

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 3rd June, 2025

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

(The Clerk-at-the-Table consulted the Chair)

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

We do have quorum now. Clerk, you may proceed to call the First Order.

The Chairperson Standing Committee on Devolution and Intergovernmental Relations, proceed.

PAPERS LAID

IMPLEMENTATION OF THE SENATE RESOLUTION ON THE CURRENT STATE OF THE NATION

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Paper on behalf of the Chairperson of the Standing Committee on National Cohesion, Equal Opportunities and Regional Integration today, Tuesday, 3rd June, 2025-

Report of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration on implementation of the Senate Resolution on the current State of the Nation made on Wednesday, 24th July, 2024.

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BRANDING PUBLIC PROJECTS/COUNTY VEHICLES
WITH IMAGES OF GOVERNORS AND MCAS

Secondly, I beg to lay the following Paper on the Table of the Senate-
Report of the Standing Committee on Devolution and Intergovernmental Relations on a Petition to the Senate by Mr. Laban Omusundi, a resident of Nakuru County, concerning the branding of public projects with images of Governors and Members of County Assemblies (MCAs) and branding of county vehicles.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. Kingi): Next Order.

The Senate Majority Leader, you may as well give notice for both Motions.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON BRANDING PUBLIC PROJECTS/COUNTY
VEHICLES WITH IMAGES OF GOVERNORS AND MCAS

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to give notice of the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on Devolution and Intergovernmental Relations on a Petition to the Senate by Mr. Laban Omusundi concerning the branding of public projects with images of Governors and Members of the County Assemblies (MCAs) and the branding of county vehicles, laid on the Table of the Senate on Tuesday, 3rd June, 2025.

ADOPTION OF REPORT ON IMPLEMENTATION OF THE SENATE
RESOLUTION ON THE CURRENT STATE OF THE NATION

Let me also move the Notice of Motion for the second Motion.

I beg to give notice of the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration on implementation of the Senate Resolution on the Current State of the Nation made on Wednesday, 24th July, 2024, laid on the Table of the Senate on Tuesday, 3rd June, 2025.

I thank you.

The Speaker (Hon. Kingi): Next Order. Statements pursuant to Standing Order No.53(1).

Senator for Kitui County, the Hon. Enoch Wambua, proceed.

QUESTIONS AND STATEMENTS

STATEMENTS

RESURGENCE OF BANDITRY IN KITUI COUNTY

Sen. Wambua: Thank you, Mr. Speaker, Sir. With your permission, I will read the two Statements.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations on a matter of countywide concern regarding the resurgence of banditry in Kitui County.

In the Statement, the Committee should address the following-

(1) Factors that have contributed to the resurgence of banditry in Kitui County as witnessed in Ngomeni Ward, where bandits masquerading as camel herders have been terrorising residents.

(2) The steps being taken by the Government to address the situation and prevent its recurrence in historically affected and vulnerable areas, including Tseikuru, Nguni, Ngomeni, Nue, Endau, Voo, and Mutha Wards.

(3) The delay by security agencies to apprehend and arraign the bandits in court and the actions being taken to address this delay.

(4) Whether the Government has considered compensating families of those killed by bandits, and if so, obtain information on the timelines for compensation.

(5) The progress made towards fulfilling the commitment made by His Excellency Prof. Kithure Kindiki during his visit to Mandongoi Area in Ngomeni Ward in September 2023, then as the Cabinet Secretary for Interior and National Administration, regarding the recruitment and deployment of 250 police reservists to aid the fight against banditry in the region.

STATUS OF CONSTRUCTION OF KIBWEZI-MUTOMO-
KITUI-MIGWANI-MBONDONI ROAD

Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Roads and Transportation on a matter of inter-county concern regarding the status of construction of the Kibwezi-Mutomo-Kitui-Migwani-Mbondoni Road.

The Ministry of Roads and Transport has announced the securalisation of Kshs175 billion from the Roads Maintenance Levy Fund to pay pending bills for contractors to return to sites to complete stalled road projects across the country.

In the Statement, the Committee should address the following-

(1) The amount of money set aside to facilitate the resumption of construction works on the Kibwezi-Mutomo-Kitui-Migwani-Mbondoni Road.

(2) The status of compensation to the project-affected persons along the road, some of whom have been waiting for compensation for their land acquired by the Government for the project for more than 10 years.

(3) The estimated completion date of the project.

I thank you, Mr. Speaker, Sir.

ALLEGED RESTRICTION ON THE NUMBER OF PASSENGER SEATS BY
QATAR AIRWAYS AND TURKISH AIRLINES ON THEIR DIRECT
FLIGHTS TO MOI INTERNATIONAL AIRPORT

Sen. Miraj: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing on a matter of national concern regarding the restriction of the number of passenger seats by Qatar Airways and Turkish Airlines on their direct flights to Moi International Airport, Mombasa.

The Government heeded the Coast Region Stakeholders' call for open skies by granting landing rights to Turkish Airlines and Qatar Airways for direct flights to Mombasa; a move that significantly boosted tourism, enhanced the local economy and positively impacted the livelihoods of the people in the region.

However, while this milestone is commendable, the imposition of restrictions on the number of passenger seats these airlines may offer per flight or week undermines the spirit of liberalisation in air transport.

In the Statement, the Committee should address the following-

(1) The justification of the restrictions on the number of passenger seats offered by Qatar Airways and Turkish Airlines on their flights to Mombasa, including the legal and policy basis, if any, for such limitations.

(2) The potential impact of these restrictions on tourism, trade and the economy of the coastal region.

(3) The measures the Ministry is taking to ensure transparency and fairness in the implementation of Bilateral Air Services Agreement (BASA).

Thank you.

PROTECTION OF THE DIGNITY AND WELFARE
OF THE BOYCHILD AND MEN IN KENYA

Sen. Gataya Mo Fire: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 53(1), to seek a Statement from the Standing Committee on Labour and Social Welfare on a matter of national concern regarding the dignity, welfare and protection of the boy-child and the men in Kenya.

