

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 18th September, 2018

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

PAPERS LAID

The Speaker (Hon. Lusaka): Senate Majority Whip, you may lay the Papers on behalf of the Senate Majority Leader.

Sen. Kihika: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Tuesday, 18th September, 2018:-

REPORT ON THE FINANCIAL STATEMENTS OF TAITA-TAVETA COUNTY ASSEMBLY MORTGAGE FUND

Report of the Auditor-General on the Financial Statements of the Taita-Taveta County Assembly Mortgage Fund for the year ended 30th June, 2016.

REPORT ON THE FINANCIAL STATEMENTS OF MOMBASA COUNTY CONSOLIDATED REVOLVING FUND

Report of the Auditor-General on the Financial Statements of the Mombasa County Consolidated Revolving Fund for the year ended 30th June, 2017.

REPORT ON THE FINANCIAL STATEMENTS OF MOMBASA COUNTY ALCOHOLIC DRINKS CONTROL FUND

Report of the Auditor-General on the Financial Statements of the Mombasa County Alcoholic Drinks Control Fund for the year ended 30 June, 2017.

(Sen. Kihika laid the documents on the Table)

The Speaker (Hon. Lusaka): Do we have any Member of the Committee on Lands, Environment and Natural Resources to table the report? I can see Sen. Halake.

REPORT ON THE PHYSICAL PLANNING BILL, 2017

Sen. Halake: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 18th September, 2018:-

The Report of the Standing Committee on Lands, Environment and Natural Resources on the Physical Planning Bill (National Assembly Bills No.34 of 2017).

(Sen. Halake laid the document on the Table)

The Speaker (Hon. Lusaka): Let us move to the next Order.

STATEMENT

DEATH OF BABIES AT PUMWANI MATERNITY HOSPITAL

Sen. Sakaja: Mr. Speaker, Sir, I would like to make a statement pursuant to Standing Order No.47(1) which provides that a Senator may make a statement on a matter of countywide, inter-county, national, regional or international concern or on a matter of general topical concern.

On Monday, 17th September, 2018, the Governor of Nairobi City County made an impromptu visit to Pumwani Maternity Hospital in Kamukunji Constituency in Nairobi City County. During the visit where the said Governor disguised himself as a *boda boda* passenger so as to catch the hospital officials off guard, several issues were unearthed.

During his visit, dead bodies of 12 babies were found placed in carton boxes and plastic bags at the facility. The Governor, sensing foul play, also caused a scene at the hospital and immediately ordered the suspension of the hospital board as well that of the management of Pumwani Maternity Hospital.

There are conflicting reports as to the cause of deaths of the babies, from stillbirths to a reported power blackout that had happened at the facility earlier.

Mr. Speaker, Sir, from the outset, allow me to condole with the families that lost their babies whatever the circumstance was during that specific time as well as those who have lost their babies at the facility before. As a parent, no words can be enough to give comfort when you lose a child and no family deserves to go through that pain. May God rest the souls of the little angles in eternal peace.

As we discussed last week in this House, health is the most important devolved function. However, the management of health in our counties leaves a lot to be desired. Pumwani Maternity Hospital, for instance, is the largest maternity facility in East and Central Africa and it was once a very prestigious hospital. Many Nairobians, Kenyans and East Africans are proud to have been born at Pumwani Maternity Hospital. However, over the years, the status of the hospital has deteriorated and it is now a hospital of last

resort for those who cannot afford other facilities as opposed to maternity hospital of choice that it was once was.

In addition to poor care of mothers and children at the facilities, there have been claims of child trafficking where healthy babies are swapped at birth for the dead babies who are then presented to their parents as stillborn births while the living babies are sold at a fee, both locally and internationally. What happened yesterday is part of the suspicion of what has been happening for a long time.

Mr. Speaker, Sir, yesterday's incident brings a number of things to light and many questions in mind with respect to the management of health facilities in Nairobi City County. As unfortunate as the death of babies and mothers during child birth is, are there any morgue facilities at Pumwani Maternity Hospital to cater for the circumstances? No. Not even a cold room. The health facilities at the county level and specifically Pumwani Maternity Hospital have adequate provision for the dignified preservation of dead bodies. Why is it that carton boxes and plastic bags are being used as storage?

Is there no provision for body bags despite the fact Nairobi City Government has a huge budget of more than Kshs32 billion? Are the deceased babies registered in the death notification register as provided for by the Registrar of Persons who registers births and deaths? If there is no mortuary in Pumwani Hospital, was it unusual for dead bodies to be found at this facility? Is it not the same governors and county governments' prerogative to ensure that dead bodies are transferred promptly and in a dignified manner to the mortuary or to the affected families as provided for in the law?

I request that you direct the Committee on Health to urgently look into this matter as well as the general state of healthcare management at the Nairobi City County. I wish that the Committee on Health investigates the state of health facilities as Kenyans from all over the country seek medical care in Nairobi City County. The Committee should look into the human resource issues and whether there is adequate financing, provision of drugs as well as healthcare practitioners.

In addition to this, Mr. Speaker, Sir, there is need to look at stalled projects, for instance, the 320-bed capacity Mathare North Hospital that has become a white elephant. This hospital has the capacity to reduce the pressure on the referral system and on hospitals such as Mama Lucy Kibaki, Pumwani Maternity, Mbagathi as well as Kenyatta National Hospital.

If the Committee takes this up, ideally, the Chairperson should give an official explanation on the issue of these deaths that have been recently reported in sections of the media and the circumstances surrounding them and an analysis of the number of deaths recorded in the past one year *vis-a-vis* the number of successful deliveries carried out. Additionally, the Chairperson should give a report on the allegations of babies being stolen or swapped with dead ones without their mothers' knowledge and are later sold through child trafficking.

This is a matter that I am also taking up as the Vice Chairperson of the Committee on National Security, Defence and Foreign Relations. I hope that we can do this jointly with the Committee on Health because that is a criminal offence. The reports that we are getting is that prominent Kenyans are involved in this child trafficking syndicate that has been going on for a while.

Finally, I would like to get a summary of the budget allocation provided by the Nairobi City County to the hospital and an evaluation of whether it is enough to cater for the day-to-day operational needs of the hospital and other such facilities in Nairobi City County.

Mr. Speaker, Sir and fellow colleagues, I ask for your support in this matter.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Of course, all of us watched this distressing impromptu visit by the Governor for Nairobi City County yesterday. However, it paints a very bad picture of the status of maternal health care. At what point did it become business as usual to put dead bodies in cartons, polythene bags and store them so that they could be collected, say, Monday, Wednesday and Friday yet Pumwani Maternity Hospital is possibly seven or eight kilometres away from the City Mortuary?

My eldest sister was born in Pumwani Maternity Hospital in 1974. We used to be proud of this hospital. I had an occasion to deal with a child who was born with cerebral palsy because the labour of the mother took more than 14 hours. This condition is caused by lack of oxygen at the point where the baby reaches the bridge and it takes too long for the baby to be taken out. What is worse, after I tweeted about it, a lady looked for my number and called me. She told me: “Sen. Mutula Kilonzo Jnr., I have seen your tweet. What bothers me most, because I was in that hospital and had a stillbirth, is that I never buried my child.” That is what bothers that lady until now.

At Pumwani Maternity Hospital, when a mother has a stillbirth, they do not even bother to deal with the mother. So, this lady, a prominent lawyer, ended up with milk for a week after the death of that child. She is traumatized to date because of the way Pumwani Maternity Hospital deals with ladies who lose their children.

While we condemn the action of treating the fetuses and angels in the manner that they were treated, the Governor still found many women on the queue waiting for 10 to 14 hours in labour. We are in Nairobi City County. What happens to county hospitals? I am extremely disappointed with the Committee on Health because they have not said anything. We said that this is a devolved function.

Sen. (Dr) Ali: On a point of order, Mr. Speaker, Sir. Is he in order to say that we have not said anything when the Committee on Health met this morning and gave a press statement on that issue just an hour ago?

Sen. Mutula Kilonzo Jnr.: Okay, Mr. Speaker, Sir, they said an hour ago. However, it does not change the fact that I would have expected the Committee on Health to be at Pumwani Maternity Hospital. That is the way that we are supposed to deal with things just like the Governor. We take pride that this is a devolved function. The First Lady went out of her way to buy 47 mobile clinics in the Beyond Zero Campaign. This is a tragedy beyond tragedy. The fact that there is an accusation that generators were switched off and these babies were unable to survive is something that we, as, the Senate, must interrogate.

Lastly, Mr. Speaker, Sir, it is so disappointing that a hospital at the rank of Pumwani Maternity Hospital does not have a cold storage. God help this country. When I say that we live in a country where the rich go to Aga Khan and Nairobi hospitals and the poor are left to die--- I have seen a message that is in comparison, that out of 156 births,

12 babies died. Why should 12 fetuses be an SI Unit for “we are doing well”. One of those 12 Kenyans would have become the President of this Republic. Why not have a scorecard that out of 156 births, 156 babies survived in Nairobi City County which houses the capital of this country. I cannot even express my disappointment!

If this hospital does not have a cold storage, it means when these children are born, there is no heater to keep them warm. Even when they are born prematurely, there is no Neonatal Intensive Care Unit (NICU) that is available at Aga Khan and Nairobi hospitals. Why am I so bitter? My son was born on an emergency surgery and spent two weeks in NICU at the Aga Khan Hospital. Why should other Kenyans be born and treated differently?

The Speaker (Hon. Lusaka): Senate Majority Leader, I gave you a little bit more time. We need to manage our time because we have 15 minutes.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I join Sen. Sakaja in passing my condolences to the families that lost their loved ones. I pass my sympathies and pray for God’s grace to be upon them and their families.

Secondly, I am glad to hear from the Vice Chairperson of the Committee on Health that they are doing something about this issue. We had extensive discussions in this House last week about the performance of that Committee, and I am happy that their response this week is a clear indication of progress that has been made for the last one week.

Thirdly, it is only when we get the facts that we can come up with proper interventions as a House. There are many conflicting conversations about the Pumwani Maternity Hospital issue. One is the circumstances under which the babies died. I hope the Committee will come up with an answer on that issue. Two is the question of preservation of bodies in that hospital. I agree with Sen. Mutula Kilonzo Jnr. that Pumwani Maternity Hospital is 8.2 Km away from the City Mortuary. There is no reason the bodies should be waiting for two to three days before they can be carried to a more dignified place for preservation.

Thirdly, there are even more serious allegations as per the Chairperson of the Senate Committee on Health with regard to child trafficking which is a very serious issue. I saw a report in one of the local television stations about how children and bodies are trafficked---

Perhaps that is why bodies are kept there; not because they have no means to transport them to the City Mortuary. They must be there to be used as an excuse so that every time a healthy child is born, an excuse is given that it is part of the children that have died. Holding them for a longer period gives traffickers more excuse and time. It is a very lucrative business and international in nature.

If one has been watching Cable News Network (CNN), it has been running a programme that is bringing attention to the slavery that is child trafficking. I had an opportunity to work with John Hopkins University in Washington DC in my days; ten years ago, on an anti-trafficking project. It is a mess especially in countries where they are in conflict and places where we have slums. Pumwani Maternity Hospital is so popular because it is a catchment area of people who live in slums. Since we have the Free Maternity Programme, then we have enough number for this business to thrive.

Mr. Speaker, Sir, that is what bothers me most because it is slavery of untold magnitude and an issue where we must do something. When I watched that documentary I forgot, but I wanted to talk to the Chair of the Health Committee to ask what the Committee was trying to do.

I saw Members of the National Assembly being interviewed in that regard. It is a serious cartel that is involved in this business and people who do it for international business. I hope that this Committee will be bold enough to come up with a response that can be acted upon by this House and Republic to ensure the safety of our children is achieved.

Mr. Speaker, Sir, finally, I believe that it is our duty as Senate to continue holding our counties accountable. We also need to work closely with the county assembly where the governor has admitted that there is a problem and any other partners in the national Government to find a solution.

I beg to support.

The Speaker (Hon. Lusaka): Let us have Sen. (Dr.) Musuruve for three minutes.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice to this very important statement. First of all, allow me to wish you a very happy birthday.

(Laughter)

I actually need to do that since we are birthday mates. You remember last year we celebrated it in Naivasha and it was quite great. We got the happy birthday cake from the Senate. Let me go back to the statement.

Mr. Speaker, Sir, I commend the---

The Speaker (Hon. Lusaka): I think Members are wondering which hotel we were in. You remember we celebrated together as Senators during the induction course in Naivasha. Just to put the record straight.

(Laughter)

The Speaker (Hon. Lusaka): Proceed.

Sen. (Dr.) Musuruve: Yes, we celebrated together with the entire Senate. I did not even expect a birthday cake from the Senate team.

Thank you very much Naivasha team.

Mr. Speaker, Sir, back to the business of the House, I commend Governor Sonko for what he did. The fact that he went to the Pumwani Maternity Hospital *in cognito* was quite commendable and very good for a governor. He was able to see what exactly happens on the ground without using a proxy, agent or anyone telling him what is happening in the county.

I was born in Pumwani Maternity Hospital, and I have fond memories for it. It is a hospital that serves the common man of this country. It is a painful thing if the staff is not keen on their work. The fact that dead children are wrapped in paper bags is unthinkable.

Mr. Speaker, Sir, even the issue of people selling babies is wrong. It is wrong and a painful thing that a mother can be pregnant for nine months and then when they have just delivered, someone steals the baby and walks away with it. It is a painful thing for the mothers.

There is need for the hospital to serve the people of Nairobi City County because health is a devolved function. There is also need for medics to take their work seriously especially in Government hospitals, because they serve the common man whom we are here to represent. We cannot keep quiet when the common man is being violated in terms of health which is one of the Big Four Agenda. If we are to realise them, we need to ensure that things are straight.

Thank you, Mr. Speaker, Sir, for giving me the opportunity.

The Speaker (Hon. Lusaka): Let us have Vice Chair of the Committee on Health.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I thank the Senator of Nairobi for bringing this issue here. We are prepared and ready to work with your Committee to make sure that we reach the bottom of this.

I will not congratulate the Governor for Nairobi City County for doing his work.

(Applause)

As he does his work, we should not politicise the death of our children. It is unfortunate that these infants lost their lives. The Governor of Nairobi City County was the Senator of the same City for the last five years and has been the governor for the last one year. He knew that Pumwani Maternity Hospital did not even have a cold room. We should not, therefore, politicise this issue.

The issue which is there is the death of infants, which is unfortunate and happened in the wrong way. That is possibly all that the staff could do; to wrap the bodies and put them somewhere. The information we are getting is that it is the routine that this hospital takes these bodies to the mortuary every two days. Why should that happen? Everybody has asked that, but the most important thing is that the hospital which has been one of the biggest for many years does not even have a coldroom. This is sad.

If the governor cannot do anything else, he can provide a cold room for the hospital immediately, so that our dead infants do not undergo that shameful experience of being wrapped in paper bags and kept in boxes.

Mr. Speaker, Sir, the Committee will do what it can. We are planning to go there tomorrow. With the support of the Senate Committee on National Security, Defence and Foreign Relations, we will see what we can do. We will make sure that we reach the bottom of what is happening there.

Sen. Wetangula: Thank you, Mr. Speaker, Sir, for giving me an opportunity to add my voice to this rather bizarre and unfortunate incident. The Senator for Nairobi City County is right in bringing the issue to the Floor because Pumwani Maternity Hospital is the most famous maternity hospital in this country. There is no other hospital that delivers more children than Pumwani Maternity Hospital.

In some clumsy attempt to explain what happened, I saw a statement from the management that appeared to indicate that out of about 126 children born, 12 had died.

That is a very large percentage. Are these children dying out of negligence, complications in delivery or what is the problem?

More important is the issue that children who have died under inexplicable circumstances are then packed in cartons like chicken, mangoes or melons and kept in a store. I laud my Muslim brethren because when one passes on, they take the least available time to dispose of the body through burial. When somebody dies – whether it is an infant or an adult – the most natural thing to do is to take the body to the morgue. Pumwani Maternity Hospital is not the only one without a morgue; there are many hospitals without morgues. However, when somebody dies in a hospital, the natural instinct is to transport the body to the nearest morgue for preservation; not to keep bodies in cartons!

