World Bank for the Kenya Development Support Programme (KDSP) Level II grant shall be allocated among the county governments on the basis of the criterion which shall be determined as follows:

“Allocation to the eligible county governments shall be on the basis of a criterion comprising of the performance score determined in paragraph “a” above and the revenue sharing formula approved by the Parliament in accordance to Article 217 of the Constitution”.

I find the entire clause 5(3) a very grey area which can be subject to manipulation by the Executive. That is why I would wish that we as a Parliament look into detail and I appreciate the fact that the Senate has discussed this Bill. The reason why they bring it to us is to point out grey areas. This Kshs4 billion can be subjected to issues by the Executive because the Cabinet Secretary (CS) is the one that has the responsibility or the onus to distribute that money.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The last one before I get to... This is at my discretion as I said before. Let us have the Member for Tigania West.

**Hon. Mutunga:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to support this Motion and basically to respond to the Member who has just spoken. I come from Meru County and I would like to take the Members step by step on the process of coming up with project funds and how project funds are allocated.

You realize that most of this money we are talking about today is under Part II of the Fourth Schedule of our Constitution in terms of the devolved programmes or the devolved activities under devolution, agriculture, medical services and others fall under Part II of the Fourth Schedule.

Projects are designed based on the project activities themselves as discussed by the stakeholders and agreed upon. The project money apportionment depends on the activities that are going to be conducted in those areas.

First of all, I rise on a point of order. I did not think this Motion was brought basically to discuss whether the error came from Meru or not. So, the Member is out of order to bring in specific issues here and discussing Meru as a case. Meru is a county; it is not a case. I would like us to look at what are the activities that have been funded. I would like to thank the person who discovered this error because one of the things he or she has done accurately and effectively is to put this House out of this disrepute because it could have been blatantly passed and later on discovered that it has such a major error.

I speak from the background of having participated specifically in the design and development of the project on the National Agricultural Inclusive Growth Project. This project takes into account many factors including the important attributes of climate change response which basically falls under mitigation and adaptation measures. When you look at some of these measures, it depends on where these activities are taking place. So, the magnitude of the activities themselves will basically speak to the amount of money that is going to be apportioned to those areas if those activities are going to have the necessary impact.

The design of some of the loans and grants that are given by the World Bank especially are basically dependent on specific areas in view of the magnitude of the problem under the negotiations which normally occur before the project agreement is signed. Normally, there is an agreement on how much money should be apportioned to a specific activity in a specific area.

So, these are specifically tailored towards some of those areas. Therefore, there is no case in point to bring out a county as having been erroneously allocated money which is not supposed to be true here.

The recent matters that you heard, there is serious planting in parts of Meru County. It was not in a position to respond to many of those issues. Meru County has not been a serious subject to funding but, unfortunately, this time round, it was. Secondly, there was no money in the county as it is in all other counties. Therefore, because some of this money is targeted to emergency response services and that money was not there, many people in Meru died. Counties are suffering because they do not have that money as yet. They have programmes laid out in the Kenya County Integrated Development Programs (KCIDPs) and rolled out into annual programmes which have not been supported. So, the more we keep this money with us or the more the money is kept in the Exchequer before it is released, the longer it takes for those counties to respond and, therefore, the more serious danger it causes.

Hon. Temporary Deputy Speaker, there is something called matching grants which are given by the national Government in collaboration with the donor or the supporting agency that supports specific activities. If this allocation went with an error, there would still have been issues and it would have been discovered at that point in time because the matching grants calculated according to the agreed formula would not have yielded the expectations of this particular programme. The specificity of this programme is important and I do not need to belabor on that point any more.

I would like to highlight one more point in terms of delays in funding in view of a declared effectiveness of a project. This project had an effective date. After the negotiation, then there was a set date for effectiveness. The longer we delay, the more we suffer as a country because we have a loan that is not operating and the money is not being utilized for the intended purpose. So, the money is costly to us because the bank will count on those dates, according to the bank, effectiveness dates has already been agreed upon; a disbursement formula has been agreed upon. It is upon the country to withdraw the money or not. The longer we take the more we pay and so it is important for us to correct that anomaly quickly so that the money moves to the counties for purposes of being expedited or being utilized for the intended purpose. I support this Motion and withdraw any form of doubt that Meru was considered erroneously.