Kenya faces a growing crisis of neglect and marginalisation of the boy child and the men, reflected in rising school dropout rates, child labour, police brutality against young male protesters, widespread unemployment, substance abuse and mental health

struggles. This has been worsened by the lack of support systems and the silence around sexual and gender-based violence against men.

While the empowerment of the girl-child has progressed commendably, the boy-child has been left behind, creating a generation struggling with dignity, identity and hope.

In the Statement, this Committee should address the following-

(1) The concrete actions being taken to improve the welfare of boys and men in Kenya.

(2) The measures currently in place by the Government to prevent and respond to violence, neglect and abuse of boys and men.

(3) The effectiveness of the implementation of the national policy for prevention and response to gender-based violence and the gender-based violence action plan, March 2023, including challenges faced.

(4) Look at the availability and impact of mental and physical health services tailored specifically for men and boys.

(5) Look at any plans to adopt educational environments to better support the psychological and physical needs of male learners.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Hon. Senators, I will allow comments on the Statements as sought for a maximum of 15 minutes. If you have an opportunity to speak, kindly keep it under three minutes.

Sen. Oketch Gicheru: Mr. Speaker, Sir, thank you for this opportunity.

I want to quickly comment on the Statement by the Senator for Kitui County, Sen. Wambua, on the issue of the Kibwezi Road. Particularly, I commend his courage to have brought a comprehensive Statement for the Senate to understand the issue of the Road Bond.

This Road Bond that has been taken is Kshs175 billion. We loosely hear of the fact that about Kshs39 billion of that is supposed to go to the project-affected persons that Sen. Wambua has talked about in his Statement. However, the biggest concern is how this Road Bond, which is part of the Road Maintenance Levy Fund (RMLF), is helping county roads as well.

Mr. Speaker, Sir, while we have national roads that are affected by lack of capitation for them to be completed - for which this Kshs179 billion was taken - there are also pending bills in counties of contractors who are doing county roads that are supposed to be financed by RMLF. We see a second tier of confrontation between county governments and the national Government on the issue of Road Maintenance Levy Fund (RMLF).

We do not get the 18 per cent that is originally supposed to be money for routine maintenance. We are supposed to benefit from it by ensuring that contractors have gone back to the county roads. They cannot be financed from county small fiscal space.

Mr. Speaker, Sir, I belong to the Committee in charge. I wish ourselves the courage to go deeper and look at the comprehensive agreements under this road bond and ensure it all includes counties.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed, Sen. Joe Nyutu.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. I rise to comment on the Statement made by the Minority Leader, Sen. Enock Wambua of Kitui County, regarding banditry that has resurged in Kitui County. It is important that we call out the Cabinet Secretary for Interior and National Administration, who is responsible for internal security. We cannot afford to continue having security problems while we have the necessary infrastructure with the Government.

Mr. Speaker, Sir, this must be taken very seriously considering that we have also had killings, especially in North Rift where we even lost a Catholic priest to this kind of crime. We must see to it or persuade the Cabinet Secretary for Interior and National Administration to disarm criminals. Firearms should not be in the wrong hands.

I believe that the Cabinet Secretary for Interior and National Administration can do better in our counties. We must ask the Cabinet Secretary to be serious and do things that matter, and not get bothered with politics and who says what. Get to the ground and have the criminals disarmed and necessary action taken because this is very serious. Every Kenyan has a right to live anywhere in this country and to engage in any form of economic activity as long as it is not illegal. We must also protect our pastoralists and those who do other forms of farming, for them to be safe in their country.

Mr. Speaker, Sir, if you allow me, I also want to comment on the Statement by Sen. Mo Fire on the welfare of the boychild who has been neglected for ages. Since 1985 when we heard of - I do not want to call it infamous - the Beijing Conference. We have been empowering the girlchild at the expense of the boychild. You would even see some laws that discriminate against boys. For example, if an 18-year-old boy is found to have engaged in a sexual affair with a 17-year-old girl, he is considered to have done what we can call child abuse or defilement and is jailed, yet they are age-mates. We must speak out for the boychild who has been neglected and also socialized not to speak about his problems.

The Speaker (Hon. Kingi): Proceed, Sen. Beatrice Akinyi.

Sen. Ogola: Mr. Speaker, Sir, I rise to support two Statements by Sen. Enock Wambua and Sen. Mwenda Gataya.

I will start by congratulating the great people of Homa Bay County. Last Sunday, Madaraka Day was celebrated in my county of Homa Bay. I thank our people for the show and demonstration of patriotism. They came in large numbers, Mr. Speaker, Sir.

A number of them came on foot. They have been so happy. Most people were very cagey about the numbers that were in Homa Bay, but that was real demonstration of the resolve of our people, especially from the Lake region. These are people who when they mean yes, they say yes and when they say no, they mean no. The demonstration on Madaraka Day was very clear to everybody that our people were happy. We are a community who show it on our face. We said yes because we meant yes.

Mr. Speaker, Sir, I now support the Statement by Sen. Wambua about the resurgence of banditry in Kitui County. Banditry has led to a lot of suffering in regions. We have witnessed loss of lives, destruction of properties and interruption of livelihood

of people. I must join in mourning the loss of the priest that was murdered the other week as a result of banditry. I condemn the act and support this Statement.

Lastly, I support that boys and men must be protected in this Republic. We support that both boys and girls must live in dignity. I support these two Statements. Thank you to the great people of Homa Bay County.

Thank you.

The Speaker (Hon. Kingi): Proceed, the Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I want to comment on the Statement by Sen. Wambua on the resurgence of banditry in Kitui.

This is not an isolated incident. There has been an increase in banditry activities. Of course, the more famous ones are the ones happening in the Kerio Valley and the battle that is ongoing there. Now, we hear these reports of what happened in Kitui.

Last weekend on the border between Kenya and Tanzania in the Angata Barakoi area where there were difficulties a few weeks ago, a lone gunman attacked citizens who were taking care of their cattle and made away with herds of cattle. This points to a greater problem than just the command of the police service.