Mr. Speaker, Sir, the Committees you are directing to go and look at this issue must not just go to find out where the bodies were piled or kept; why and so on, and so forth. They should also find out what is ailing this hospital; a hospital that is so popular for delivery of our children in this city. Secondly, as a House through this Committee, we should look far and wide and include all other counties. In our own county where you and I come from, you will remember that we had a situation where the bodies of those who had lost their lives on a Friday were still lying in hospital beds where other patients were by Sunday, which is not acceptable anywhere. This is something that this House must be seized of, must act quickly and must show the country that we care, particularly for the young children who have not even tasted life.

Thank you, Mr. Speaker, Sir.

Sen. Seneta: Thank you, Mr. Speaker, Sir, for also giving me a chance to add my voice to this very important Statement by the Senator for Nairobi City County.

From the onset, this is a very sad thing to have happened to the mothers of this nation in the 21st Century. I want to condole with the families of the 12 infants. It is heartbreaking for such an incident to happen, not because we lost these infants, but because of the way we have kept them. When I was listening to the media, I heard that the deaths occurred on a Friday, yet the bodies of the infants were kept in a paper bag on Saturday, Sunday up to Monday. It is high time that we respected lives and our citizens.

Mr. Speaker, Sir, I urge this House, through the Committee of Health, to also visit our counties. If this is happening in the City of Nairobi, which hosts the Parliament of this Republic, what do you think is happening in some dispensaries in Garissa, Kajiado, Narok and Kitale? What is happening in the other small dispensaries there? It is high time we looked at the resources that we are allocating to these health centres, health facilities and hospitals. It is also high time for us to get to know their priorities.

In this particular case, Mr. Speaker, Sir, we may need to look at our priorities as a country. How can such a hospital lack a facility to store dead infants? How can such a facility lack a vehicle to transport these dead bodies to the mortuary? How can such a facility lack an automatic generator which can help in case of a power blackout? How can such a facility lack---

(Sen. Seneta's microphone went off)

The Speaker (Hon. Lusaka): Sen. Olekina, you have two minutes.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise to support the Statement by Sen. Sakaja on the inquiry into what exactly is happening in our hospitals. I would like to invite the Committee on Health to look into this issue of health because it is a devolved function.

I know it has been said, and I also read in the newspapers that the Governor paid an impromptu visit. However, the question I wanted to ask – and which is something that this House should be looking into – since this is a devolved function, what is the best way to solve the problems in these hospitals? The issue of Pumwani Maternity Hospital did not start when Governor Sonko took office; it has always been there. It is in the public domain that Pumwani Maternity Hospital has never had a morgue. I think that we sometimes mix up things here because health is devolved. I would have expected that the first person to be suspended by Governor Sonko would have been his County Executive Committee Member (CEC) in charge of Health because if---

Hon. Senators: He has already been suspended!

Sen. Olekina: Now that I have been informed that he has no CEC for health, there is no way that one person can handle all tasks. The Governor should immediately appoint a competent person, because he cannot do everything alone; there is no way! One finger cannot kill a lion. We may want to appear as if we can solve all our problems in this country, but we cannot. The reason why a governor has got people like the CEC's who support him is because certain things cannot work. Therefore, one of the recommendations that the Committee should be making is to ensure that all counties have working CEC's, particularly for health. If one is not there, then that person should be appointed immediately.

Mr. Speaker, Sir, the other thing is the issue of audit. It is important for us to know whether the hospitals in these counties have the facilities that they require. If they do not---

The Speaker (Hon. Lusaka): Your time is up, Senator.

Proceed, Sen. Halake?

Sen. Halake: Thank you, Mr. Speaker, Sir. I also rise to add my voice in support to Sen. Sakaja's Statement.

Please, allow me to offer my condolences to the families of the deceased children. I know that we will be talking of this number of the 12 children as if it is just a label, but those are real families which have been affected by these deaths. This is a sign of the rot that is in our health system. I know that Pumwani Maternity Hospital has been in the headlines for a very long time for below optimal performance in many areas. However, this is a pointer to the fact that our health system, even though it is devolved, is really suffering.

Mr. Speaker, Sir, Governor Sonko may be praised for having unearthed this, but having said that, this reactive approach to doing business can never help us. We cannot have people going to bust these kinds of malpractices when, in actual fact, they are responsible for ensuring that the right and dignified manner of handling dead bodies is in place; and that the right facilities – be they cold storages or body bags – are in place. In fact, Governor Sonko should have disqualified himself instead of seeking accolades for

discovering this. Where was he when there was no generator? Where was he when there were no body bags to make sure that there are dignified ways to handle the dead bodies? Where was he---?

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

(Loud consultations)

Let us consult *pole pole*.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, we have Sen. (Prof.) Ongeru here. We have the numbers and if possible, we can proceed. I did not want to interrupt my colleague. I request you to give her another two minutes. I request that we do the Division because we have the numbers at the moment. There are still more than five Members who want to contribute.

The Speaker (Hon. Lusaka): Let the Senator complete her contribution. I urge Members to remain in the Chamber for the Division.

Please, proceed Senator. That is the last statement.

Sen. Halake: Mr. Speaker, Sir, the way we should run our health systems or the counties is not to reactively play to the gallery and for the optics of things, appear to have unearthed things that are supposed to have been our work. We are supposed to have put in place measures to ensure we have these things.

Mr. Speaker, Sir, the Leader of Majority has ---

(Hon. Senators spoke off record)

The Leader of Majority has not requested but has sabotaged my contribution. So, I will sit down.

The Speaker (Hon. Lusaka): Next Order.

BILL

Second Reading

THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2017)

(Sen. Murkomen on 26.07.2018)

(Resumption of Debate interrupted on 12.09.2018)

I order the Division Bell to be rung for one minute.

(The Division Bell was rung)

I now direct that the doors be locked and that the Bar be drawn.

(The doors were closed and the Bar drawn)

Hon. Senators, I will now put the question.

(Question that the Physical Planning Bill (National Assembly No.34 of 2017) be now read a Second Time put and the Senators proceeded to vote by county delegations)

I am told there was a bit of challenges, so we will start again.

Hon. Senators, who need assistance, please come forward. Sen. Malalah and the Senator for Bungoma, please approach the Clerk-at-the-Table.

DIVISION

ELECTRONIC VOTING

(Question, that the Physical Planning Bill (National Assembly Bills No.34 of 2017) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County

NOES: Nil

The Speaker (Hon. Lusaka): Hon. Members, these are the results:-

AYES: 24

NOES: 0

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 24 votes to 0)

(The Bill was accordingly read the Second Time and referred to a Committee of the Whole tomorrow)

The Speaker (Hon. Lusaka): I now direct that the Bars be drawn and doors opened.

(The Bars were drawn and doors opened)

Let us move to the next Order.

BILL

Second Reading

THE CARE AND PROTECTION OF OLDER MEMBERS
OF SOCIETY BILL (SENATE BILLS NO.17 OF 2018)

The Speaker (Hon. Lusaka): We shall defer that.

(Bill deferred)

Let us go to the next Order.

MOTION

APPROVAL OF REPORT ON THE COUNTY GOVERNMENTS
CASH DISBURSEMENT SCHEDULE FOR FISCAL YEAR 2018/2019

The Speaker (Hon. Lusaka): Let us have the Chairperson of the Standing Committee on Finance and Budget

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to move-

THAT, pursuant to Standing Order 183, the Senate approves the Report of the Standing Committee on Finance and Budget on the County Governments Cash Disbursement Schedule for Fiscal Year 2018/2019, laid on the Table of the House on Thursday, 13th September, 2018.

This House will recall that we passed both the Division of Revenue Bill and County Allocation of Revenue Act. In fact, pursuant to Section 17(6) and (7) of the Public Finance Management (PFM) Act, the Cabinet Secretary for the National Treasury and Planning, in consultation with the Inter-governmental Budget and Economic Council (IBEC), is required to submit a cash disbursement schedule to the Senate for approval.

There are three schedules in the CARA this Financial Year. Members will recall that there was only one schedule with the component of sharable revenue. There is the national Government revenue which is supposed to go to counties as conditional grant and also the conditional grant in form of loans and grants from donors.

The County Cash Disbursement Schedule is a key Senate resolution that operationalises the release of funds as per the annual County Allocation of Revenue Act. The First Schedule is about disbursement of part of the revenue allocated Kshs314 billion

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to all the counties from July, 2018 to June, 2019 in proportions that are supposed to be disbursed to the counties on every 15th day of the month.

The Senate received the Schedule on 22nd August, 2018, and it was tabled on 11th September, 2018. The Committee did not go through the three schedules that were presented. The First Schedule, which is the component of sharable revenue, had a few errors but they have been corrected. In terms of the totals and allocations going to the various counties, it has been tested and it is as per what was passed in the Act.

We recommended that the First Schedule be approved with those small corrections. That was noted from the letter from the National Treasury but did not affect the totals. The Second Schedule, which is about conditional allocations from the nationally raised revenue, was supposed to be Kshs25.5 billion according to the Act. This included a component of Kshs9.4 billion for leasing of medical equipment. This has not been included in the Schedule because the national Government is supposed to pay those monies elsewhere. Again, the Committee raised concerns about Kshs9.4 billion, which we need to interrogate the National Treasury and see the equipment that has been delivered or supposed to have been delivered and if they are functioning and the actual cost and what we expect in the coming financial year in terms of the amount.

The Third Schedule relates to the disbursement of conditional grants financed by loans and grants from development partners which should have come to about Kshs33.4 billion. However, in the Schedule, a figure of about Kshs4 billion, which was supposed to be funded by the World Bank under Kenya Devolution Support Programme (KDSP) has not been distributed. The reason given is that there must be certain criterion which is performance-based and counties must meet some criteria before it is disbursed. As a Committee, we will be engaging the National Treasury to see how the disbursement will be done and what the criterion is.

We realised that in the previous financial year, the same amount of Kshs4 billion was provided under the KDSP but only Kshs1.9 billion was disbursed to about 13 counties. That means that Kshs2.1 billion has not been disbursed. Again, we have to interrogate the National Treasury on why it has not been disbursed.

Save for those small concerns, we have looked at the Schedule. As it is, it needs to be passed. We seek the approval of the Senate so that it is passed, so that counties can get money.

The CARA, 2018, was assented to on 29th June, 2018. The national Treasury is supposed to, within 45 days, submit the Schedule to us but they did not do it on time. In fact, our Standing Orders also require that within 15 days after assent, we should have got the schedule. We have lost some time because now we are---

Sen. Cherargei: On a point of order!

The Speaker (Hon. Lusaka): Sen. Cherargei, what is your intervention?

Sen. Cherargei: Mr. Speaker, Sir, we had lined up to contribute on a sensitive matter about the Pumwani saga. However, you did not give proper directions after the Division yet we wanted to share our thoughts on the way forward on the issue.

With your indulgence, could you give us proper guidance because we cannot just overlook a serious and sensitive matter of that nature? Our counties cannot just be wished away. The Committee on Health, led by the Vice Chair, Sen. (Dr.) Ali, was supposed to

be given proper direction on the same, so that we do not perceive it to be moribund and ineffective in terms of discharging its mandate.

Mr. Speaker, Sir, I beg your indulgence so that we move from there.

The Speaker (Hon. Lusaka): Hon. Members, the time for statements was well over. The Committee on Health is already seized of the matter. Those who have any other views can give them to the Committee that will be looking at the matter.

Chair, you may proceed.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I have realised that we are now in mid-September. In fact, the Schedule was supposed to run from July. We urge the national Treasury to fast-track the disbursement of funds to the counties as soon as we pass this.

The cash disbursement schedule is a very important instrument of goodwill that must be implemented to the letter by the national Treasury if we are to support our counties properly. However, you will realise that in the previous financial year, many delays were occasioned to the counties. Money was disbursed to the counties at the end of the financial year, towards June. That was in arrears of about five months and therefore a lot of money was sent the last minute. In the current CARA, we said that it must be on time without delays and deductions.

You will realise that in the Third Schedule, there are a few things which have not yet been distributed. You are aware that the Division of Revenue Bill, 2018, has been amended by both Houses and waiting presidential assent.

Once this is done, we will be forced to amend the County Allocation of Revenue Act (CARA) and thereafter we will come back to the Schedule. Luckily, the schedules are now separated and also those amendments are only related to the loans and grants component of the funding to the counties. We will only then be amending the Third Schedule which relates to loans and grants from development partners.

Mr. Speaker, Sir, I urge the Senate to pass this quickly so that we can now trigger the process of releasing of funds to the counties by the national Treasury.

I thank my Committee for the support they have given. Going forward, I assure that we, as a Committee, will do our best to make sure that disbursement of funds to counties is not delayed.

We must put a mechanism in place for monitoring and evaluation, so that we know how funds are disbursed to the counties. Currently, the requirement is that the National Treasury must publish every month in the gazette what they have disbursed. However, it is a limited documentation where they talk about what was allocated, what was disbursed and the balance. However, we want to know in the details how much of the various components have been disbursed and it is reported to us instead of putting in the newspapers. Let us have simultaneous reporting so that the Senate can be seized of the matter.

Mr. Speaker, Sir, with those many remarks, I beg to move and ask Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. I rise to support the Motion for the approval of the report on the County Governments and Cash

Disbursement Schedule. I want to echo the sentiments of the Chairperson of the Committee that we need to interrogate the timelines.

While the timelines and the Standing Order No.183 require that the national Treasury submits this Cash Disbursement Schedule within 15 days, the national Treasury send it in five days after the assent on 29th June 2018. In my view, this was to delay the disbursement of funds.

The second issue that I would like to bring to the attention of my colleague Senators is the portion (iii) on our observations on page 12. Only 13 counties have qualified for the Kenya Devolution Support Programme on two grounds. Those counties are Baringo, Busia, Garissa, Kajiado, Kiambu, Kirinyaga, Kisii, Laikipia, Makueni, Mandera, Narok, Nyandarua and Siaya. The amount is Kshs1.90 billion only.

The other counties have not complied with the conditions of World Bank in terms of financial reporting. This is something that we must highlight. Although, the Kshs2.1 billion has been put in the budget, that money will not be disbursed to these counties.

Mr. Speaker, Sir, the only thing we, as a Committee, has recommended is to interrogate the level of compliance by counties. Why did counties that are not in this list miss out on funding? Is this something to do with the audit reports interrogated by the Committee led by Sen. M. Kajwang and Sen. Wamatangi, respectively? Has it something to do with financial reporting to the Controller of the Budget? Those are some of the issues that we must interrogate in terms of our work as the Senate. For now, two consecutive financial years, several counties will not receive this fund because either the Committee of Sen. M. Kajwang has not given a go ahead, or they have not complied with financial reporting.

Mr. Speaker, in CARA which is the law on disbursement of funds, Kshs4.4 billion had been set aside for this grant. Only Kshs1.9 billion will go to the 13 counties. A question has arisen; where is the Kshs2.1 billion? Since the Chairperson and Vice Chairperson of Committee on Health are here, it is important now we bring to the attention that every county government from Lamu, Mombasa, Turkana, Makueni, Isiolo, Elgeyo Marakwet, irrespective of size, number of hospitals and number of patients, they are all paying Kshs200 million in advance for medical equipment.

Mr. Speaker, we need to interrogate this conditional grant. The thought of money we have disbursed--- and this issue came about when we were discussing Pumwani Hospital, while Kiambu and Nairobi City counties have big hospitals and dispensaries more than the rest of the counties, are paying the same with Lamu, Isiolo and Elgeyo-Marakwet, which obviously, has less. While we discuss this, Pumwani Maternity Hospital does not have a morgue. It does not have any equipment that will protect children. What is that money doing in Nairobi and Kiambu counties? Why is it an unequal sum?

Mr. Speaker, when we go to Eldoret, my fellow colleagues, the Senate Business Committee (SBC) has confirmed that the Senate will lead a high powered delegation to the Moi Teaching and Referral Hospital. Our mission is to see how many machines have been purchased in Eldoret for purposes of this conditional grant.