We need to look at the entire allocation from all the counties and look at what is the issue. I would like it to come out clearly that Meru was not the issue for discussion. We are not here to discuss how much Meru was allocated *vis-a-vis* others.

Finally, it is important for us to fast-track this particular process so that we do not put the country into unnecessary cost besides being unable to move the activities at the county level. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, very well spoken. Hon. Members, following the advice of the Member for Kwana under Standing Order 95, let me put the Question.

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

I call upon the Mover to reply, Hon. Cecily Mbarire.

**Hon. (Ms.) Mbarire:** Thank you, Hon. Temporary Deputy Speaker. With your permission I would like to donate three minutes to Hon. Naomi Shaban.



**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Cecily Mbarire, I know you are philanthropic enough but following the procedures of the House and our own Standing Orders, this debate was prematurely closed because it was done through Standing Order No.95 and so at this point, we do not donate time.

**Hon. (Ms.) Mbarire:** Much obliged, Hon. Temporary Deputy Speaker. Let me take this opportunity to thank all the Members who have contributed to this important Motion. We know that many counties are crying out for revenue allocation from the national Government as stipulated in the Constitution. I think it is within our mandate to therefore pass this Bill so that counties may continue to work, do their projects in good time and businesses get more serious than it has been over the last couple months.

One of the issues which has come out of this debate and caught my ear is the challenge for counties to begin generating local revenue that will help them grow so that over-dependence on the national Government can reduce. We hope that going forward we are going to see more counties working to ensure that there is enough business going on and a friendly environment for investors so that they can attract revenue from licences *et cetera*. We should not burden the already heavily burdened taxpayer but look for ways which will encourage people to pay revenue which will help counties to grow. I have no doubt in my mind that these are the challenges which the new governors who were elected across the country are facing.

We want to see more competition across counties so that they can do well and devolution can make more sense as we move forward. It is important to inform the House that yesterday, as President of Kenya Uhuru Kenyatta was speaking he emphasised on the need to continue supporting devolution and ensure that it works. Going forward we expect that county allocations to be timely without challenges. I urge Members from both sides of the House to help in getting the normalcy we need as a nation so that businesses can thrive and more revenue is collected by those in authority and by those bestowed upon the duty of collecting revenue so that more money can go to the counties. The more we protract our political battles the more we really expose this nation to real suffering which will affect the *wananchi* we claim to be fighting for.

With those remarks, I want to thank all the Members and appreciate the many ideas which have come forth and more importantly appreciate the fact that this House does recognise the need to continue giving full support to devolution, so that our country may change and develop. With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I can confirm that we have the requisite numbers for me 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)*

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker*

*(Hon. (Ms.) Mbalu) left the Chair]*

IN THE COMMITTEE

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

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Order Members! I want to pronounce that we are in the Committee of the whole House to consider the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017). Hon. Members, there are no amendments to this and so, those who are leaving the Chamber please do so quickly, so that we can have some decorum when considering this Bill which is very short Bill.

*(Clause 2 agreed to)*

*(Clause 3 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

Hon. Members, we are through with the Committee of the whole House on the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017). I therefore call upon the Mover.

**Hon. (Ms.) Mbarire:** Thank you, Hon. Temporary Deputy Chairlady. I beg to move that the Committee doth report to the House its considerations of the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017) and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**REPORT AND THIRD READING**

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have the Chairperson.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the County Allocation of Revenue (Amendment) Bill (Senate Bill No. 9 of 2017) and approved the same without amendments.

**Hon. (Ms.) Mbarire:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Naomi Shaban to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Dr.) Shaban:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. (Ms.) Mbarire:** Hon. Temporary Deputy Speaker, I beg to move that the County Allocation of Revenue (Amendment) Bill (Senate Bill No. 9 of 2017) be now read a Third Time. I also request Hon. Naomi Shaban to second.

**Hon. (Dr.) Shaban:** I second.

*(Question proposed)*

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. Mariru): I can read the mood of the House. I have confirmed that there is quorum present in the House for purposes of putting the Question.

*(Question put and agreed to)*

*((The Bill was accordingly read the Third Time  
with leave of the House and passed))*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Mariru): The time being 4.55 p.m., this House stands adjourned until tomorrow, Thursday, 30<sup>th</sup> November 2017 at 2.30 p.m.

The House rose at 4.55 p.m.