Mr. Speaker, Sir, you know this is not rocket science. There is a technology to take care of vast areas such as the area that Sen. Wambua is talking about, the Kerio Valley, Angata Barikoi, *et cetera*, yet as a country, we have continued to underfund our security apparatus.

A time has come. I hope that when the Committee on National Security, Defence and Foreign Relations takes time to listen to the representation from the Inspector General of Police and the Ministry of Interior and National Administration, we will have a conversation about the need to properly fund our security agencies. We continue to banish them and say that you need to do this or that, but you are as good as the technology that is available to you.

This is the only country in the world where we politicise the budget of our security forces. We have seen many times newspapers trying to discuss and dissuade the country from investing and modernising our security systems. We ignorantly do so because unlike the rest of our neighbours and parts of this world that have dealt with insurgents such as this, we have never dealt with serious conflict. Perhaps, we think that it is not important to fund our security systems and modernise the equipment they have.

I hope that when this Committee retires to consider this Statement, it will be a wake-up call to us on the need to better equip our security agencies, so as to combat this kind of menace across the country.

Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Essy Okenyuri.

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I wish to support the Statement by Sen. Wambua. The current issue he is actually highlighting is not appearing for the first time. The Ministry now needs to take stern actions to ensure they stop whatever is happening within that area.

Mr. Speaker, Sir, I also wish to support the Statement by Sen. Mwenda Gataya Mo Fire on neglect of the boychild. I would use the former President Barack Obama's

words on not being successful when playing half a team. This Statement calls on us to refocus on looking at the kind of families we are bringing up because the future of this country is at stake. I personally come from a conservative community, which for a very long time celebrated the boychild for purposes of having continuity of our generation. However, whatever we are seeing directly has a relationship to do with the femicide cases in this country.

I wish that we put our heads together and look at the issue of the boychild even as we emphasise on the conversation of girls because the fight against Gender-Based Violence (GBV) is not in isolation for women. The men are part of us. For a long time, I have come to appreciate that being a man is more than having muscles and a deep voice. They are seed carriers. So, if what is happening continues, we risk the future of this generation.

Thank you.

The Speaker (Hon. Kingi): Next Order.

MOTIONS

ADOPTION OF REPORT ON PETITION ON DEATH OF MS. ANNITA JEPKORIR AT MTRH DUE TO ALLEGED MEDICAL NEGLIGENCE

THAT, the Senate adopts the Report of the Standing Committee on Health on a Petition to the Senate by Ms. Mercy Jepchirchir regarding alleged medical negligence and staff incompetence which led to the death of Ms. Annita Jepkorir at the Moi Teaching and Referral Hospital, laid on the Table of the Senate on Wednesday, 7th May, 2025.

(Sen. Mandago on 27.5.2025)

(Resumption of Debate interrupted on 29.5.2025)

The Speaker (Hon. Kingi): Debate on this Motion had concluded. What remained was for the Chair to put the question, which I will proceed to do.

Clerk, do we have the requisite quorum?

(The Clerk-at-the-Table consulted the Speaker)

I will, therefore, proceed to put the question.

(Question put and agreed to)

Next Order.

ADOPTION OF REPORT ON THE FOURTH BASIS FOR ALLOCATING
SHARE OF NATIONAL REVENUE AMONG COUNTIES

The Speaker (Hon. Kingi): The Chairperson, Standing Committee on Finance and Budget, you may proceed to move the Motion.

Sen. Osotsi, what is your point of order all about? You are out of order, Sen. Osotsi. You can only rise on a point of order to point out a disorderly conduct of a Senator who is on their feet. It certainly cannot be a point of order.

You may proceed.

POINT OF ORDER

PROPOSAL TO SUSPEND SITTING IN ORDER TO BUILD
CONSENSUS ON THE REVENUE SHARING FORMULA

Sen. Osotsi: Mr. Speaker, Sir, I have a very important matter to raise. Standing Order No.38 allows us to temporarily suspend a sitting. The practice has been that when we have a matter of serious importance like the one we are about to discuss, so that we can give us some time to discuss and get a consensus.

I have noted that the Motion before us as written--- I am sure we have consulted including the meeting we had this morning. However, some of the issues that we raised seem not have been included in this Motion today. I was seeking that you probably give us some time, under Standing Order No.38, to consult further on this matter before we continue with it, given its importance not just to us, but to the whole country.

(The Clerk-at-the-Table consulted the Speaker)

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Yes, Senator for Kitui.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I have listened to what our colleague, Sen. Osotsi, has said.

(Sen. Oketch Gicheru consulted loudly)

Sen. Eddy, you may want to listen to this.

Mr. Speaker, Sir, maybe what Sen. Osotsi has said makes sense, but there is one thing that we, as leaders, must also get serious about. We agreed through a Communication from the Chair that we will have a *Kamukunji* this morning, where we were supposed to sit and canvass those issues. Just a handful of us attended that *Kamukunji*. I am wondering what magic you will employ that will get all of us to sit, consult and agree.

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Mr. Speaker, Sir, this is an important matter, but it is as important as the attention that we give to it. If we honestly wanted to deal with this matter, all of us should have been here at 7.00 a.m., to address this issue. There is business that is pending in the Order Paper for so long. If we keep adjourning debate to deal with issues that people are not very keen on dealing with, then I do not know what we will do. My point is that the opportunity was given to us twice and we did not take it. How many more times do we need to come and address those issues?

Thank you.

The Speaker (Hon. Kingi): The Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): If I can probably provide a way out and for the comfort of Sen. Osotsi, Sen. Kinyua and the rest of the Members that I know have a position they are trying to canvass.

First of all, I associate myself with the comments of Sen. Wambua. It would have been important that you be here today in the morning as a sign of commitment to your constituents because we had a lengthy discussion. However, that is neither here nor there.

What we resolved in that meeting is that the Senators that have a contrary position to what the Committee is proposing to convince the rest of us by way of permutations done by the Parliamentary Budget Office (PBO). As you make your submissions to the Motion, you inform the House why you disagree with the formula and why the formula you are now proposing serves us better. If you have a good formula and better than what the Committee is proposing, that secures the interest of your particular region or the counties that you are proposing, we will listen to them.