It will help if the Committee led by Sen. (Dr.) Mbitio can interrogate this matter in detail for purposes of helping everybody. On my part in Makueni, the equipment is only

in two hospitals. The machines are seven in total. Why are we paying Kshs200 million? That needs interrogation.

Mr. Speaker, Sir, this Senate must come up with criteria and the Chairman did not mention, maybe he forgot. I must say that we have requested the Commission on Revenue Authority (CRA) to give us the policy of interrogating conditional grants. There are so many conditional grants. However, if we are not careful, my fellow colleague, Senators, these conditional grants will take over the functions of counties without necessarily having a mechanism of auditing them.

While we appreciate the assistance we are getting from our donors and the work that they are doing in terms of universal healthcare, for example, water and sanitation; we do not know whether governors once this money gets into their kitty, they are mixing it with equitable share and there is no reporting.

Mr. Speaker, the Committee led by Sen. (Eng.) Mahamud has achieved a great objective. That objective is to cure the mischief in the last disbursement schedule where equitable share was mixed with conditional grants and because of typographical and mathematical errors, the sharable revenue was not sent.

Mr. Speaker, lastly, from a report circulated by the Cabinet Secretary, national Treasury, my fellow colleague, Senators, money is not going to counties. In the last circulated gazette notice by CS national Treasury, 90 per cent of the money that was collected by the national Government went to pay debts. What are we going to do about this issue? The delay in the disbursement of funds even after we have passed them here, it will continue provided our debt is the way it is. Whilst it is a requirement that every month funds are sent to counties, is there a corresponding report to the Senate of the amounts of money sent, for example, to Nandi County? On bank balances, if we do not admit, from the report that I have seen, we will have a crisis.

While the National Assembly has today been unable and will not amend or reject the Presidential Memorandum, counties will receive less by Kshs9 billion. Whilst I am sure that the National Assembly will find a way of getting their money back in the National Government Constituency Development Fund (NG-CDF), what strategy do we have, as the Senate, of getting Kshs9 billion back into the kitty of counties? That Kshs9 billion is on development. That money will affect each one of us and each project to the extent – and I discussed this with a fellow Senator – that if we do not check this trend, we will inherit debts in counties.

In the end, just like Nairobi City County, these counties will be insolvent. Nairobi City County has a debt of Kshs59 billion and we are remitting Kshs11 billion. In legal terms, that is called insolvency. At the end of the two terms, if we are not careful on these disbursement schedules and the seriousness to which we attach to the monthly remittances, Nakuru County at the end of this session will be bankrupt. There will be nothing to inherit except debts, shells and dry bones.

Mr. Speaker, Sir, these are matters that we must discuss seriously if we want to help this country. I have spoken about debts and said that we do not have a portfolio on money bills. However, our colleagues will commit us, by default, to debt. What will we do about it? Under Article 104, we cannot do money Bills, but will we allow them to continue committing counties to debt, while we watch and say that our hands are tied?

That is the elephant in the room. If this elephant is not confronted, this Senate will have failed in its mandate to protect counties.

With those few remarks, I beg to second.

(Question proposed)

Sen. Wetangula: Thank you, Mr. Speaker, Sir. Approving this Report by the House is just a ritual. The national Government has successfully ensnared counties and set them up for failure completely. You will remember that two or three months ago, the Senator for Vihiga County made a Statement of this Floor about disbursement of funds to counties.

I am in this Committee that is chaired by the distinguished colleague from Mandera County, who has done a good job. However, we are all looking very helpless because the national Government does not disburse funds to the counties. Under the Constitution and international law, the first charge to Treasury funds and our revenues, is public debt.

Recently, in the media, you saw the amount of money being paid for the incomplete Standard Gauge Railway (SGR) as the loan repayment to China. There are many other debts to the extent that, today, county governments are on a shoestring budget of only being able to pay salaries. Some counties are even defaulting on paying salaries. There are counties that have three or four months of piled-up salaries for their employees. When you talk to the national Treasury, they give you flowery and handsome figures, all fake and fraudulent, because they are not disbursing any money. The law in this country is clear – thanks to our retired President Kibaki and his Government – that you cannot procure services unless you have money in your hands and a budget line.

How have counties accumulated pending bills running to Kshs100 billion? It is simply because they are responding to pressure to develop. Everybody is looking at counties as instruments of development, and rightly so. That is why Kenyans voted for this Constitution; because of devolution. They were tired of the centre having a grip on the life of this country. Kenyans wanted to control their affairs in running their hospitals, schools, agriculture and everything.

However, we have an uncaring Government that has gone on a reckless misadventure of borrowing. What they are now engaging in is the proverbial talk of digging a hole to fill a hole. Even what is going on in the National Assembly this afternoon; they have cajoled and armtwisted Members of the National Assembly to go and acclaim the Memorandum from the President, to impose on Kenyans an 8 per cent tax on fuel and fuel products. When Members were talking, I knew that they were just pontificating. I feel ashamed that even the Opposition has joined this reckless misadventure of adding load upon load of debts on Kenyans.

In counties today, hospitals have no drugs, not because counties are unable to procure drugs, but because they have no money. Roads that were awarded for construction, even to open up rural access for farmers and traders, have stalled because there is no money to pay those who were awarded these tenders. Rudimentary springs

and wells to give at least a semblance of fresh and clean water to families are not working because there is no money to pay for them.

Mr. Speaker, Sir, sometimes I think we come too hard on the managers of devolved units without looking at the bigger picture. This House should engineer the change of law, so that even the little money that counties collect should not be remitted and held at the national Treasury. This will enable counties to at least move. Counties like Nairobi City, Uasin Gishu, Nakuru, Mombasa and Kiambu, left on their own, can collect enough revenue and run their affairs subject to the strict rules of accountability and probity. However, this money that is collected in the counties and sent to Nairobi cannot go back.

It is joining into the already fathomless pit that exists at the National Treasury. Today, the International Monetary Fund (IMF) has sent us a red card that we are ineligible to borrow from them and if we cannot borrow from the IMF, where else can we borrow? It is the lender of last resort anywhere in the world. Where you cannot get a loan from China, Germany, the UK, from wherever, the IMF will walk in to bail you out. They have already said we are ineligible to access their loans.

This country is in serious problems and that is why we have been saying, instead of standing across the aisle pointing and shouting at each other, the President of this country needs to call for a serious national conversation on how to manage the affairs of this country. Is devolution too heavy for this country? Do we have too many elected people in this country? Do we have too many layers of Government in this country? How do you explain?

When you look at the Transition Section of the Constitution, it is very clear that the Provincial Government shall in five years be reformed and be aligned to devolution. Today, from the same Exchequer, we are paying the Governor, the County Commissioner, the Sub-county Commissioner, somebody from the national Government, the Water Administrator, the District Officer (DO), the chief and the village administrator. We are paying everybody up to the lowest level at two parallel systems and it is the same money. It is the tax that we pay that is paying the governor and the County Commissioner.

You go to the counties, county commissioners are there sitting like beggars, there is no money there for them. They are just sitting, waiting for salaries and harassing governors every day, saying: "I need fuel, I need this, I need that." We cannot run a country like this. Kenya is a much more respected country and we are rapidly sliding into a banana republic; a country where we are not able, in a determinate manner, to plan and stick to plans. That is how countries go into an abyss. It will be unfortunate if this country is not able to manage its public debt.

Today, we owe China so much money that China can decide to foreclose on our country. A sum of 72 per cent of our public debt is owed to China. It should not be lost to Members that China foreclosed Sri Lanka and took their port and airport and they are running them until they recover their debt. Zambia is under the hammer, they have not taken it yet but they have issued foreclosure notice. We are in the picture and in the line of fire for this because of reckless borrowing.

Why did we set up counties if we did not want to help them run? The money we give them, that we are not giving them, is just a theory. Out of a budget of Kshs3 trillion, if you calculate what we are giving the counties, it is less than nine per cent and we are busy saying we are giving them 25 or 30 per cent. Those who failed mathematics in school know this, that we are cheating ourselves that we are not doing what we ought to do, that we are violating the Constitution by not equitably sharing funds. Now, we are left with governors quarrelling over small monies like the Equalisation Fund. Some are even threatening to go to court, some are threatening to fight and some are threatening to do this or that. They are fighting for this rabbit because the elephant has been taken away.

Mr. Speaker, this House enjoys some reasonable degree of confidence from the public. This House, that members of the public listen to, has to make its voice heard, even if it means this House having a private *kamukunji* with the Head of State because we owe a duty to this country. We are tired of fighting, abusing each other and shouting at each other. We need to come back to our senses and ask ourselves: We are soaked wet with rain, where did the first drop of rain land on us? This is the big question.

[The Speaker (Hon. Lusaka) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kindiki) took the Chair]

Mzee Kibaki left this country with a public debt of less than a billion. Now it is over Kshs5 billion. When you add on what came from China the other day, it is now Kshs5.23 billion. Our appetite for borrowing is growing and growing. It is insatiable and you can borrow and borrow until---Can you imagine? Last week, Argentina was declared technically insolvent; Argentina, a country with an economy three times bigger than Kenya because the leadership embarked on a reckless highway of borrowing upon borrowing. Sometimes they borrow money and take to casinos. This is dangerous!

I listened to the Chairman of the Committee straining to make sense of this Report and the more I strained, the more it looked unbelievable, because we are cheating ourselves. Today, we will walk home that we passed a Committee report on disbursement of funds and it will go into statistics that the Senate has worked. What work have we done? Nothing! I feel so pained when I talk about this, because whichever county you go to whether it is Bungoma, Nandi, Mombasa, Laikipia or Mandera, they are under severe financial stress.

Sooner than later, the people of this country will start asking question after question. They will start getting angry. After that, they will start acting in a manner that is inconsistent with the behavior of a civilized country. It is time to talk to each other, time to change, time to make devolution work, time to stick to the rules and time to be patriotic.

Mr. Speaker, Sir, in this report, you have seen and heard the stories that we were flogged here that Mutula Kilonzo Jr. has talked about, I have talked about it, I even raised a question here, the issue of hospital equipment. The Government entered into a fixed contract. I am happy you have taken the chair as a distinguished lawyer and professor of law, you know what a fixed contract means. In this fixed contract, if you may remember,

the documents brought here, counties were to be surcharged from the headquarters Kshs4.5 billion per annum for seven years.

If you want to change a fixed contract, you draw an addendum to the contract and table it to the House for approval. Two years later, the figure shot up to Kshs6.4 billion. Where was it changed in the contract? Now, we are talking of Kshs9.6 billion in a fixed term contract, who changed these figures and who approved this change? Which Parliament? The Constitution says you cannot draw a cent from the Exchequer without the approval of Parliament. We have asked these questions and nobody is giving us answers.

I encourage the Chair of the Senate Committee on Health, the distinguished Senator for Trans Nzoia, to take up this matter and tell this House how the figure moved from Kshs4.5 billion to Kshs9.6 billion.

Mr. Speaker Deputy, Sir, the other day, I was happy to see that some counties have gone to court. A county was surcharged Kshs200 million for equipment delivered that is worth Kshs20 million. If that is not monstrous theft, I do not know what you would call it. When that money is taken away, we then say that the county is not working whereas Kshs200 million can change lives, buy drugs and save children that were found in cartons in Pumwani Maternity Hospital. It can also save mothers who die at childbirth.

Today in the villages people go to hospital to die; not for treatment. As hon. Members of Parliament representing constituencies in the rural areas, particularly every weekend; Saturdays are funeral days with people dying of very preventable diseases. *“Alikufa namna gani? Alikohoa tu na akafa.”*

Mr. Deputy Speaker, Sir, how can we have a country like this and yet we can do things differently since we have the capacity? We export more doctors to other parts of the world than any other African country and they do a fantastic job. Botswana runs on nurses from Kenya. Every hospital there has a nurse from Kenya. When I went to the Isle of Man and felt a fever, I was taken to a hospital and attended to by a Kenyan nurse and she had tremendous respect.

Back home, Kenyans are suffering and we are busy pontificating on which formation we want to be and who is going to be the President in 2022. We may get there and find ourselves in the case of former Presidents Mobutu, Tsishekedi and Kabila. It is so painful to talk about these things that are happening to our country.

I beg to support the Report from my Committee, though it is not worth supporting.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wetangula. What is the consequence of your final remark?

(Laughter)

Sen. Wetangula: *Shingo upande*, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us have Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. Welcome back. We had missed you.

I rise to support and---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. Proceed, Sen. Cherargei.

Sen. Cherargei: Mr. Deputy Speaker, Sir, secondly, I congratulate one of this country's legend, Eliud Kipchoge, for setting the new world record and taking the famous *mursik* which is the "turbo charger". He has so many accolades in the athletics world. We celebrate him. I saw Sen. Wetangula's tweet that was trending the other day. I do not want to mention the reply but it was a source of pride for this country.

I equally want to congratulate Amos Kipruto, Wilson Kipsang and our very own Gladys Cheronu. We are proud of them and as a country, they are providing the country--

I know many people are having the wrong perception that Kenya will be auctioned soon. However, it is good that we have trailblazers in the athletic world that are portraying Kenya as a good country and as a house of serious athletes across the country.

Mr. Deputy Speaker, Sir, I urge the women across the country that if they want world beaters and "turbo chargers" of *mursik*, they should try and get children from the Kalenjin guys plus, yours truly.

I agree that there are so many questions that have been raised on the spending. We are approving this cash disbursement schedule to our counties. I think the county of Sen. Omogeni has not been able to pay their staff for so many months and this is replicated across the country. I agree with some of the procurement laws and policies that former President Kibaki set, where one could not spend what they do not have. Unfortunately, in this country, we are spending what we do not have.

I agree with the guidelines that the President provided some time back, that the existing projects should be completed and launched. Secondly, that directive seems to have only applied to the national Government projects. As a Senate, we must take the lead to advise governors who were elected that there are so many projects that their predecessors started but did not finish.

I know many Senators from across the board who can tell you that for those counties that elected new governors, there are so many projects that have not been done. I think it is very important that, as the Senate, we take the lead. Even as we look upon Makueni County No.17 as a model across the country, we must tell our new governors that those projects that were being worked on by their former colleagues must be completed so that Kenyans can get value for their money.

Even through the National Government Constituencies Development Fund (NG-CDF), we had the same after 2003. When some people lost elections, we found that the new people who were elected did not finish the earlier projects.

Mr. Deputy Speaker, Sir, unfortunately, many people have seen our counties as employment bureaus. We should request the leadership of the House where we have three Senior Counsel to try and do capacity-building for governors so that they understand that their role is not about employing. They are busy hiring, re-hiring and employing. They

should not turn our counties into employment bureaus. They must know that the counties were meant to bring service delivery in the spirit of Article 174 of our Constitution in bringing development across our counties.

Mr. Deputy Speaker, Sir, if we look at the reports that the Committee has done and even the Auditor-General's report, most of these issues that have been raised are on Recurrent Expenditure, some of which are majorly on employment, salaries and personal emoluments apart from travelling expenses. I think this is what has contributed to the recurrent expenditure.

Thirdly, I thank the 'Super Senator' Sen. Sakaja, for that Statement on Pumwani Maternity Hospital. What we are seeing there is an example of what is happening across the 47 counties. It is very unfortunate that our health facilities---

Mr. Deputy Speaker, Sir, I thank you because you have Sen. (Dr.) Mbiti, the Chairperson Committee on Health, who is here. The Committee should be seized of the matter with the seriousness it deserves.

Mr. Deputy Speaker, Sir, I hope that as we go to Eldoret for the special sittings of the Senate, the Committee on Health should take their time off the Committee meetings and visit our health facilities, especially in the North Rift, so as to learn the reality of what is happening. I agree with Senator Wetangula, who has said that our health facilities are death traps.

Mr. Deputy Speaker, Sir, even as we raise hullabaloo about the mismanagement of Pumwani Maternity Hospital, the biggest question is: I saw that Kshs9.4 billion was allocated for leasing medical equipment, which is so sad. I do not know why the Senate, through the Committee on Health, has not taken the lead, together with the County Public Accounts and Investments Committee (CPAIC) led by our able Chair, Sen. Moses Kajwang,' on this matter. They should tell us who we are leasing from and why the amount is going up each year. If they cannot handle those issues, we should then invite Noordin Haji to investigate the matter, because counties continue losing money through leasing of medical equipment, yet the number of people who are dying in our health facilities has quadrupled.

I know that there is the handshake, but it should not kill the spirit of Kenyans looking for justice. This is because as we talk now, taxpayers are on their own. With or without the handshake in place, I can tell you that if we do not take the lead on this matter, we will leave our counties worse than they were before.

Mr. Deputy Speaker, Sir, on the issue of public debts, I agree that the Senate should be given a role. I have heard Sen. Mutula Kilonzo Jnr, Sen. Wetangula and many other Senators say that counties are committed to public debt, yet we do not have a role as the Senate. We must sit with the leadership of the House and agree that the Senate must take a pivotal role in the commitment of public debt. I know that one of my Members of Parliament (MPs), Hon. Alex Kosgei of Emgwen Constituency in Nandi, has proposed a public debt ceiling Kshs6 trillion so that we cannot be auctioned like Zambia, Sri Lanka or anywhere else. It will be very sad for this country if we cannot manage our public debt. I hope the County Public Accounts and Investments Committee will have the opportunity---

Mr. Deputy Speaker Sir, it is very unfortunate that the Liaison Committee has never met to discuss the program we are working on or drafting some timetable that is not in existence. This is because we, as the Chairmen, through Liaison Committee, have not drafted a proposal. Some of these issues of leasing, the PSC through the Senate, together with the Council of Governors (CoG), should have organized a meeting, if we had agreed, to discuss some of these issues.

We trust your office to provide the necessary wisdom so that we do not kill the Liaison Committee at the expense of planning these issues. Some of these issues can be resolved at the Liaison Committee without necessarily coming to the Floor of the Senate. Therefore, I hope that the Liaison Committee will meet before the end of the week so that we can fine tune the timetable that we will use in Eldoret during the special sitting.

Finally, Mr. Deputy Speaker, Sir, as the Chair of the Committee on Justice, Legal Affairs and Human Rights, I think the issue of constitutional reforms and constitutional referendum is no longer evadable; it has to happen. That is the unfortunate reality, because it seems that this Constitution is too heavy for us to carry. We cannot bear the cost of devolution; we are using a lot of money in terms of maintaining so many MPs. At one point, Sen. Malalah said that one Senator is equal to a number of MPs, and there was a lot of uproar; but that is the truth.

Mr. Deputy Speaker, Sir, as a Professor of Law, if this Constitution is too heavy for this country, it is high time that we reviewed it so that we can manage our public debt and get the revenue that can run the Government.

Reading the President's speech on the issue of the Memorandum on the Value Added Tax (VAT) on fuel, which he cut from 16 per cent to 8 per cent – and which we support whole heartedly - it looks like the issue of constitutional reforms and review is no longer an option for this country to move forward so that we can live within our means. If your neighbor's children are looking nice, you do not have to borrow money to buy expensive clothes because you want to look nice. Therefore, we must discuss about the way forward to ensure that we increase the effectiveness and efficiency of our commitment.

Mr. Deputy Speaker, Sir, I thank you and I beg to support.

The Deputy Speaker (Sen. (Prof) Kindiki): Thank you, Sen. Cherargei.

Proceed, Sen. George Khaniri.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I thank you for the opportunity so that I can make very brief sentiments on this particular report. Let me begin by hailing the Chairman of the Committee on Finance and Budget, Sen. (Eng.) Mahamud, for the very good report on the schedule for the disbursement of funds to our counties, and Sen. Wetangula indeed alluded to it.

Mr. Deputy Speaker, Sir, about three months ago, I made a very emotional statement in this House with regard to the issue of the delayed disbursement of funds to our counties. I was very passionate about that topic.

This report is very important because it goes to the core of our mandate, as enshrined in our Constitution under Article 96. Sometimes it pains me when I hear some of our governors going on radio talk shows and making press statements to say that the Senate has no role to play in the funds that go to the counties. This is because when I go

my county, I tell the people that I am the one who brings this money; I am the one who debates on what comes to Vihiga County. I want to inform them that when revenue is collected by the national Government, the first Bill that comes to Parliament – and when I say Parliament, I mean the National Assembly and the Senate – is the Division of Revenue Bill. This is a Bill that decides how much money remains with the national Government and how much money goes to the counties.

Mr. Deputy Speaker, Sir, you will agree with me that during our first year in the last Senate, there were some people who were scheming to exclude the Senate from this important exercise of deciding on the division of revenue between the counties and the national Government. We had to go to court, and I remember that we walked with you and the rest of the Senators who were there in the last Senate to the High Court, and we won that battle. We now have a big role to play in deciding how much money goes to the counties and how much money remains at the national Government.

Mr. Deputy Speaker, Sir, after the Division of Revenue Bill, there is what we call the County Allocation of Revenue Bill. This is done here in the Senate after we have got our chunk of what is supposed to go to the counties. A Bill comes here to decide which county gets what; and this House has a final say on that. Yet after that, we come to what we are now doing now, approving the report on the schedule on how these funds allocated to counties shall be disbursed to the counties. Therefore, I want to tell those people who think that the Senate has no role to play that for them to get those resources to the counties, it is all about the Senate.

Mr. Deputy Speaker, Sir, the purpose of this Bill is to ensure timely monthly transfer of funds from the national kitty – the Consolidated Fund – to the county treasuries. Why is that important? It is extremely important because it helps the county to predict and work on their work plans.

Mr. Deputy Speaker, Sir, because I said that I will be very brief, I want to urge that the Treasury should always endeavor to adhere to the schedule that we pass here. Year in, year out, we come here to complain that whatever is passed here is law, and no one is above the law. Treasury must always ensure that they adhere to this Schedule for the counties to receive their funds in time so as to implement their projects.

There have been numerous cases of funds being returned to the Treasury at the end of the financial year because they have not been expended by the counties. This is partly caused by the delayed release. In my county, for example, the last disbursement was done just about three weeks to the end of the financial year. Honestly, how do you expect that money to be used within three weeks? We are insisting that these funds must be disbursed in time so that the counties not to be brought to a halt.

On the other hand, we want to urge our governors, even as we push for these funds to be disbursed to the counties, to use them prudently. We want the county governments to prioritise projects that will benefit *mwananchi*, the people in the county, rather than those that benefit individuals. In my county, for example, I saw that they had prioritised building of the governor's official residence in this financial year. I then wondered whether this was taken through public participation. Is this what the people of Vihiga County want? Is this the priority?

I do not object to the idea of building a residence for the governor, but that cannot be a priority. It cannot take precedence before issues like equipping our health centres, dispensaries and county hospitals. We can only embark on such projects once we have dealt with issues that affect *mwananchi* and dealt with them exhaustively.

We are going to insist that there should be prudent use of resources and adequate public participation in all the projects that will be undertaken in our counties so that *mwananchi* can prioritise the projects that they think will be important to them. Public participation is enshrined in our Constitution. Therefore, we cannot run away from it.

I also want to urge our county assemblies to be very vigilant as these resources come to the counties. They should play their rightful role of oversight as provided for in the Constitution. I am very happy with my current county assembly for the role that they are playing in oversight. They have identified a few issues. There is a case where some County Executive Committee Members (CECs) had siphoned money from the public coffers and deposited about Kshs18 million in a private M-Pesa account. Clearly, the money was on its way out. That is theft. We cannot call it by any other name. However, this was identified by our county assembly. I want to believe that the funds have since been recovered.

Sen. Wetangula alluded to it, and I think we must really insist on it. This is because the Act is very clear that any expenditure must be based on budget and planning. If we do so, then I do not understand how we can end up with public debt where counties owe. My county, for example, has accumulated a debt of over Kshs2 billion in the last six years. How would you accumulate a debt if you had done your expenditure based on budget? We want to insist that any expenditure must be budgeted for.

We urge the national Treasury to strictly adhere to the Schedule that we are going to pass today so that our counties can get their resources in a timely manner.

I thank you, once more, for the opportunity.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Could we hear from Sen. Sakaja?

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to comment and to give my thoughts on the County Governments Cash Disbursement Schedule for Fiscal Year 2018/19.

I would like to associate myself with the sentiments expressed by many of my colleagues. This is possibly one of the most important functions of a Senator. Our work is to find money to take to the counties. I would like to tell the people of Nairobi City County that we have Kshs15.8 billion today according to this Schedule based on the formula that has been there before and based on internal discussions of the Senate. Indeed, this is a key part of devolution.

Many times, we forget the key principles that define devolution, especially the principles of fiscal decentralisation. The first principle that many of us do not focus on is the issue of expenditure responsibility and revenue allocation. Expenditure responsibilities as defined by our Constitution in the Fourth Schedule tells us what a county should be doing and what the national Government should be doing.

Once that has been determined, then we go to the next step of how much revenue is collected. How are our counties able to collect revenue? I am disappointed that many

of our county governments are actually collecting much less than the defunct municipalities and town councils in proportion to how the economy was then. Beyond comparing it with the administrative structures that we had before devolution, my own County of Nairobi has collected Kshs1 billion less than it did during the last administration in the same financial period despite digitisation or automating of revenue collection. There is need for us to do more work on upping revenue, mobilisation and curbing expenditure.

That is why I have always wondered why it took the Senate so long to cost functions. This is what would then determine how much it costs to run the health function in Siaya County, Nairobi City County or in any other county. What is the cost of providing agricultural services in this and that county? When we do that, we would then know how much a county deserves to have.

(Sen. Moi whispered to Sen. Sakaja as he walked out of the Chamber)

Sen. Moi is becoming a bit mischievous.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja! You know what to do if you have challenges.

Sen. Sakaja: Let me proceed, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay.

Sen. Sakaja: He has retreated from the House.

It is important that when a decision is being made on division of revenue; before we go to the horizontal division amongst counties, we have to make sure that the decision of how much money we are giving to that level of government is an objective decision based on the actual cost of running that level of devolution. Thereafter, we can go to what we call the Intergovernmental Transfer of Money which the Constitution has set at a minimum of 15 per cent. I must applaud the fact that the Jubilee Government has never gone below 28 per cent since 2013 despite the Constitution saying that it must be done at 15 per cent of the last audited revenue.

I am saying this because many times, we put the cart before the horse. We forget that devolution is based on the principle of subsidiarity. Yes, we have devolved resources. However, more than resources, we have devolved power; the power to make decisions. The people were meant to feel that because one approach cannot work in allocation of resources across the country as it used to be done before where a bunch of people would sit at the Ministry of Finance and decide on 'how much is going to Elgeyo-Marakwet or Meru County or should we give them a road or not.

At the moment, the people at the lowest level must be part of the decision of what they get. We have seen the exercise that many governors take people through, the County Integrated Development Plan (CIDP) process and public participation as just a fuss. People contribute, but there are very few budgets that go in line with the County Integrated Development Plans that have been passed by the people.

Even as we look at this amount, I am looking at the Kshs15.8 billion budget going to Nairobi County and we also have what we collect as a county. Nairobi City County has

now a budget of Kshs32 billion. However, the capacity to monitor and evaluate this money is missing. The capacity and ability for us, as Senators, to look at these projects or create public portals where *wananchi* can say that ‘yes, you have said that in Kasarani Ward, for example, this is the amount of money that has been budgeted on the programme based budget, the county government is saying that it is at 30 per cent, but I can see on the ground that it is at 0 per cent or 10 per cent’.

I hope the Senate Majority Leader is listening, when these supplementary estimates come to this House, because they have been taken to the National Assembly, we must amend it. We must make sure that the resources for monitoring and evaluation of county governments are reallocated from the Ministry of Devolution and Planning back to where they are supposed to be; that is, at the Senate. This is because Senators must be equipped to actually monitor devolution within the counties.

Mr. Deputy Speaker, Sir, it is also important for us to note that too many projects have stalled in many counties, especially those that have new governors. Many of the new governors have stopped the projects that the previous governors were doing. Some say that they do not agree with specific projects or that the projects were done in areas that are not advantageous to them politically. This matter must be addressed and we must continue, through our Committee on Devolution and Intergovernmental Relations, working on how we can create bureaucracies within the counties that outlive the politics.

I just spoke earlier about the state of healthcare in Nairobi. We have strained the few big hospitals that we have. The referral system is not working, yet in Mathare North, for instance, there is a 320 capacity hospital that is at maybe 40 per cent completion, but has been like that for more than 10 years. If that hospital in Mathare is completed, which of course is next to Kariobangi and other areas, you will reduce pressure on Mama Lucy Kibaki Hospital, Pumwani Maternity Hospital and Kenyatta National Hospital. If our dispensaries that we have in our estates and at the ward level have medicine, doctors and whatever resources that are required, we will reduce pressure and the strain on our resources.

The amount of money spent on proper needs must be addressed. We must look at how we prioritize issues. If you look at some of the budgets, and that is why the discussion that we had earlier today is important to me--- The fact that the Nairobi Governor can go and act shocked that bodies of dead babies are being kept in boxes and there is no cold storage, yet it is his same county government that is supposed to have budgeted for cold storage facilities and ensure that these bodies of children who passed on - and may God rest their souls in peace - are promptly transported to the morgues in a dignified manner, leaves a lot to be desired.

That is why we must build the capacity of Members of the County Assemblies (MCAs), who are the first point of call for accountability and making sure that money we are allocating - this kshs15.8 billion in my particular example - is used properly and for what the *mwananchi* needs.

Mr. Deputy Speaker, Sir, we must look at not just the level, but the structure of our debt in our country. For instance, the Gross Domestic Product (GDP) to debt ratio is probably around 54 per cent. Some people will say that it is okay because the upper limit is 58 per cent and we have not yet reached there. However, it must never be a race to hit

the limit of our debt. This country is not just inherited from our parents, but it is borrowed from our children. The burden of debt must be shared equitably across all generations.

Especially in this day and age of “handshake”, can we sit down and look at the sustainability of our debt? Most economists just look at the debt to GDP ratio, but the more important ratio on the sustainability of debt is the Debt to Income (DTI) or in the economics of our country we can call it Debt to Revenue (DTR) ratio. As I speak, it is already above 51.5 per cent. What that means is that more than half of the revenue that we collect today is used to service our debts. What does that do? That will put pressure on cash flows and make sure that even though we pass a Cash Disbursement Schedule, our county governments will not be able to get the right amount of money at the time when that money is needed in the counties.

I hope that the Chairperson of the Committee on Finance and Budget can lead us in the process of actually suggesting ways of balancing, spreading out and re-amortizing some of these loans and talking to some of our bilateral and multilateral partners, who have given us some of these facilities. This will ensure that we do not have undue pressure on cash flow and there will be enough money for devolution in the counties, where it is supposed to be. So, it is within the structure and not necessarily the amount. We now have more reliance on commercial debt, which creates an immediate strain and pressure on paying interest and servicing those loans. We do not have the kind of grace period that we can get in bilateral or multilateral borrowing.

We must make sure that our counties are properly structured to deliver. As the Senate, we have not been able to play our role properly in terms of how our counties are structured and operate. The Senate is where intergovernmental relations are supposed to be domiciled, but so many times the national Government has flown above the head of the Senate and entered into agreements with county governments that the Senate has no clue about. We must create legislation or a way through which the Senate is involved right, left and center.

My county, for instance, has the Nairobi Regeneration Plan that the national Government and the county government are working on. It is very good and we are happy that the national and the county government have agreed on things to be done in Nairobi. For instance, it is good that the Kenya Urban Roads Authority (KURA) has done roads in Eastlands and we are waiting for them to go to the other parts of the City. But we cannot have such a plan that the national Government is supporting, yet the Senate has no clue and is not involved.

We do not know the extent of that support, despite the fact that the Constitution says clearly that for the management of cities like Nairobi, Kisumu and Mombasa, there must be a written agreement and arrangement between the national Government and the county government. Where is the agreement and arrangement between the national Government and Nairobi City County, if the Senator for Nairobi County has not seen it? Unless we play our part, we will not be able to oversight many of these arrangements that are happening in the counties.