However, we felt that it will be unfair to the Committee to continue discussing this matter without it finding its way substantively before the Floor of this House. The practice has always been - and this is a practice adopted in the second and in the third generation and now, that we are doing the fourth - once the Motion is moved, you prepare your notes, Sen. Osotsi, together with permutations calculated for you by the PBO, come and circulate. Then you can convince us. I believe that is what Sen. Omogeni is doing. He is not here because he was part of the *Kamukunji*.

I request that we make progress. We allow the Chairperson to move, the Motion be seconded then deliberations can begin. We are not about to vote this afternoon, Sen. Osotsi. You still have time maybe between today, tomorrow or Thursday, who knows, to convince the rest of the House.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): We will lastly hear from the Senator for Nairobi City County.

Sen. Sifuna: Mr. Speaker, Sir, I do not understand the anxiety from some of our colleagues. I do not know what we have said or done to make them believe that we cannot be persuaded. I am personally here to be persuaded by the arguments that are advanced on this Floor. If you remember, the first time this matter was supposed to be on the Order Paper, you gave a communication and said that you wanted an opportunity for this House to talk within itself for us to avoid the acrimony of the last formula. We all agreed to that.

To the credit of the Committee on Finance and Budget, they have organized forums for us to have this conversation twice, including this morning. I did not see my Deputy Party Leader in that meeting. The way forward that has been given by the Senate Majority Leader will solve the problem for us. Let us hear from the Committee and everybody. Let us try to persuade each other.

Personally, I do not like people playing cards under the table. The good thing is that Sen. Osotsi knows me. When I feel that one is trying to be clever with me, I become a bit upset. I feel like there are people who have an agenda that they do not want to disclose. Let them persuade us here. We are amenable to be persuaded and Sen. Osotsi knows that.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, let us make progress on this matter.

(Sen. Osotsi consulted loudly)

Sen. Osotsi, you had the opportunity to speak, allow the Chair to give the way forward.

Hon. Senators, if you remember, when this matter came up, I listened to the concerns of hon. Senators and we agreed that it was important for us to engage more substantively before this particular Motion was moved. It is over one month since I made that communication. That means we had ample time to engage, consult, and try to see if we can have a give and take, so that once this matter is tabled, we do not have the acrimonious environment like it was witnessed sometimes back.

That opportunity was made available to you. No Senator here can say they were rushed or they were not given an opportunity to consult, to engage, to persuade. That opportunity was indeed made available to all of us. Hon. Senators, even if we are to allow for more consultation for maybe six months, we will still have some dissenting voices. I do not think we will be able to strike a 100 per cent agreement in this formula. Therefore, what remains is as what the Senator for Nairobi City County has just said: persuade your colleagues on the Floor of this House.

In any event, hon. Senators, I did not want to rule the Senator for Vihiga County out of order, but to some extent, what he brought forward is in breach of our Standing Orders. It is an anticipation of a debate, because the Motion is yet to be moved, and we are actually debating the Motion before it was moved.

So, let us allow the Motion to be moved. Let all these good arguments that I have just listened to be put forward as you debate this Motion. Try to persuade your colleagues on the position that you individually hold and depending on your power of persuasion, we may swing one way or the other.

At this juncture, allow the Chairman to move the Motion, then we engage in debate.

Proceed, Chairman.

MOTION**ADOPTION OF REPORT ON THE FOURTH BASIS FOR ALLOCATING
SHARE OF NATIONAL REVENUE AMONG COUNTIES**

Sen. Ali Roba: Thank you, Mr. Speaker, Sir, for that guidance. Pursuant to Standing Order No.62 of the Senate Standing Orders, I beg to move-

THAT, the Senate notes the Report of the Standing Committee on Finance and Budget on the Fourth Basis for Allocating the Share of National Revenue Among the Counties, laid on the Table of the Senate on Thursday, 17th April, 2025, and that pursuant to Article 217(1) of the Constitution, approves the Fourth Basis for Allocating the Share of National Revenue Among the Counties for the Financial Years 2025/2026 to 2029/2030 as follows: -

County Allocation = (Baseline Allocation Ratio*Ksh387.425 billion) + (Ksh2 billion shared equally among the identified 11 counties) + {[(0.45*Population Index) + (0.35*Equal Share Index) + (0.12*Poverty Index) + (0.08*Geographical Size Index)] *Additional County Equitable Share above Ksh 389.425 billion}.

Where –

- i. Baseline Allocation Ratio = The allocation factor derived from each County's allocation for the Financial Year 2024/2025;
- ii. The 11 identified counties are: - Elgeyo/Marakwet, Embu, Isiolo, Kirinyaga, Laikipia, Lamu, Nyamira, Samburu, Taita/Taveta, Tharaka Nithi and Vihiga;
- iii. The Population Index is based on the 2019 Kenya Population and Housing Census (KPHC);
- iv. The Poverty Index is based on the 2022 Kenya Poverty Report by the Kenya National Bureau of Statistics (KNBS); and
- v. Geographical Size is capped at 10%.

Mr. Speaker, Sir, Article 217(1) of the Constitution of Kenya provides that once every five years, the Senate shall, by resolution, determine the basis of allocating, among counties, the share of nationally raised revenue annually allocated to the county level of government.

Further, Article 216(1) of the Constitution provides that the principal function of the Commission on Revenue Allocation (CRA) is to make recommendations concerning the basis of equitable share of revenue raised by the national Government between the national Government and county governments and among the county governments using the County Allocation of Revenue Act (CARA).

Mr. Speaker, Sir, the CRA forwarded their recommendation to the Committee, and the Committee engaged many stakeholders after receiving the recommendations of

the CRA. The Committee engaged the National Treasury, the Commission on Revenue Allocation, the Kenya National Bureau of Statistics, the Council of Governors, the Institute of Certified Public Accountants of Kenya, Budgetyhub, the County Assembly of Bomet Budget Office on behalf of Mr. Bernard Rono, Stella Chemutai, and Nixon Kirui, the Budget Talk Global, the Institute of Public Finance, Achievers of Kenya, Coastal People Forum, and Mr. John Kangani.

During the deliberations, the Committee made various observations. The Fourth Basis recommended by the CRA incorporated a new parameter called the stabilisation factor. According to the CRA, this factor was introduced to ensure that no county loses any money from what they are getting in the current Financial Year 2024/2025. However, it will be prudent to address transitional effect from one basis to another using scientifically generated deviation parameter.

Mr. Speaker, Sir, that the data used to generate the income distance index, Gross County Product (GCP), is not directly derived from each county, but rather the Kenyan National Bureau of Statistics applies a top-down approach to determine each county's contribution to Gross Domestic Product (GDP).

Further, the approach used by the CRA to determine the index is similar to the level of poverty gap in a particular county when compared to Nairobi City County. Additionally, using Nairobi City County as a reference point makes it difficult to assign an index to this reference that is specific to the county.

Mr. Speaker, Sir, we have engaged these stakeholders and we have picked their input at various levels. The underlying issue the Committee faced was that when we convened for consultation in the presence of the Commission on Revenue Allocation (CRA) in Naivasha, the Committee was guided by the entire Senate and the attendees of that meeting. The Senate's guidance was based on two principles.

The first principle is that no county should lose money from its current allocation. The second principle is that, any amount exceeding Kshs387.425 billion must be distributed so that each county gains marginally or equitably.

In order for the Committee to arrive at a position that conforms to the Senate's agreed principles, we had to apply the third basis formulae of revenue sharing and convert it into an allocation factor to safeguard each county's current share. Thus, Kshs387.425 billion was held as a factor for each county based on the third basis formulae of revenue allocation. Next, we had to establish parameters for distributing amounts exceeding Kshs387.425 billion.

At this juncture, it is important to note that the National Assembly has already approved the Division of Revenue Act (DORA) at Kshs405 billion. Additionally, the Senate of the Republic of Kenya has also approved DORA at Kshs465 billion.

It is very important for the nation to understand that the Senate arrived at the figure of Kshs465.425 billion based on non-discretionary expenditures arising from legislations that are passed by Parliament at the national level. These expenditures have been added to what counties have been receiving.

These non-discretionary expenditures include Housing Levy deductions amounting to Kshs4.1 billion, enhanced contributions to the National Social Security

Fund (NSSF) totalling Kshs6 billion, matching allocation to the County Aggregated Industrial Parks (CAIPS) totalling Kshs11.8 billion, matching allocation for Community Health Promoters (CHPs) totalling Kshs3.23 billion, the annual wage increment amounting to Kshs6.3 billion and the basic salary increment, as per the Doctor's Collective Bargaining Agreement (CBA) No.217/21 execution of Return to Work Formula amounting to Kshs3.5 billion.

This is coupled with the fact that the shareable revenue of the Government of Kenya has been gradually increasing. The last meaningful increase in county government revenue occurred in the Financial Year 2020/2021 when the last third basis formulae of revenue sharing was implemented. At that time, the shareable revenue increased from Kshs316 billion to Kshs370 billion.

Thereafter, it is important to note that the shareable revenue only marginally increased. The following year, it remained at Kshs370 billion; these were the COVID-19 pandemic years. Thereafter, it increased from Kshs370 billion to Kshs385 billion and later to Kshs387.425 billion.

The cumulative increase in shareable revenue for county governments over five years amounts to approximately Kshs70 billion, while the national Government's shareable revenue increase over the past five years amounts to approximately Kshs770 billion or an increase of about 10 per cent. This is the wisdom that informed the Senate's decision to pass the DORA at Kshs465 billion. The goal was not for Senators to argue over the formula or county allocations but to fight for a larger shareable revenue to address their concerns.

Mr. Speaker, Sir, this decision was also shaped by consultations, as mentioned by my colleagues; Sen. Sifuna, Sen. Wambua and the Senate Majority Leader. We have held two consultation periods, guided by your leadership. The Committee, along with the Secretariat, has made itself available. The purpose of these meetings was to consult and address any thorny issues that might arise. Based on the experience of the third basis formulae of revenue sharing, the goal was to cushion the country from potential Senate disputes and ensure that all 47 counties are carried along together.

This morning, in consultation with the 13 attendees, we arrived at a position regarding the smaller counties I mentioned: Elgeyo-Marakwet, Embu, Isiolo, Kirinyaga, Laikipia, Lamu, Nyamira, Samburu, Taita-Taveta, Tharaka-Nithi and Vihiga. These counties face challenges in remaining viable unless they receive some form of cushioning. The proposal that came in, which now is the property of the House, is that we set aside within the formula Kshs2 billion to be shared equally among these 11 counties in order to carry everybody along.

The Senate Standing Committee on Finance and Budget has carried this responsibility on behalf of the entire Senate. While the Committee Members represent their respective counties, as the Chair, I could not allow them to advocate solely for their counties in situations that favor them. We must ensure that all 47 county governments are considered in the proposals we make.

Similarly, this Senate should not be influenced by individual efforts to push agenda that favour specific counties. Instead, we must focus on how to collectively

support all 47 counties, as it is our sworn responsibility as the Senate of the Republic of Kenya. This means we are collectively responsible for the welfare of all the 47 counties, while individually accountable for oversight and other mandates.

As we engage, and as I move this Motion, it is important to inform my colleagues that during this morning's engagement, I listened to eight members of the Senate. Each Member spoke in favour of a position they believed would benefit their county. Some would ask whether we could we change certain variable's number to another. They did not consider the reality that, as a Committee, once we have tabled this report, we no longer have the mandate to amend the figures in favour of any county, even in consultation? Rather, it is our prerogative, on behalf of the Senate, to ensure inclusivity and develop a formula that, while not perfect, remains fair.

A truly perfect formula is unattainable. If that were the case, I would have advocated for 14 per cent based on poverty and 9 per cent based on geographical size, as Mandera County would have fallen within that bracket if such considerations were applied. However, to carry everybody along and avoid being short sighted on what benefits only my county or another, I have guided the honourable Senators who are Members of this Committee. They have listened, and I have prevailed upon them to understand the complexity and controversy surrounding this issue.