Mr. Deputy Speaker, Sir, the Urban Areas and Cities Act provide for city managers; that you can step down devolution to the lowest level that you can. The only

county that I have seen the governor keen to have this done is Kisumu County. I do not know what his motivation is, but at least he has been able to provide for that. There was some thinking and wisdom when the Urban and Cities Act created the position of city managers. In this City, the person who is thinking about the roads in Kayole cannot be the same person trying to sort out roads in Westlands and Lavington. You need to go a step down into four boroughs; Nairobi North, Nairobi East, Nairobi South, Nairobi West and have leadership on that level.

Let people be served on the things they need where they need them, because that is the real essence of devolution. Not everybody has to come to City Hall. If you have an issue in Nairobi South, for example, you should go to Lang'ata. If you have an issue in Nairobi East, be served in Kayole or Embakasi. Through that, we will be able to bring devolution closer to the people and serve them much better.

If you look, for instance, at the Second Schedule of this Cash Disbursement Schedule, on conditional allocation from the national Government, there are conditional grants that are very important. There is Kshs4.33 billion to Level Five hospitals. There is also compensation for user fees of Kshs900 million that is to be disbursed monthly; supplement for construction of country headquarters; conditional allocation on road maintenance fuel levy of Kshs8 billion and youth polytechnics of Kshs2 billion. I remember we had a discussion as the Senate - and at that time I think it was Senators from one side only - with the President, that this conditional allocations from the national Government need to get direct oversight from the Senate. Whatever happened to that discussion, I think your guess is as good as mine.

It is the Senate that is supposed to monitor and play a closer role in overseeing the conditional grants coming from the national Government to county governments, because the county executives are able to keep this away from the MCAs. So, we do not have oversight at the county level and the national level, because that is not the focus of the Auditor General. So, this oversight is being done by the National Assembly instead of the Senate and the county assemblies.

Mr. Deputy Speaker, Sir, on top of that, I would like to urge that we continue to support the war against graft because that is the only way we can restructure our country, develop and ensure that the fruits of the great gift called devolution go straight to the people of this country. I am glad that with the Estimates that have come to the National Assembly, there has been a reallocation and increase of the money going to the Director of Public Prosecutions (DPP) and the Judiciary. That is one part that I agree with.

On top of that, I feel that there other areas that we could have rationalized our Budget. For instance, I am not convinced that in this day and age, we need to be struggling so much to fund a Kshs2.6 trillion budget. Because of the 16 per cent Value Added Tax (VAT) that will only give us Kshs35 billion, the common *mwananchi* is feeling it as an individual, yet if we reduce every Ministry's budget by between 2 and 5 per cent we would save about Kshs175 billion.

If we decide to go the way our neighbours have by having no VAT on fuel but having your VAT rate at 18 because the protocol allows it to move from 16 per cent to 18 per cent, you spread the pain wide but you inject another Kshs75 billion into the economy. We need to be honest with ourselves in some of these discussions. We should

look at some of the funds that are lying dormant. There is Kshs10 billion lying at the Kenya Airports Authority (KAA) Fund that is supposed to be from user charges of passengers. It is just sitting there waiting for a legal framework that has never been created.

There is another Kshs5 billion. If we assign this to some of the roads that are being done at the constituency level, we will save another Kshs5 billion. There are many ways through which we can save money and at least, cushion *mwananchi* because the goodwill of the common man today on the fight against corruption cannot be taken for granted. If they think that we are increasing this budget and we are looking for money from them to fund corruption, then this fight will be lost *ab initio*.

Mr. Deputy Speaker, Sir, with those remarks, I beg to support. We have had discussions with my MCAS of Nairobi. We have had discussions on resolving some of the issues that we have in the county. Concerning this Kshs15.8 billion, we will sit down and ensure that there is proper accountability and that it delivers for the people of Nairobi.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Proceed, Leader of Minority.

The Senate Minority Leader (Sen. Orenge): Mr. Deputy Speaker, Sir, I will be very brief. I will paint with a broad brush. I do not want to go into any particular details regarding the schedule or content of the report but I support the report. In doing so, I note what is contained in the two schedules. The broad point is that even with the money that has been set aside for allocation to the counties on equitable basis; I still believe that the way we are giving resources to the counties and managing the counties is not within the contemplation of those who made our Constitution.

One of the most important pillars of this Constitution is the Bill of Rights. Truth be told, even under the old Constitution we had a Bill of Rights. We also had provisions that deal with the management of public finance. Under the old Constitution, one of the things that were not addressed in any way, not even in a clause or sentence, was the question of devolution of power and resources. That was completely empty in so far as that Constitution that was repealed was concerned. That was a major departure from the Independence Constitution that had provisions relating to the regions and the counties.

So, Mr. Deputy Speaker, Sir, for everybody who lifted the Bible to take an oath of office in the Republic of Kenya, one of the things we must be conscious of, is the assurance that we give the public by the proclamation of this Constitution in 2010, that devolution would be protected. The Senate is the protector of the counties. As we speak, I still believe we are not giving enough emphasis to the counties.

The way people are treating devolved units of Government around the world, whether authoritarian or not, is different. Even in China where central control is part of the structure of Government or the old Soviet Union Russia, you would still find that the regions are given reasonable autonomy, not only in terms of governance but in terms of resources because without resources there is no way you can run the counties.

I have just had a meeting with the governor and that is why I was not here at the beginning of the session this afternoon. The picture that the governors are painting

overall, I do not think they are lamenting. I had the advantage of listening over the radio as I came to the very emotive speech of Sen. Wetangula. It is only lamentation. I am at pains that every speech that is made in this House is basically lamentation. In fact, this new Constitution was giving power and authority to Parliament, the National Assembly and the Senate yet we are still lamenting. The old Constitution had provisions that Parliament consisted of the President and the National Assembly. That was removed because the Presidency was found to be a force within that structure of Government that made systems not work effectively; and more particularly Parliament.

So, we ended up with a structured system that encourages separation of powers. Some people have said that, you know, there is no absolute separation of powers – that indeed, it could be a blending of powers or it may be a system of checks and balances.

Be that as it may, Parliament as it is, every day that we have an opportunity to talk about the budget and budgetary allocations, we do not speak as if we are the people who hold the purse. Much can be said about the National Assembly as really absolute owner of the public purse but as the Senate, to the extent that anything that concerns counties ends up here, we are in a position to make sure that whatever we pass by way of legislation or allocation of funds is not only used the way it should but we should put our foot down to ensure that more resources go to the counties.

We tried a little bit in the last financial year. This financial year, the Senate has been heard about the necessity to increase resources going to the counties. We have not all the time been successful but what I find odd about these two Chambers of Parliament is that we are without power and authority. We speak here. We lament and what has happened recently in the National Assembly which is ongoing; that even on the idea of making a budget, we cannot stand firm and truly reflect to the public that the public purse belongs to Parliament.

We should come out now and say that the public purse no longer belongs to Parliament. It belongs to the Executive. There is no need pretending that you are the owners of the purse when you are dictated to, and you do things as if you do not have any power and authority. The power belongs here and the Supreme Court said that there is nothing that can be done by way of legislation or even in terms of oversight of Government that would not require the involvement of the Senate.

Mr. Deputy Speaker, Sir, I have tried to say this many times. That, there is a time like in this session, that Parliament needs to sit on a bipartisan basis and put its hand strongly to make sure that the wishes of the framers of the Constitution to make the counties strong and make them viable institutions are achieved. We cannot do it without sitting together and ensuring that this is what happens out there. I believe that devolution is still a project which is very far away from fruition.

There is a group of us who went to Los Angeles, including the Majority Leader. There is a sense of pride when you hear Californians saying, we are the fifth largest economy in the world. They say it with a lot of pride. They fly their flag with a sense of authority and dignity. They are not concerned whether they agree with what happens in Washington. They do not kowtow to the Executive but in this country we are rolling the clock back. We may not want to say so but we are rolling the clock back in terms of

taking charge not only of the finances of this country; how we tax our people, raise resources and spend it.

Things will work out one day when we will behave like the first Parliament under the Kibaki Government where he tried, as President, to give instructions to Parliament to do things in a certain way. He had a lot of experience. He had been a Minister for Finance. Parliament said no. I remember at that time, the Minister for Finance was the late, my friend from Meru, Hon. Mwiraria. Parliament said no; including this thing called CDF it was not done by kowtowing to the Executive. They said, “You want a budget? We are not passing it until you give us the CDF.” Parliament carried the day.

In the history of this Parliament, there is no war that this Parliament, both the National Assembly and the Senate, has won against the Executive. None! You are calling yourself a Parliament, *bure kabisa!* There is no one single instance. At least the Judiciary can have the authority and sense of patriotism, that when we make bad laws they can say: “Take it back to Parliament.” This is not what the law in Kenya should look like or what it should provide because there is a Constitution in Kenya. When you make laws, they must comply with the Constitution. They have said “no” many times.

Mr. Speaker, Sir, on the Security Laws (Amendment) Bill, when the matter came here to the Senate, we were able to see the flaws in that Bill. We raised issues. Some of us agreed with the National Assembly but at least we raised those issues. When they went to the court of law, they were struck out with finality. The Executive did not even try to bring them back here.

So am pleading with all of us, that let there be one day - in this competition for space - that Parliament can show its teeth and can bite, and not to be bitten all the time. There is no day, when there is no problem that Members of Parliament are not called to a Parliamentary Group meeting (PG) somewhere else. When these decisions were made you were not called, but when they bring problems, then you are called. We go there running and within one hour, the decision is changed.

Parliament is there to represent the sovereign will of the people. The moment we get that clear, I think then the devolution experiment will work. Devolution, as it is now, is struggling. It may end up, when all is said and done, that it is another layer - just a layer - for spending money to pay State officials and officers at that level, because there is really no money for development. That is just a structure to have another layer of another Government at a local level for earning salaries. We could have done with a Board or something else if it was just a question of paying people salaries.

The most important pillar for devolution at the local level is not only for creating democratic space, it is also to make sure resources go to the people. The people are not those that are being paid salaries because the people who are being paid salaries, even if it is in Siaya County, they must come from all over Kenya, they cannot just be the locals. Therefore, there should be sufficient money going to the counties for development and sufficient indicators for the health requirements of the people, to make sure they get water and that agriculture is funded in a way that is sustainable. That is when we can say devolution is working and any one person can stand firm and say that the system of devolution was good for Kenya.

Mr. Speaker, Sir, you find governors coming to this city, with baskets hoping that when they leave town, that basket will be filled with some fruits to take back to the county. That is not the way it is supposed to work. I hope that when we are talking about these matters of resources, we should still insist that we are not giving enough to the counties.

I may have problems with governors and county assemblies, but as long as sufficient resources are not going to the counties, I do not think we are doing justice to those who sat down and thought that devolution is a good thing for this country.

The second pillar that I want to talk about in the Constitution, which again is an improvement from what was there in the previous Constitution, is Chapter 12 which deals with public finance; the way we should treat public finance. It does not leave it to us, it requires of us to make sure that we are prudent in the expenditure of public resources. That goes to both the national and county governments.

Right now, truth be told, the Government is broke. We can try to use other words but this system has failed, is failing and is failed! When you have to borrow in order to pay salaries and not to develop, the system is not working and we should be honest about it. That is why prudence is important in the way we spend our resources. To say the Government of Kenya is broke when people in Government can spend Khs10 million at a Harambe and you are telling them you want to tax them more, what are we talking about?

In fact, Mr. Speaker, Sir, the sums of money that are being given out as Harambee in this country, are awkwardly obscene. You can ask Bill Gates to go to a Harambee, he will not be able to give you the kind of money we, public officers, are giving in this country. This money is getting into the hands of people who are known and they are being protected.

If you take a drive to the villages, for instance, to Busia, a lot of buildings that are coming up do not belong to the people in the private sector. We know which part of the Government they are coming from, where someone suddenly, without any education, but because he or she is at the right place in a public office, comes up with a monument in the village thinking that resources have come from his own personal savings.

Mr. Speaker, Sir, we should not look like Mobutus everywhere; you know Mobutu used to walk with money everywhere. We should not look like this leader from West Africa who was caught in Brazil with USD16 million at the airport. It is hard to tell Kenyans that we are broke when, indeed, it is a question of waste of public resources.

Therefore, Mr. Speaker, Sir, I am appealing to the national Government to be more innovative in raising resources. The Kibaki Government was very innovative, the way they dealt with the lack of resources to fund national projects. Former President Kibaki came into Government when the national budget was something below Kshs600 million. In fact, it was about Kshs400 million. Within one year, the revenue base for the Government of the Republic of Kenya was Kshs800 million without borrowing.

There should be innovative ways of raising resources and when you build something like the Standard Gauge Railway (SGR), the counter part of it, you must make sure that when that project is done, it is sustainable. Otherwise, we will be building a lot of monuments. If you go to Moscow, for example, you can see a lot of monuments from Stalin; they are all there built in competition with the West.

If you go to Romania, there was another mad man called Ceausescu, he built huge monuments including even infrastructure, but they were not well thought out. We are trying to build monuments to please our people when we do not know how they will be run and whether they will be sustainable.

I believe that what probably may go on in the National Assembly that we are allowing the Government to borrow more. I am repeating from my own stand point as a Senator, that to give the Government the authority to tax when it has misbehaved and has not been prudent, I think that is the wrong thing to do in the name of the people. Let people should know that being patriotic is not by supporting a particular leader or party; being patriotic is supporting the country. That is what patriotism means. That is why it is not in the Constitution, that when you have to make a choice between the people or any particular government, you support the people.

I hope that in the coming years, successive governments will succeed. If the Jubilee Government does well, it will be a good spell for Kenyans. There is no reason why they should fail. If another Government does justice to the people of the country, it will be good for Kenya. However, right now, the dreams have turned into nightmares. Big projects have turned to be burdens hanging over the heads of taxpayers. We must rethink what we are doing with our resources instead of just sitting back and saying “it has been decided.”

Public participation is there to get rid of this thing. Public participation was undertaken by the National Assembly and they said they do not want more taxation. That is used by those in power and it is good in politics for you and me.

Finally, with all these problems, still county governments must also do their best because many of them are not doing their best. Resources they get are not being used effectively. If we go by the reports of the Auditor-General and what we get through our committees, then we are not doing our best as far as the counties are concerned. Responsibility of prudence at the county level is also wanting.

I hope that in the fullness of time – I do not know when that will be – people will begin to take devolution as a cherished gem. There are those who struggled so much to enable us get this Constitution as a way out of oppression, exploitation and economic backwardness. This is something that we promised ourselves as a nation; to fight for justice in accordance with the law and the Constitution. The Constitution should be read not selectively but in entirety to show what promise we gave to Kenyans and to ourselves as a people and as a nation.

With those remarks, I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much Sen. Orengo. From where I sit, I am not supposed to express what I make out of your sentiments but I am sure the Senators have heard you.

Let us now have the Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I rise to support this important Motion. However, by way of introduction, we have to be careful when we are opposing Sen. Orengo. There is something that he told us when we were dealing with the amendment of security laws and a few of those people here who were enthusiastic about it became its victim in less than a year as he said. So, people have to be

more careful when they raise points of order. Nevertheless, each one of us here is entitled to their opinion from different perspectives.

I agree with most of the things he said. It is important to have a robust and proactive Parliament that can stand up to the Executive because when they do so, they help the Executive to succeed and when the Executive and Parliament succeed, the country succeeds. I will revert back to that issue.

First, let me say that this is an important schedule. In the wisdom of Parliament to ensure that the Senate is involved in discussing the disbursement schedule, the mischief was to deal with situations where the Executive may delay disbursements to go to county governments. So, it was important to have a legal document that mandates the national Government to disburse the money accordingly.

However, having done so, in practice, that has never been the case because the conversation around this is that you only disburse what you have collected. The excuse given most of the time is that counties cannot be given certain amount of money because the Executive has not received or collected from the people of Kenya. Nevertheless, this gives county governments a better legal standing to demand for their rights.

This has been divided into three. The most obvious one, which we need to understand, is the equitable revenue shared to various counties based on the formula provided under the County Allocation of Revenue Act (CARA). The second one deals with resources related to conditional allocation to counties and also there are grants. I have no problem with the sharable revenue and conditional grants going to counties because they are properly anchored in law. However, there is one important element that we need to interrogate and most Members have discussed about that. They said that the Committee on Health needs to go further.