It is important that even before this becomes the property of the House for the House to either accept and amend or decide what they will do with it. From the face value of our presentation, we should position and present ourselves as extremely fair in conformity with the guidance that we were given in Naivasha by the Senate.

Mr. Speaker, Sir, as I conclude, I would like to report that both the principles that we were given as a guide in Naivasha of no county losing anything from what they are getting now--- Remember the controversy of the Third Basis of revenue sharing was largely because many counties were losing substantial amount of money. Counties are just like salaried people. Once you are given a certain amount of money, you learn to plan with that. A reduction will be extremely unfair because it is going to put counties in a spin.

The onus is on the Senate to make sure that the guidance that we took is upheld by way of making sure no county loses anything from what they have been getting and the formula has taken care of that. Whatever is over and above Kshs387.425 billion and now from the amended perspective, which is Kshs399.425 billion, will cushion about 11 smaller counties. We believe that will further address that and every county will marginally or equitably benefit, while we also take care of smaller counties.

Mr. Speaker, Sir, I beg to move and request Sen. (Dr.) Khalwale to second.

The Speaker (Hon. Kingi): Sen. Boni, you may proceed to second.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to second this Motion as moved by the Chairperson of the Committee on Finance and Budget, the Senator for Mandera, who fortunately for us in this Senate, is a national party leader. Therefore, like many national party leaders, he has a global view, not just on the politics of the country, but also the need to carry all the people of Kenya along on a very sensitive issue like sharing the common wealth of the Republic of Kenya.

I, therefore, congratulate him for moving the Motion. Together with my colleagues in the Committee, I would like to plead with this Senate that it was without prejudice that we arrived at the current formula. I will be grateful if you joined us in allowing this formula to be used to share revenue in the Republic for the next five years or so.

In saying so, colleagues, it does not mean that we are emotionally attached to this formula; not in any way. In fact, if I were to be emotionally attached to this formula, I would be attached to the one that allows Kakamega to capitalise on its population size. That way, we would get more money than most counties because Nairobi, Kakamega, Kiambu and Nakuru are the largest counties population-wise.

Mr. Speaker, Sir, I was happy during *Kamukunji* 1 and *Kamukunji* 2 that we had this morning to hear Members speak emotively. That is the way it should be because we were not brought here to fight for any position that does not favour counties that voted us into this Senate. When you see, for example, the Senator for Nyamira who happens to be my *mokoyone*, speak with the passion he did, it is because---

(An hon. Senator spoke off record)

Mr. Speaker, Sir, that is loud consultation.

The Speaker (Hon. Kingi): Senator for Kakamega, you have chosen English. Stick to English, please. Another alternative is Kiswahili. I do not think the word you have just uttered is either Kiswahili or English.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I agree with you fully. However, somewhere I read and somewhere I heard that the Speaker does not see or hear; he is only moved by the Plenary.

Mr. Speaker, Sir, I take your guidance.

(Laughter)

The Speaker (Hon. Kingi): Senator for Kakamega, do not invite the Chair to that direction. Proceed to conclude.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I wanted to speak to his heart. *Mokoyone* in Gusii Language means 'my brother-in-law,' which is a fact. I wanted to appeal to him so that he comes closer to the position of the Committee. I did not mean to insult the House in any way.

From where my wife is hearing this, I know dinner today is going to be very nice.

An hon. Senator: Which one?

Sen. (Dr.) Khalwale: The Kisii one.

The Speaker (Hon. Kingi): Hon. Senators---

Sen. (Dr.) Khalwale: I have not finished.

The Speaker (Hon. Kingi): While you have taken your seat, I presume you are done.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have not.

The Speaker (Hon. Kingi): Then why did you take your seat?

Sen. (Dr.) Khalwale: Because I saw you rising. I cannot remain on my feet when the Speaker of the Senate is on his feet.

The Speaker (Hon. Kingi): Proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to speak to the reason we can easily disagree. The first one is that the people of Nairobi, Nakuru, Kiambu and Kakamega can paralyse this debate by saying that the population factor should be enhanced. Let them give in because we will lose something.

Because of the vast nature of their counties, the Senators for Marsabit, Mandera, Turkana, Wajir, Garissa and Isiolo can easily frustrate this debate by talking about landmass and water mass. We know counties with high poverty indices, including Mandera, Wajir, Turkana, Kilifi, Kwale and so on and so forth. They can frustrate this debate by insisting that we emphasise about poverty. I appeal to them; let us give and take.

Finally, I want to speak to our professionals at the Commission on Revenue Allocation (CRA) who had proposed that in this formula, we introduce a new factor called income distance. I would like them to bear with the Committee. We understood them very well and tried to see how best we could carry the country on something which 99 per cent of Kenyans were hearing for the first time in their lives, despite their good education.

We want to persuade them that the nearest we can bring to income distance is that it was trying to factor in gross county product, something that is not backed by proper data in the country as I speak. Therefore, going forward, maybe income distance will be a factor in sharing of revenue in this country.

What is more? It was based on Nairobi, yet Nairobi is one of the counties sharing with other counties. If, for example, this formula was being applied in the United States of America, it would have been easier for somebody from Pennsylvania, knowing that it was being based on Washington DC, to understand because in the United States of America, Washington DC is not regarded at the same level like the other states.

Mr. Speaker, Sir, having said this, with due respect, all politics is local. I, therefore, would like to speak my locality. When devolution came, there are a few of us, and I am glad that the Speaker, Sen. Mungatana and Sen. Oburu Odinga were there. That is as many as we were, at that time.

There are those of us who believed, and we ended up being in the minority, that what we needed was to create economically viable units so much so that, at that time, we were talking about a maximum of 14 counties. Well, the emotions of, “we do not want our community to be in the same county with this community, or we want our community to have its own county, or we want our community to have so many counties”, carried the day.