The first year when leasing of equipment came to be, we were told that counties were going to pay Kshs94,500,000, if I am not wrong, to the person leasing out the equipment. Now, Kshs200 million is being deducted from all the counties regardless of the population and size of a county.

A county like mine, which receives about Kshs4.4 billion, has to part with Kshs200 million directly going to pay leasing of medical equipment. After five years, that would be Kshs1 billion, which is enough to buy the equipment and there would be no need for the equipment to be leased or replaced and so forth. Why should Isiolo County with only two constituencies and a county like Lamu pay Kshs200 million the same as Nairobi City County with about 5 million people? It only makes sense that the structure should be such that it can be accountable.

Personally I have a lot of fears. A clear interrogation of this issue might bring results that are unpalatable and undesirable and might unearth a con game.

The Deputy Speaker (Sen. (Prof.) Kindiki): Why are you fearful?

The Senate Majority Leader (Sen. Murkomen): I am fearful because we are paying public money.

The Deputy Speaker (Sen. (Prof.) Kindiki): You fear for the country?

The Senate Majority Leader (Sen. Murkomen): Yes. It has moved to Kshs200 million and maybe next year it will be Kshs300 million. We need to stop this before it

reaches a stage where we will all regret. We do not want to regret having certain important resources being wasted.

If Kshs200 million is given to Elgeyo-Marakwet County every year for five years, if you take a loan to buy equipment, you can buy fantastic equipment that serves the population that we have without paying that amount of money to a particular private investor. Questions have been raised again and again. Could the Committee on Health take the initiative to interrogate this issue?

Mr. Deputy Speaker, Sir, I think from your Chair if you order air conditioning to be switched on, because it is getting hot in here.

The Deputy Speaker (Sen. (Prof.) Kindiki): Serjeant-at-Arms take note; switch on the air conditioning.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, secondly, when it comes to the conditional grants, it is important that in the accountability within the counties - the Chairman of the County Public Accounts and Investments Committee (CPAIC) is here - we want to see the Auditor-General's report in so far as the conditional grants are concerned, because it is easy to track the money that has been sent to counties, but the conditional grants have a player at the national level; sometimes you have a donor, then you have national Government office and then you have a county government office.

Again, for purposes of accountability, I hope that we can then track this money to the very end so that we can look at the Auditor-General's report in so far as the resources that are going to the counties are concerned.

Mr. Deputy Speaker, public monies are important and devolution is a great thing. Despite the misgivings that Sen. Orendo mentioned here, devolution has done a wonderful thing in this country. Even the fact that Kshs4.4 billion is going to be spent in Elgeyo Marakwet County, I do not think that would have happened in a centralised system of government. Whether it goes to the Recurrent Expenditure so that people are purchasing goods at the local level or going to do few roads in Elgeyo Marakwet County, by the local government, devolution has revolutionised this country.

Many counties are doing a fantastic job. Kenyans are witnessing counties doing things that I can say, for example, in my county a few things have been done, including the refurbishing and re-equipping of the county referral hospital in Iten. You have situations where a few roads have been opened in Elgeyo Marakwet, you have the Rimoi Game Reserve in Kerio Valley which is now functional, attracting many investors. Even as we say so, we must be ready to challenge our counties to perform.

Mr. Deputy Speaker, Sir, my county spends almost Kshs3 billion of the Kshs4 billion they get on Recurrent Expenditure. Why? Like what the President said the other day, we are doing good politics, but bad leadership. We must be able to interrogate whether it is still necessary for county governments to have the number of staff they have in areas that are not critical. It is not only doctors, nurses or ECDE teachers, but many of the staff at the county level are consuming public resources.

There must be a plan that will ensure that at least half of resources of counties can go to the development budget. Can you imagine now you have less than half of the

money going to development, and then almost half of the one that is going to development is misappropriated? Then, the whole place becomes a mess.

I think that of the examples that we have of counties that have done a good job, Makueni is always mentioned; Professor Kibwana is always used as a good model. It would be nice for the Senate to also interrogate those model counties where they have done something and it can be used to showcase to the other counties as to what they need to do.

Mr. Deputy Speaker, Sir, there are some counties or at least one of them - I do not know if I went there with you - where we were told to go and launch a road. When we asked where exactly the tarmac was, we were told that the tarmac was beneath what was on top, which was supposed to get out and then the real tarmac will come out.

There are some counties where they are doing cinemas in the name of development; where “Cobra Squad” kind of development is being showcased using cameras and pictures, moving of leased equipment of the police from one place to another, which are not even functioning. Then the whole country will think that this county is doing well. We must be careful not to be hoodwinked as a Senate to fall into that cinema kind of development or films that are done in special rooms of governors in the name of development taking place.

We must see something that is tangible. We must be able to see that the cost of living in a particular county has changed because of the county government; that the cost of health has changed in a particular county. Some counties are working hard to ensure that every house has health cover in order to reduce the cost spend in terms of health.

Mr. Deputy Speaker, Sir, some counties are being innovative and you do not have to have one size of shoe to fit everybody. I mean, I saw Kajiado County the other day being innovative, where Sen. Orenge was questioning about some people going for *harambee* and giving money. If you can have a public auction like the one Governor Ole Lenku did; a public auction where you are selling livestock, a family donates livestock because they find it so difficult when you tell them to go and sell at the market and bring the money.

You create for them an environment for an auction controlled by the county, take the money, they can have health in their families, those who can afford like Sen. Orenge and others to buy livestock, can buy and take it to Machakos or Siaya and meanwhile the people of Kajiado will have benefitted in terms of health. I do not think we should come here and bash our generosity. We are good people who give.

The other day I went with Sen. Orenge for a *harambee* to support one of our colleagues who passed on and I did not know Sen. Orenge gives in *harambees* despite the fact that he makes certain comments here to look like he does not. He is a very generous contributor. If anybody gives any amount above Kshs5,000, that is a lot of money. “A lot” is not being defined as so because someone gave Kshs1 million and another one gave Kshs500,000--- It is the principle itself and that is why Jesus said that it is not the amount that you give that matters, but the heart. The lady who gave the least according to Jesus gave everything and she was the best giver because you give out of the abundance of what you have. It is in the same way, I saw “Baba” - the former Prime Minister, donating

a lot of money to the campaign of Senator of Migori. Again, Sen. Orengo was there. That is how to give.

However, let us also give to poor causes, such as churches and others; where we think we can assist people who have, for example, medical problems. We should always give. I think there is also a mentality being created in this country that its only Members of parliament who do *harambee*; that is not true. I was from a *harambee* in my county this weekend where we were fundraising for a church and all elected leaders gave Kshs1 million only while church members gave over Kshs4 million.

Mr. Deputy Speaker, Sir, let us not create this impression that we are the only ones who give. That *harambee* is because your people are in office. The other day I went to a fundraising with the Deputy President at the All Saints Cathedral and I saw quiet professionals bringing Kshs5 million and other individuals Kshs10 million. The only reason we get publicity as elected leaders is because we are the ones who are being seen all the time, but Kenyans in their philanthropic way give a lot.

I like Sen. Orengo because he is an avid reader. I want him to read about Bill Gates; how much he gives from his wealth. He gives billions and billions of dollars not Kenya Shillings to worthy causes. He supports dairy farming in this country, he supplies computers in this country and all over the world. He is a global giver. He donates his wealth to the world. That's the same to George Soros, Hobert Humphrey where you had the scholarship of the former Vice President of the of the United States. The only difference between us and them is that they have institutional framework; they call it a "Foundation" then they take their wealth, put it in that foundation and support causes; NGO's and whatever.

In fact, if Sen. Orengo was still here, he would have to retract his Statement about, whether billionaires give. The only reason why, in this country that is not a culture, is because only people who give here, actually give for political reasons, but there are many people who quietly are not publicised, who give to many causes in this nation. Again, it has never been a culture for billionaires of this country to give. You will get someone who is a billionaire – some of whom are with us in this House – and they queue with us, trying to get a transport allowance of Kshs5,000 for a meeting we attended.

(Sen. Murkomen laughed)

You sometimes ask yourself what the problem here is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

The Senate Majority Leader (Sen. Murkomen): It is because the culture of giving---

The Deputy Speaker (Sen. (Prof.) Kindiki): Majority Leader, you know that if a Senator is entitled to an allowance, it should be considered as an entitlement, notwithstanding the wealth or commercial status of the Senator.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is true. However, it is also true that the President of the United States of America (USA), Donald Trump, does not take a dime of his salary because he donated everything to his

people. If you are the son of a billionaire or if you are a billionaire yourself, why do you want to go after small things? You should donate them to worthy causes. That culture of giving must be entrenched in this country and it must not be seen as a negative thing. We should not just wake up and say that because so and so has given, it is wrong, and so on, and so forth---

I can speak for myself; I am not amongst the people who can be said to own anything in this country worth being discussed. However, by giving in small ways, God has continued to bless us to live. This is a Biblical principle. I know that Sen. M. Kajwang' and Sen. Omogeni, who are avid Seventh Day Adventists (SDAs) can confirm that, that is what the Bible says. We must not attack those who want to give.

Mr. Deputy Speaker, Sir, when I come to the question of how Parliament should stand up for devolution, it is important that once we have given resources, like the ones that we have given to counties, our main duty as the Senate--- We are quick to ask questions about how the national Government is not being interrogated; but how many Senators in this House can stand up to their governors? How many Senators can walk to their counties, interrogate the books of their counties and tell the governor to use their money properly? I do not think I have heard, read or seen in any media house where my friend, the Minority Leader, has questioned Gov. Rasanga. This is despite the fact that there are so many complaints from the people of Siaya about how money is being used there.

Mr. Deputy Speaker, Sir, as we point out how the national Government should be questioned and how Parliament should stand up to the national Government, we must stand up to the counties where we come from. If a governor is your friend, you must be the first person to point out the ills and the challenges that they go through so that they can do better.

Mr. Deputy Speaker, Sir, your Governor is your good friend and you played a major role for him to be in office. I know that very well because of the political partnership, mentorship and conversations that you had; and I was in the mix. Should you question Gov. Muthomi and push him to perform, that should not be seen as a negative thing; it should be seen as a positive thing because you mean well. However, the person who does not mean well for the governor and the county will let him fail so that they can take advantage of it tomorrow and easily remove him from office.

You will realise over time that anyone who gives you positive criticism –of course devoid of insults, name calling and so on, and so forth –someone who raises issues---Like you said, had your former Governor listened to you last time – when you told him there was no need to buy fingerlings and pour them into a river, because it will be difficult to account for them –he would be in office now.

It is, therefore, important for us, as the Senate, to not just give money to go to the counties, but to also give positive criticism on how they can improve service delivery. I have told this to all Senators in this House; that even our colleagues who were here and have gone to the counties depend on us to give them positive criticism on how they can improve services.

Mr. Deputy Speaker, Sir, we must not miss the point that party caucuses also play an important role in running Government manifestos. Where those Government

manifestos have been interrogated--- I hear some people sometimes calling us sycophants. There are parties and regions in this country where one person just stands somewhere and whatever he says will pass; but for some reason, nobody calls them sycophants. However, there are places and parties – like where I come from – where we are called for meetings; we are persuaded and our points are also incorporated.

When we get out of those meetings and announce a position that we know has been interrogated by the leadership of that particular party, some characters want to call us sycophants. Teamwork does not mean sycophancy. The fact that you are not aware of what we discussed inside that room; about the proposals, the counter proposals; the agreements and disagreements that we have had for us to now come up with a joint position, does not warrant dismissing MPs that they are not doing their job.

Mr. Deputy Speaker, Sir, I would be concerned where there is no consultation, participation or robust internal democratic processes; where one person just rises and when he says; “we go left”, they go left. They can even brag publicly that they did it quietly so that people do not know. Then, we are just saying: “Long live the King; we are the democratic side and we are pushing for that side.”

Therefore, when we raise these issues about MPs not being accountable enough, we must be very careful because there are internal party mechanisms which people go through when they are pushing their issues. That is the same for county assemblies. We are not saying that the county assemblies should fight with the governors; we are saying that you must point out issues. When those issues are pointed out in the proper manner, they must be incorporated.

Mr. Deputy Speaker, Sir, I want to add my voice to the argument that counties must also be run in a prudent manner. I have said this, and Sen. Sakaja talked about Nairobi County. We have said it over and over again, that county management, just like national Government management, is not a one-man show. I sometimes see some people who want to blame President Uhuru, his Government and his policies. President Uhuru Kenyatta cannot work in isolation from the National Assembly, the Senate, other institutions and the Executive. It is the duty of every citizen around the President who has an opportunity to serve constitutionally, to help to ensure that what the President is pronouncing is the collective position that has been advised by many of us. It is the same in the counties; and I have mentioned the example of Nairobi County.

Mr. Deputy Speaker, Sir, Gov. Mbuvi is a good friend of ours and we sat with him in this House. You were here when he came with voluminous documents about misappropriation and mismanagement of resources in Nairobi County. This is a man who I know believes in the poor, common man and he has a fantastic heart.

However, it is true to also tell him that it is time he worked with a team. We said that there are no County Executive Committee (CEC) Member and Chief Officer for Health in Nairobi County. We are talking about the madness in Pumwani Maternity Hospital because there are no people who are in charge and who can take responsibility for that. There is even no Deputy Governor who would have gone to another corner when the Governor goes to one side.

We must, therefore, point out these issues. Counties must not be avenues for fights; it must be a place for cooperation and consultation; where assemblies are

consulting among themselves and with the executive; and the executive is consulting within itself. The more the better! The more you have a proper working arrangement, the better. Blames will come in and people will say, "O, you know the Governor wanted to sack so and so, and that is why we did this and this." The reason why there are many people who work below the Governor is also to cushion him or her from political issues and problems. That way, by the time the Governor acts on a particular thing, it has been sieved through by professionals who are working under him. I believe that does not just apply for Nairobi, but across the country.

We urge our governors to work with their deputies and their CECs so as to give everybody an opportunity to shine. Do not make it a one-man show. Let everybody shine in that corner, just like when we have the national Government where the President allows a Cabinet Secretary (CS) to shine as he is doing something in security, another in water and another one in lands. Collectively, since the President is coordinating all of them, ultimately when all these things succeed, the President will succeed and shine. Allow people to also shine, just like the President also allows his Deputy to shine. This is because if he gives him responsibilities to do one, two or three things, he is also able to put across his talents.

Mr. Deputy Speaker, Sir, I am asking county governments to tap into the talents and competencies that are within the counties. It should not be the case that we still have situations where a county will say that the deputy governor is missing. I do not know if it is true, but I hear that the Ethics and Anti-Corruption Commission (EACC) was questioning Gov. Lonyangapuo about his deputy, who is practising medicine in Texas. I would rather even have that deputy governor who is perhaps practising that medicine than the one who comes to the office to read newspapers and go home. It is the output that counts.

There is a big difference, because even when I asked the people of West Pokot County; "what is this thing about your Deputy Governor visiting USA all the time?" They said that he was working on medical equipment and that he had even brought them new medical equipment, and so on, and so forth. They are in full praise of their Deputy Governor compared to other counties, where the deputy governor reads newspapers and goes back home. I was also asking myself what the EACC is up to. Why would a Governor be arrested and held for the absence or performance by another constitutional office holder, who should be held accountable as an individual?

It will be interesting if that is true, because that is some of the breaking news that we saw. It would be interesting to see if blame can be transferred from one office to the other. For example, if one of my officers knows the officer should be arrested because he is not in office yet that person has been employed to do his job.

Mr. Deputy Speaker, Sir, counties must allow teamwork and performance, among others. This schedule is important. I support fully. I want to thank the Committee for doing a fantastic job.

When the proposals that come from the Executive are brought to this House, I believe that we will also look at them, but with the best interest of the counties and country at heart.

I beg to support.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senate Majority Leader. It is well spoken. However, next time when you are invited to witness a non-existent tarmac road which you are told is subterranean; I recommend you should have reported the matter to the police immediately because that is a grave offence in the nature of abuse of office.

We are making good progress. I will now give the Floor to the Senator for Homa Bay County.

Sen. M Kajwang: Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I rise to support this Motion that the Senate do approve the Report on the Cash Disbursement Schedule for FY2018/19.

It is rather difficult to make a contribution after prolific speakers like Sen. Murkomen, the Senate Majority Leader and Sen. Orengo, Senate Minority Leader, respectfully, in this House. However, on behalf of the people of Homa Bay County and the nation at large, I also tender my public support for this Motion. However, I will keep it very brief.

I sympathise with the debaters who have said that this could be an exercise in futility. I understand how important this Cash Disbursement Schedule is because, last financial year counties did not get money on the pretext that Senate approved a Cash Disbursement Schedule that had typographical errors. Yet, again this year, the Committee reports to us that the Cash Disbursement Schedule has got errors on Schedule One. There are errors on percentages and dates. We ask ourselves whether Treasury is not setting us up or is not serious about its duty. I congratulate the Committee for flagging the errors in this Schedule so that it is not used as an excuse again.

Mr. Deputy Speaker, Sir, secondly, we must ask ourselves whether we want to follow the law with fidelity to the last detail. The law says that this Cash Disbursement Schedule shall be agreed between Treasury and other players and shall be approved by Senate not later than 30th of May of any year. Today, it is the 18th of September, 2018. If someone was to go to court to ask for an interpretation on whether the actions of Senate are within the law, we might find ourselves in trouble.

The County Allocation of Revenue Act (CARA) is supposed to have been approved by 30th of April of any year. It is the CARA that gives rise to this Cash Disbursement Schedule. However, it was approved on 29th of June, 2018. The Public Finance Act (PFM) says that within 15 days of the approval of CARA which is expected to be Mid-May, the Cash Disbursement Schedule shall have been approved by Senate.

[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

Madam Temporary Speaker, it is for that reason that I subscribe to those who say that this could be a futile exercise; that we do so because only because the law requires us

to do it. It is more like the people who go to church on Sunday simply because it is an expectation upon them. They need to go to church.

We all know that despite us passing this Cash Disbursement Schedule, Treasury still gives out monies to counties when they want. They give how much they want. It is an issue that has intrigued the Senate County Public Accounts and Investment Committee (CPAIC) because every time a governor appears before us, there is the complaint that they are not getting money and on time.

Madam Temporary Speaker, you are aware that the debt in counties is close to Kshs100 billion. This cash disbursement schedule is for Kshs314 billion. That means that 30 per cent of the revenue of our counties will have to go to paying debt. We are making serious comments about the national debt status. We need to spend some time to consider the county debt status. This is because the Kshs100 billion that we are calling pending bills is debt that will have to be paid. The law says that it will have to be a fixed charge on our public expenses.

We have attempted to interrogate why counties complain that they do not have money and yet Treasury so regularly publishes notices in the newspapers saying that they have given money to counties. Who is fooling who? We have seen counties where workers are on strike. Workers of the Homa Bay County Assembly have not been paid while those of the county executive were paid only two weeks ago. Yet, Treasury says they have sent all the money to the county. Either Treasury is setting up our counties or our counties are not doing the right job.

Madam Temporary Speaker, in that interrogation, we established a few things. One is the budget making process. Counties delay to conclude their appropriation process and the budget because of the internal strife or competition between the executive and the assembly. Notwithstanding this Cash Disbursement Schedule, if a county has not concluded its budget making process, Treasury shall not disburse. That is something hon. Members need to understand. Yes, we have said that cash shall be disbursed on a certain date and manner on a monthly basis. However, counties, the Treasuries and the county assemblies must also complete their bit when it comes to the budget making process.

We have seen counties that have been surviving on Section 9 of the PFM Act that allows them to run, but only on the basis of recurrent expenditure. No development can occur because the executive and the assembly have failed to agree on the budget process.

Madam Temporary Speaker, even when the county concludes the budget process and we have the Appropriations act, a budget, the County Annual Development Plan (CADP) and the County Integrated Development Plan (CIDP), there is another process of uploading the budget at the Treasury.

This might sound operational, but it is a serious problem to counties. When counties have to upload their budgets into the system, they have to travel to Nairobi. This is because it has to be done at the Treasury. This is done county by county. The experience that governors have shared with us is that if you want your county's budget to be uploaded quickly, then send some people to 'lobby' at the Treasury. We have asked what they mean by the word "lobby". There are those who are politically-correct who say that it means smiling and just being around. However, it appears that money is changing hands for counties to get their budgets uploaded into the system. This is a system that

can be distributed and on which people can be trained and access rights provided. Why can the Treasury not allow counties to upload budgets on their own?

Madam Temporary Speaker, this is fundamental because in my county, for almost three weeks the story was that Homa Bay County budget was approved late and so it has not been uploaded into the Treasury platform. It took two to three weeks of parents sending children to school without school fees and workers going without pay simply because of such operational and transactional processes.

Madam Temporary Speaker, that is not the end of the problem. When the budget has already been uploaded with all the pain and ‘lobbying’ and despite this Cash Disbursement Schedule, for a county to get money, there has to be the approval from the Controller of Budget. That is a constitutional process. It is a process that is in the law.

How does it work? If a county wants money they have to send someone to the office of the Controller of Budget. Someone has to board a plane or a vehicle to Nairobi with a paper to the office of the Controller of Budget. After that, the person has to walk over to Central Bank of Kenya (CBK) which does not work beyond 2.00 p.m. Again, we have an operational and transactional issue, but this can have the impact of delaying disbursements to a county by one week or two weeks, during which a lot of things could have gone wrong.

We keep asking the Controller of Budget why they cannot automate the approval process, so that counties do not have to travel to Nairobi. The story that is not told loudly is that for your approvals to be fast-tracked, you have to lobby. Again, what does ‘lobby’ mean? Maybe it means smiling and just strutting in the corridors, but in the real sense, lobbying could have greater connotations than just smiling and looking nice. We have to audit, review them and fix these processes.

As if that is not enough, when a county uploads its budget and obtains approval from the Controller of Budget, there is another animal called the Integrated Financial Management System (IFMIS), which if it is down, the way it goes down for two months at the end of every financial year, counties cannot access cash. They have a budget, approvals and Treasury says that they have sent money, but it cannot be accessed.

As we look at this Cash Disbursement Schedule, it is important that we do a process mapping, which can be done by the Committee on Finance and Budget in conjunction with the Committee on County Public Accounts and Investments and the Committee on Information, Communication and Technology. Some of these issues are bottlenecks that arise because of the systems that we have put in place.

I also want to encourage the establishment of Parliament, particularly the Office of the Clerk, that there are certain competencies that must be developed internally. These are the competencies that will do the process mapping, the technical considerations, reviews and benchmarking, and then advise the Committees appropriately. I have no doubt about the competence of the staff and the clerks that are in this Senate and Parliament, but they need to be better organised so that some of the things that we talk about in our meetings and Plenary are converted to action.

We are politicians who are good in vision setting, but we need people who will help us in execution and realisation of that vision, and that is the role of the administrative wing of Parliament. We will pass this Schedule, but counties will go to

their Automated Teller Machines (ATM's), which will tell them that their actual balance is Kshs314 billion, but the available balance is Kshs0, simply because of those operational bottlenecks.

My Committee, the Committee on County Public Accounts and Investments, has already sent a letter to the Treasury for us to sit down and have a discussion on some of these challenges around IFMIS. There are counties that say that they at times have access to IFMIS once in a week, yet there is a Cash Disbursement Schedule that says that money should be available and budgets have been approved. We will bring in the Committee on Information, Communication and Technology and the Committee on Finance and Budget for us to find ways of improving IFMIS performance and performance of the systems that support counties when it comes to access to cash.

The Minority Whip, in his earlier contribution, alluded to the Kenya Devolution Support Programme and its reliance on the opinions and reports of the Auditor General. I want to correct the impression that was created that the Kenya Devolution Support Programme relies on the reports of the County Public Accounts and Investments Committee; it does not. It relies on the opinion rendered by the Auditor General. When the Committee on County Public Accounts and Investment does its review, it does not change the opinion of the Auditor General. It might only accept mitigating circumstances and measures, but the opinion remains the same.

It is the same thing that we have done with the Fiscal Responsibility Measure, which looks at Own Source Revenue. The conversation has been ongoing and I believe that the Chairperson of the Committee on Finance and Budget will update us at the right time. When we are giving that fiscal responsibility award to counties, it should not just focus on Own Source Revenue; it needs to go beyond that.

I want to weigh in on the issue of waste, national budgets and debt. We are talking about waste at the national Government level. We need to be honest about the waste, corruption, duplication and inefficiency that is in the Executive at the national level and county level. If we are serious about dealing with our budget deficit, then we have to look at those processes at the county and at the national level.

Counties will get Kshs9 billion less, assuming that the National Assembly agrees with the Memorandum from the President on the Supplementary Appropriations and the Finance Bills. The Kshs9 billion loss should not translate to Kshs9 billion loss of service. Let us not hear counties say that they can no longer offer healthcare because they lost Kshs9 billion at the national level. Let us not hear them say that they cannot build Early Childhood Development (ECD) schools because they lost Kshs9 billion or that they cannot provide water because they lost Kshs9 billion.

We have had discussions with governors on their Own Source Revenue potential and we realise that every county is achieving just about 10 per cent or 20 per cent of their potential. One Member of my Committee, the Senator for Kirinyaga County, is always very keen on finding out what the defunct local authorities were collecting, what county governments are collecting today and how it compares. By and large, you will find that the defunct authorities were collecting more than the county governments are collecting today with their inspectorates, automation, vehicles and advancement in organisation.

We must encourage efficiency at the counties and deal with corruption. We are talking of devolution producing millionaires, but most of them are “kickback millionaires”. We must advocate for efficiency at the counties. Counties do not need to increase taxation at that level. What Kenyans forget is that Value Added Tax (VAT) is one layer of tax. We have the Income Tax and Excise Tax, but when we go to the county, that woman who sells *omena* and dried fish at Kisumu Market pays a tax every morning as she checks in. That *boda boda* operator must pay a tax. There are ropes and roadblocks all over, if you move around this country, which look like extortion points.

Madam Temporary Speaker, counties have not been creative around liquor licensing and thus they have not optimised that revenue source. Outdoor advertising is a devolved function. We have seen the County Assembly of Nairobi pass an outdoor advertising law. We hope that once it is assented to by the Governor, it shall be implemented and replicated across. There has been a dispute between the Kenya National Highways Authority (KeNHA) and counties on who should collect rates from those billboards. I believe that it has been established that county governments have got the outdoor advertising responsibility, as long as the furniture or assets are on their property.

Issues of local tourism and areas around agriculture are devolved. Counties must be encouraged to think beyond what they are thinking. Most counties will be defunct if they do not get money from Nairobi, and they have no motivation to collect locally. When they collect locally, the revenue collectors pay themselves because they know that despite a Cash Disbursement Schedule, there will be IFMIS and Controller of Budget problems and they will never be paid on time. Therefore, they collect from the cattle market in Kipasi, in my village, pay themselves and then bank the balance. In many hospitals, the money collected is utilised at source.

I want to finalise by supporting this Schedule and encourage that it is not enough. We must address the operational, systemic and procedural issues that frustrate the realisation of this Schedule. We must also continue to encourage our governors not to levy more taxes. They should be creative, efficient and that the money that they receive should help them deliver the services that have been put in the Fourth Schedule of the Constitution.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Nyamunga): That is very good. I do not see Sen. Linturi in the House. Is he sitting somewhere?

Sen. Omogeni.

Sen. Omogeni: Thank you, Madam Temporary Speaker. I also rise to support the Report of the Committee on Finance and Budget on the County Governments Cash Disbursement Schedule for Fiscal Year 2018/19.

This Schedule is coming to the Senate at a time when those of us who are here to protect devolution and our county governments are still processing the Memorandum that has been sent to the National Assembly by His Excellency the President. We are made to understand that its implication will lead to the reduction of money that was due to go to the counties by a whopping Kshs9 billion.

Madam Temporary Speaker, most of us in this Senate and our governors, agree that the money that we give to our counties is not enough to support development that

will transform most of our counties. I would have expected the President, even if he wanted to put in place some adjustments in our expenditure as a country, the least he would have done, is not to interfere with the allocation that was to go to our counties.

We already passed the Division of Revenue Bill. I believe the implication would be that we will have to relook at it. It is even more worrying that what we read in the newspapers implies that even the allocation for the Equalisation Fund that was to go to the county governments would also be affected by the Memorandum that the President sent to the National Assembly. That is a very unfortunate occurrence.

Ever since we enacted our Constitution in 2010 - we did our first elections in 2013 – we have not had disbursements of funds to the counties under the equalisation formula. This time, when most counties were looking forward to receiving this fund, it is sad that again, the President is keen on chopping off the money that was to go to the counties.

Madam Temporary Speaker, on the historical perspective, the Equalisation Fund was meant to serve a very critical role in terms of pushing counties that have been lagging behind to be at the same level or close to the level that other counties are at. The Equalisation Fund was meant to support counties, build their infrastructure, support some counties to have essential services accessible to the people, including water. What message are we sending, when again, we are reducing our allocation to the counties under the Equalisation Fund?

The National Assembly should keenly address this. If we continue with this trend, there is no way a county like Turkana will ever be at the same level with other counties like Kiambu. The reason why the Equalisation Fund was put in the Constitution is because, historically, there are some counties that were deliberately marginalised economically in terms of development.

So, if we do not assert that constitutional principle of deliberately giving money to counties that are lagging behind, they will never catch up. Secondly, we will never progress as a country, unless we are honest with ourselves. If we do not diagnose the problem that is ailing this country, we will be playing ping pong games with each other. The problem is not that this country does not have enough resources. The problem is corruption and wastage.

By extension, what I am seeing of late is that we do not even want to respect our Constitution and the way the Executive should be constituted under the 2010 Constitution. The President created entities called the Chief Administrative Secretary (CAS) which have no room in the Constitution that the people of Kenya enacted in 2010. These are not cheap offices. They are expensive. A CAS is almost somebody above a Principal Secretary and below a Cabinet Secretary. This means that they are maybe running on three vehicles and an allocation of 10 members of staff under them. That is money that we are expending on offices which have no space under the 2010 Constitution.

Madam Temporary Speaker, it is time that the President sat back and asked; when did the rain start beating him? Why we are always crying that this country has no money. Why is it that we have entered this troubled economic order when just the other day in 2013, when President Kibaki handed the baton to President Uhuru, the country was

performing so well economically? Where did the ball drop between President Kibaki and President Uhuru? We must do self-examination and be magnanimous.

Bill Clinton once said, if you live long enough, you will make mistakes but what is important is to learn from them so that you become a better person. If the President made a mistake by creating these offices called CAS, he should own up, be magnanimous, tell the people of Kenya, that, here I went wrong and sack them.

Those offices are serving nothing other than just trying to please and massage egos of people who ran in elections and did not win and they need to be in some office somewhere and earn a salary. They are not the only people who have run in elections and lost. I was also a candidate in an election in 2013. I did not make it to this House but I did not require somebody to create an office for me. I retreated to do something else. They can sell *mandazis*, bananas and *omena* but not disturb the economics of this country just because they have to get jobs. That is not the way we will transform this country. That is a way of being retrogressive; taking this country back to the years we have come from.

Therefore, Madam Temporary Speaker, the solution is not to start taxing poor Kenyans. I was in my county over the weekend. There are poor women who earn less than a dollar a day. They take motorcycles to cover a distance of about four kilometres to go to the market to sell their *mbogas*. They are now facing the wrath of this taxation because the *boda boda* riders are now increasing fares that these poor women pay.

Madam Temporary Speaker, we cannot be a country that is cold hearted. We do not feel when we are subjecting our brothers, mothers and sisters to pain. This is the time that we expected parliamentarians to stand up and be counted. This is not the time for people to be called to some house to enjoy soup and chicken, and then come out and say, we have made a decision.