However, today, in the third cycle of devolution, we are now realizing that bigger economic blocs present better viabilities for our counties than the smaller ones. This morning, the Senator of Vihiga County, while you were away, I remembered how, out of the blue, Vihiga County was hived out of Kakamega County. We never told them.

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The people of Idakho and Isukha were doing well when they were with the Tirikis, Banyores, and Maragolis of Vihiga County. The people of Kabras were doing well when we were like that. In fact, with the intermarriages that have been taking place between our houses, sometimes our children will start thinking that the people of Vihiga County are different from the people of Kakamega County, yet it is not true.

So, I feel very uncomfortable that Kakamega County can get so many billions of shillings, while Vihiga County, where my own sisters and brothers are, gets almost nothing to do meaningful flagship projects so that in ten years, when you go to the bigger brother in Kakamega County, we have realised multi-billion stadium, a teaching and referral hospital, hundreds of kilometres of tarmac roads worth hundreds of millions of shillings, yet in Vihiga County they can hardly do anything.

So, Mr. Speaker, Sir, this provoked us to agree with the *Kamkunji*, which proposed that despite having a basic allocation of Kshs387.5 billion to make sure that no county loses, we should bring in another factor, which the Parliamentary Budget Office, for lack of a better terminology, called it the Affirmative Action Allocation.

This Affirmative Action Allocation is meant to say the following, members of the public--- That, 11 counties in this country, get below Kshs5 billion, which they literally spend on recurrent expenditure. There is no much development that you can talk about, and this is why I was referring to my neighbour, Vihiga County.

So, we have said, let us have an Affirmative Action that will attract some more funds, but not lead to the rest of the counties losing, so that whereas all of us are winning, the 11 counties will be brought up, so that they have slightly more money for development. These counties are: Nyamira, Samburu, Taita-Taveta, Tharaka-Nithi, Vihiga, Elgeyo-Marakwet, Embu, Isiolo, Kirinyaga, Laikipia and Lamu. This is what we decided, after drawing from the wisdom of the two *Kamkunjis*. So, this is enough reason for us to say, Sen. Osotsi, that the consultation that you want to look for has sufficiently been addressed. Nothing can be perfect.

I remember the Senator of Kitui County persuaded me in the first *Kamukunji*. He brought the analogy of pick-ups carrying vaccines to go from the centre to some area in North Horr, and I was convinced. This is the purpose of debate. As the Senator of Nairobi City County has said, we listen to each other, so that we can convince each other for the good of the country.

Mr. Speaker, Sir, with those remarks, before I conclude, allow me to congratulate the football fans of Gor Mahia Football Club (FC) from Homa Bay. When we went to play yesterday against Gor Mahia, we were worried that there was going to be the misbehaviour I saw between the fans of Shabana and Gor Mahia in Kisii. It was very shameful to see Kenyan fans injuring each other at Gusii Stadium just because Shabana was playing against Gor Mahia.

Yesterday, most of my young people were asking me, should we go? I told them, “go, I have talked to Sen. (Dr.) Oburu, Sen. Kajwang’ and Sen. Beatrice Oyomo, and they have told me that for the first time, Luos will not make noise, they will just be cheering.” We know you as our noisy neighbours and we do not complain.

Mr. Speaker, Sir, with those remarks, I second.

(Question proposed)

The Speaker (Hon. Kingi): Hon. Senators, the Floor is now open for debate. I call upon the Hon. Senator for Vihiga County to take the Floor.

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I have just pressed my button now, but I have no problem being the first one.

Mr. Speaker, Sir, this exercise that we are doing is only done once in five years. That means this formula will be with us for five years and will be the formula that will be used for division of revenue. That is why we really need to create an environment for consensus and not contestation between the so-called small counties and the big counties.

Mr. Speaker, Sir, I am a Senator of one of the so-called small counties; that is, the counties that receive less amount of money from the sharable revenue. I want to refer the Members of this House to the Constitution. Article 203 of the Constitution provides the basis for how the sharing will be done; basically, the principles to be complied with when deciding on the sharing formula.

I want to refer Members to two very important principles. The principle under Article 203(1)(g), which is on economic disparities within and among counties and the need to remedy them. I also refer you to Article 203(1)(h) on the need for affirmative action in respect of disadvantaged areas and groups.

Mr. Speaker, Sir, these are two very critical constitutional principles which this House should not ignore and which the previous three formulas have ignored, and I will demonstrate that shortly. We cannot continue disadvantaging some counties at the expense of others. Devolution was meant to ensure equitable and balanced development across the country.

Sen. (Dr.) Khalwale has just given an example between Kakamega and Vihiga counties, which are neighbours. It is so sad that a county like Vihiga County cannot do any meaningful development and yet, their immediate neighbour which is Kakamega County, where my friend and my elder brother comes from, is doing major projects.

Sen. (Dr.) Khalwale, you know very well that Vihiga County is a mere kilometre of road away from Kakamega County, which has constructed a road up to Eregi on the boundary. From Eregi to the Chavakali Junction is about a kilometre. Vihiga County has not been able to complete the road because of a low budget.

The other day, we were shown on television the Kidundu Stadium, which looks so bad, yet when you go to Kakamega County, they have an international stadium. It is high time we looked at the provision of the Constitution, particularly Article 203(1) on the issue of economic disparity among the counties and the need to uplift the disadvantaged counties and groups. If we do not do this, devolution will mean nothing for some counties.

The small counties are basically employment bureaus. They employ people, but they cannot do any development. You know very well that the staff establishment in all these counties is the same, but the money that remains for development is very little.

Let me now come to the two formulas. I want to address the CRA formula and the committee formula. It is unfair for us to sit in this House and our Committee on Finance and Budget, which is supposed to protect our interests, is giving us less money than what CRA is giving us.

I want to demonstrate that. The CRA tried to look at these two parameters: The parameter of economic disparity and the parameter of affirmative action. They tried to help the small counties. I know some of the big counties lost, but we would have gotten a clear balance, so that we are not disenfranchised by our committee.

If you look at the report by the Committee, they have conveniently left out the simulation based on the CRA formula. If you look at the simulation for CRA, Elgeyo-Marakwet County was getting Kshs392 million on top of what they are getting. The Committee is giving them Kshs241 million. So, they are losing over Kshs150 million.