Article 95(2) of the Constitution gives us a very clear mandate. It says that we shall deliberate on issues of concern for the Kenyan people and get solutions. The place to deliberate and find solutions should be on the Floor of the House. We must strive to ensure that Parliament remains independent. That is why we have three arms of Government. We have the Judiciary, for example.

When the Judiciary has troubling cases that need them to take time before they make decisions, they retreat back and make decisions at the Judiciary. They never come here to consult Parliament or go to the Executive. So, this should be for Parliament. We do not need to look for solutions outside the Floor of this House. Often times, we do self-censorship and self-inflicted fear when there would be no consequences if you are independent and you stand on the side of the people of Kenya.

In our neighbouring country of Uganda, there is a time President Museveni nominated a retired judge to serve as an interim Chief Justice. A courageous Member of Parliament filed a case before the constitutional court. The bench that sat to listen and make judgment on that matter ruled that the President was out of order. There was fear within the legal circles. Our colleagues told us that that was the end of the career of Prof. Lillian. However, President Museveni, in his address to the nation, said that he accepted the decision of the court because courts exist to adjudicate on disputes even if they are between the Executive and Parliament.

Four years down the line, President Museveni promoted that judge to be a judge of the Supreme Court. So, we should not play small. Our playing small will never serve the world. We must stand out and assert the supremacy of Parliament. It is on that note that I hope the recommendation of this Committee will be taken seriously. Part of the recommendation of the Committee is that we approve the schedule but exclude the Kshs9.4 billion for leasing of medical equipment for the Financial Year 2018/2019.

I serve in the Committee on Health. This issue has remained the elephant in the room for many years. We ask questions but we have never gotten answers. On Thursday this week, we will have a session with the Cabinet Secretary for Health on why and how the equipment was procured.

In some counties like Wajir, dialysis machines were dumped there and they have never functioned ever since. In other counties, the machines were dumped in hospitals but there is no expertise to handle them. So, the question that begs is; why are we adding more money for the leasing of equipment if they have not helped our counties in enhancing provision of health services? Why are we engaging in this kind of wastage at a time when this country is short of enough money to provide services to our people? The Executive must respect the decision that this House makes. We are not here to rubberstamp what the Executive does. We are here to do our work on checks and balances on the Executive.

(The red light went off)

Madam Temporary Speaker, I beg for two minutes to just sum up.

Finally, unless we, as the Senate, can put county governments on toes, we will be sending money to counties and never see results. Under the Kenya Devolution Support Programme (KDSP), 34 counties are not eligible to receive these grants on the basis that performance assessment done on these counties found that they are not qualified. This is why we, as Senators, should ask questions. It is regrettable and sad that my county of Nyamira is one of the casualties. We will not benefit.

The Kshs4 billion from the World Bank is not being disbursed because counties have not fulfilled some financial conditions. Why should our people suffer because of inefficiency in our counties in this time and era? In Nyamira County, the health sector has been in a crisis. For three months, there were no salaries for doctors and workers and no services were offered in hospitals. How then will the people appreciate that devolution is a good thing if we cannot provide basic services like healthcare?

We must hold our governors to account. Accountability does not just mean summoning governors when we have reports of the Auditor-General. We must do more than that. We must visit our counties and ask questions when issues like these are brought to us. When we see deaths in Pumwani Maternity Hospital, we must ask questions. It is not just for Gov. Mbuvi to rush to the hospital and say that there are babies in polythene bags. He is the Chief Accounting officer of Nairobi City County and the one who should be put in the dock to answer questions.

Finally, Madam Temporary Speaker, unless we give enough money to counties, we are reducing governors into payroll masters. They will just be receiving money

enough to pay salaries and then sit back and we will see no development in the counties. In conclusion and as I support this Report, we must fight to ensure that counties receive enough resources that can transform them and the lives of the people there.

With those remarks, I support.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, before we continue, I would like to reduce the time to 10 minutes so that we give the rest of the interested Members time to contribute to the Motion.

Next is Sen. Kibiru.

Sen. Kibiru: Thank you, Madam Temporary Speaker. From the onset, I stand to support the disbursement schedule. We will definitely require to see results for the Kshs314 billion that we are taking to the counties.

Once in a while, I look at counties as a firm or organisation. I look at the electorate as the stakeholders or shareholders. At the end of the financial year, shareholders ask what the bottom line is. They also ask what you have done with the money that they entrusted to you to do business and carry out issues or development.

Several issues have been mentioned by Members. One of the issues that is coming up is about pending bills, which I have heard the Chairperson of the Committee on County Public Accounts and Investments (CPAIC) mention.

Madam Temporary Speaker, this is a huge bill. One of the things that is happening is that, everywhere we go in this country, people are saying that there is no money. People are wondering what happened to money. Some of these monies are in the pending bills. There are people who did genuine businesses, whose property is being auctioned by banks because they supplied and have not been paid, one and half or two years down the line. This is an issue that should be addressed so that the genuine suppliers are paid. Let the law take its course on those who did not do genuine supplies.

Madam Temporary Speaker, looking at it also from the national Government, we are only hearing about the external debt and the money that we owe other institutions that have lent money to this country. Nobody is talking about the money that the national Government owes the suppliers, road contractors *et cetera*. We need to tell the national and county governments to stop misusing supplier credit. The more they use the supplier credit, the more they are making the upcoming entrepreneurs go down the drain when it comes to realizing value for the monies they have invested.

It is high time that both the national and county governments started practicing prudent ways of doing business by way of honouring contracts. They should pay promptly when certificates are presented. There can never be a more fertile ground for corruption than when one is chasing payments in the national and county governments.

Madam Temporary Speaker, if we want to avoid costly projects and corruption, we need to streamline the way we do and contract people to do business. We need to only order for goods that we are ready to pay for. That way, we will increase money circulation in this country and make businesses grow.

There has been mention about the way county governments are getting a lot of problems when it comes to dealing with the Budget Office and issues of the Integrated Financial Management Information System (IFMIS). The knowledge that I have

currently is that every organisation or everybody is going technological. One wonders why technology becomes a hindrance to doing activities or business.

I sit in Senate CPAIC and many are the times when we hear governors lamenting that they are unable to access IFMIS. We do not need to travel from Kirinyaga or Nyandarua counties to come to Nairobi to deal with the issue of technology. It means that technology is not helping us.

We need to relook at this animal called IFMIS. If it is the one that is hindering the flow of businesses and activities in the counties, I think it is high time we overhauled it or brought interactive technology. This is because in this century, we cannot have technology that is not helping us in doing business.

Madam Temporary Speaker, issues have come up on how we use the money that is disbursed to the counties. We have had governors who have come in front of us telling us about certain projects that are collapsing because no feasibility studies had been carried out before they commenced. One governor told us that they came up with a milk processing plant, but because of variation in the production of milk, some are currently ghost projects.

In conclusion, Madam Temporary Speaker, as the Governors get money and do whatever it is that they are doing with it; they also need to take care of the assets that they inherited from the county councils. If this issue is not addressed well, we will be harbouring an issue that will be a serious scandal or a very big corruption issue that has never been witnessed before in this country. Practically, I believe that both the national Government and the county governments need to look at issues from a proactive manner and stop being reactive.

In the Committee on County Public Accounts and Investments, we complain of being morticians. We want to be physicians. Let the county governments and the national Government be proactive in whatever decisions that they want to take.

With those few remarks, Madam Temporary Speaker, I beg to support the County Governments Cash Disbursement Schedule for Fiscal Year 2018/2019, of course minus the recommendation of the Kshs9.4 billion that is going to the leasing of the hospital equipment.

Thank you, Madam Temporary Speaker.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I also stand to support the approval of the Report on the County Governments Cash Disbursement Schedule for Fiscal Year 2018/2019. As other hon. Members have indicated, the three Schedules have clearly indicated the equitable share disbursement, the disbursement for conditional allocation and the conditional allocations that are from projects and grants.

Madam Temporary Speaker, the Constitution of Kenya 2010 was overwhelmingly voted for because of the Article on devolution. That is because Kenyans believed that this was the moment of change and that this was the way to capture that change. We have seen countries like America, for example, that have a system that is quite close to ours in terms of devolution. Their state level is more or less like our county levels; including what we have also seen in the systems of accountability and transparency. Without accountability and transparency, we are going to have the same resource pilferage that we are talking about. We are talking about a lot of money that is going to the counties.

Madam Temporary Speaker, this is the sixth year of implementation of devolution and we are still talking about problems of the Integrated Financial Management Information System (IFMIS). It is worsened by what Sen. M. Kajwang' is talking about; that people have to lobby for the funds. We need to have a very honest discussion because the life of more than 50 million Kenyans depends on devolution.

Madam Temporary Speaker, Article 174 of the Constitution is very clear and it states that the objective of devolution is:-

“to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.”

However, Article 175 of the Constitution is very specific and it states that:-

“county governments shall have reliable sources of revenue to enable them to govern and to deliver services effectively.”

Those two Articles summarise everything that is meant to happen in terms of devolution. It is one thing to come here and approve this Report and to have the money disbursed, but from the reports that we are getting, this money is not properly disbursed. It is either disbursed in sections or some counties have to lobby. Subsequently, we also have problems finding out what the money has been used for.

Madam Temporary Speaker, part of the objects of devolution was to enhance checks and balances and the separation of powers; this is where the problem lies. I do not think that in the Eleventh or in the Twelfth Parliament, we can come up and say that we have satisfactorily handled the issue of separation of powers. Looking at the way decisions are being made, the three organs of Government –the Judiciary, the Legislature and the Executive – are increasingly becoming one organ rather than three organs which should be very effective. The county assemblies should also be able to hold the county governments accountable using the power they have.

The role of the Senate, therefore, is very critical. Just listening to Sen. M. Kajwang' gives us the Business of this Senate and what we are meant to do to ensure that these errors are actually addressed. One of the issues he mentioned is that even in these disbursements, we have mistakes right here. That needs to be addressed. The CARA approval should be made by 30th April which means we are far beyond the time. Article 175 is very clear about the reliable and timely disbursement to these counties.

Many counties will talk about most of the resources being taken up by recurrent expenditure. There is also the developmental budget which is critical. That also needs to be handled for devolution to have an impact. Many of these counties have not delved into the development budget. We have a recurrent budget that keeps on increasing.

In the 11th Parliament of the Senate of Kenya, we began to address some of the issues, for example, we had the budget ceilings that the Senate put in the county assemblies to ensure that certain expenditures do not overflow beyond a certain limit, both at the level of the county assemblies and also at the level of the county executive and the County Executive Committee Members (CECs) who are part of that executive. That worked.

Madam Temporary Speaker, the role of this Senate is getting clearer and clearer. If I refer to what Sen. Kajwang' has mentioned, then we will have to go to these counties and interrogate what the issues are and how they can be addressed. The Senate is moving

to Uasin Gishu next week. I suggest that should just be the beginning of moving to each of these counties. We should be specific on the problems; what is happening and where the problems really lie. We need to come up with clear systems of accountability in the specific counties.

We have the problem of debt payments. A Bill that has been brought to this House by Sen. Wamatangi tries to address the issue of transition from one government to another. If pending bills are accumulated by the current administration, how will the incoming one cope with the expenditures that they are coming up with in terms of their budget and how to deal with debts? We should also look at the extent to which the county governments are held liable to the County Integrated Development Plans (CIDPs) in the counties and whether this has been achieved.

The concept of public participation is the most important thing in this Constitution. We have not paid enough attention to that. We need to raise the premium. Transparent and tranquil governments have an open governance system (OGS). You will just click on a button on the computer and it will run for you the county expenses; how much has gone from the treasury, into which county and what it has been used for. Having such transparent systems will enable people to question. You can go to counties and ask people; this is what the county has planned to do. This is your CIDP and these are the projects that you have. Have these been actualized?

One Senator said in one of the discussions we had recently that the Controller of Budget has a list of all these projects that are meant to be undertaken in the counties. So, it is possible to begin to inform Kenyans that this is not a favour. Devolution is not a favour to anybody. It is the way out for us to quicken the level of development and social-economic empowerment of our people to get us to where we need to go.

I was saddened when I heard a Senator talking about the need to lobby the Treasury, for example, for these funds. What else might be going on in between all that is happening there? All these checks and balances and the separation of powers is very important.

So, again, we need to have operational transience and automated operationalisation from the point we have released these funds. That becomes the agenda for this Senate. We need to follow through sufficiently to know that these funds have reached the counties and have been used in those counties. In one of the visits in the 11th Parliament, we went to Kericho County. We had a sense of how revenue is collected right up to the end but also as we said, there is a lot of craftiness in what finally ends up on our tables.

We heard the Chairperson of CPAIC say that at the end of the day, we become morticians. We look at the Auditor-General's reports and make queries, sometimes for governors who were not in office at that particular time. We need to move away from that.

Last but not least, we need to revisit the whole issue. We need to ask questions and get answers for the questions that we ask. For example, how can the county local revenue be less than the local authorities' revenue? With the changes that have happened and taxes that are collected from the people, how can we lack some sort of automated systems?

When we were in Malindi for the Arid and Semi-Arid Lands (ASAL) Conference, a proposal was made for having some sort of automation. You can do automation but we also need to change the culture---

(Sen. (Dr.) Zani's microphone went off)

The Temporary Speaker (Sen. Nyamunga): Two minutes is not possible. Just wrap up in a half a minute.

Sen. (Dr.) Zani: Madam Temporary Speaker, nothing is rocket science. The Rostovian Model for development has been put into place. You must first accumulate and then divide. You cannot do that with increased taxes. You need to have a strategy on how to accumulate and then divide and I think that is the direction we want to go.

I thank you.

The Temporary Speaker (Sen. Nyamunga): That has been a good debate. Sen. Mwaura, you have the Floor.

Sen. Mwaura: Madam Temporary Speaker, I rise to thank Sen. Olekina for allowing me to jump the queue. That is kind of him.

Recently when we were at the ASAL Conference, we had some informal conversation with some people. After many governors had presented on how they are doing well in their counties, someone asked whether it is them or the counties they come from. That summed it all. We are here to approve the County Disbursement Schedule to governors who I heard Sen. Omogeni describe as "payroll masters" but I disagree with that. County governors are doing well.

This morning, we were discussing this matter somewhere. The truth of the matter is that the devolution aspect is working in some places and not in others because governors have learnt how to circumvent the law. They are not accountable to their source of revenue because they assume that it is their own kitty. If you looked at the last report of the Controller of Budget, you could tell the counties were doing badly, including Nairobi and Kiambu counties among others.

We have a problem because of liquidity and cash flow management issues at the National Treasury with regard to how we receive our revenue. We have three sources of revenue which are rates, loans and private equity. We were advised that we have an economy that is 25 per cent richer than it actually is. I think that was ingenious of our competitors looking at the effect of the economies to make African economies to stall because this has predicated us to have a high appetite for debts. Currently, our nominal debt is at Kshs5.1 trillion. As a result, therefore, it has become extremely difficult to finance the operations of counties because a huge chunk of the monies that are designated for counties are supposed to come from loans. That is the truth of the matter.

Theoretically, we would first divide the sharable revenue through the Division of Revenue Bill which, as a consequence today, we are discussing how to disburse monies in the Schedule as presented therein. Because of the issues of cash flow and liquidity, collection, missing of targets and repayment of loans that we took before, it follows that counties are at the lower end of priority when it comes to availability of cash at the National Treasury.

As we speak, most of the counties have not paid their staff the July salaries. It is not just counties but also Ministries, Departments and agencies. I have interacted with individuals who only received their cash disbursement recently. Some of them never got the monies for the other quarter before this one. So, we should not lie to ourselves. In terms of microeconomics, for the past six years, we have gotten it wrong and we must be honest to Kenyans.

Today I was listening to resolutions of various parliamentary groups. I do not know why the Senate was not invited. Maybe we will have another one. There is consensus that we need to agree on where this deficit will come from. We must remember that the national deficits are wishful. Therefore, Parliament must not be seen to be punished by raiding coffers where there is direct influence of MPs as if we are the ones who have led the country---

The Temporary Speaker (Sen. Nyamunga): Sorry Senator, as a matter of priority, we will give you a balance of six minutes, if you will be available tomorrow, followed by Sen. Olekina.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday, 19th September, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.