Embu County is losing on the CRA formula. The Committee gave them Kshs256 million, and they are getting Kshs85 million, but that is just one county. The most serious effect is on Sen. Dullo's county of Isiolo. The Committee is giving Isiolo Kshs257 million and CRA is giving Isiolo Kshs137 million.

The Committee gave Lamu Kshs177 million---

The Speaker (Hon. Kingi): Sen. Osotsi, there is a point of information. Do you desire to be given the information by Sen. Ali Roba?

Sen. Osotsi: Mr. Speaker, Sir, yes, he is the Chairperson of the Committee. He can give me information, but I also have very crucial information.

(Laughter)

The Speaker (Hon. Kingi): Proceed, Sen. Ali Roba.

Sen. Ali Roba: Mr. Speaker, Sir, I would like to guide Sen. Osotsi that the numbers he is making reference to, he has to share with the House. The CRA based the allocation on Kshs417 billion as shareable revenue. The numbers he is making reference to are at Kshs405 billion. So, he needs to clarify so that it is very clear in terms of what shareable revenue he is basing the numbers he is discussing on.

Sen. Osotsi: Mr. Speaker, Sir, the numbers are based on Kshs405 billion. Remember, I started by saying the Committee should have done us a favour by also publishing the simulation based on the CRA formula, which they did not do. We have gone ahead to get the simulation ourselves.

Let me proceed. Lamu County is gaining Kshs568 million and the Committee is giving them Kshs177 million. CRA is giving Laikipia County Kshs478 million and the committee is giving them Kshs263 million. Nyamira County is getting Kshs356 million and the committee is giving them Kshs260 million.

Taita-Taveta County is getting Kshs481 million on CRA, the committee is giving them Kshs246 million. Tharaka-Nithi County is getting Kshs483 million, the committee is giving them Kshs219 million. Vihiga, my county, CRA is giving Kshs609 million, and the committee is giving us Kshs263 million.

Samburu County, the CRA is giving them Kshs547 million, the committee is giving them Kshs216 million---

The Speaker (Hon. Kingi): Sen. Osotsi, there is a point of order.

Sen. Eddy, what is your point of order?

Sen. Oketch Gicheru: Mr. Speaker, Sir, because I sit in that Committee, I also rise on Standing Order No.105, the responsibility for statement of fact.

I appreciate what Sen. Osotsi is doing in terms of reading the 11 counties - considered small counties - losing or gaining. However, for the purposes of the public, if you read the CRA formula that was given, then you ought to read it for all counties. This is because there were bigger counties that were also losing as well as some counties that were gaining. It is not in order to misinform the public only the smaller counties were affected by the CRA formula.

Secondly, the CRA formula was based on Kshs417 billion. Our formula is based on a baseline of Kshs387 billion plus Kshs405 billion that has come from the National Assembly. That fact needs to be stated correctly, so that there is no misguiding the public.

Sen. Osotsi: Mr. Speaker, Sir, I am very thorough in what I do. I have done my research very well.

The Speaker (Hon. Kingi): I know you are always very thorough. However, in your being thorough, do not put an impression out there that only 11 counties have been isolated for losing. That is the impression that---

Sen. Osotsi: Mr. Speaker, Sir, I am just demonstrating the points here.

The Speaker (Hon. Kingi): As you demonstrate, pick one big county or three that have also lost, because a number of counties---

Sen. Osotsi: I am demonstrating the point here using the counties that I have listed, but I have done the simulation for all the 47 counties---

The Speaker (Hon. Kingi): Under the CRA formula, are the 11 counties the only ones losing?

Sen. Osotsi: There are counties which are losing under CRA. I am trying to say is that even as we go for another formula, let us not have a huge loss from the CRA formula compared to the Committee formula. That is the point I am bringing.

The Speaker (Hon. Kingi): Proceed.

Sen. Osotsi: Mr. Speaker, Sir, having done this comparison, I request my colleagues in this House to have some sympathy on us from the small counties. This is because we have laid our case about development. I am happy Sen. (Dr.) Khalwale has really supported that.

So, we ask you, hon. colleagues, that even as we discuss this, let us not be disadvantaged. I think this is the basis on which the CRA came up with their formula.

The only way small counties can benefit is through equal share because the other parameters are not favourable. Population and land area are not favourable to us.

The Third Basis formula, which had eight parameters, population at 18 per cent, health at 17 per cent, basic share at 20 per cent, poverty at 14 per cent, land area at 8 per cent, agriculture at 10 per cent, urban services 5 per cent, rural access 8 per cent. All those factors, except the basic share, do not favour the small counties.

Mr. Speaker, Sir, I am saying that because the formula that the Committee is proposing to us has two components. It is taking Kshs387 billion, which was based on the Third Basis as a base, and then sharing the remaining Kshs12 billion and applying a basic share in this formula.

I am saying that for clarity because I heard some Committee member saying we have increased the basic share. They have only increased the basic share on the Kshs12 billion, not on the entire amount.

The CRA formula was increasing the basic share from 20 per cent to 22 per cent on the entire amount with a zero base but this formula is putting 35 per cent equal share on Kshs12 billion only. So, it is not favourable to us.

All these factors of health, poverty, agriculture and urban are all based on population. It does not favour the small counties, yet a component of that formula has been applied in the fourth basis proposal. Even the second basis is still using population at 45 per cent. Equal share, this one was favourable, 26 per cent; land, 8 per cent; and, poverty at 18 per cent. All that is not favouring us, except the equal share.

If you really want to help small counties, all the other factors are not helping them, but the factor of equal share. That is why CRA increased the equal share from 20 per cent to 22 per cent, which is why according to the CRA formula, the small counties are gaining.

Mr. Speaker, Sir, even as we speak about this formula, let us look at the equal share. The equal share in this formula proposed by the committee is not favourable because it is being applied on Kshs12 billion only.

How I would wish that we talk about population density. In fact, whoever proposed these factors should have considered population density. For instance, a county such as Kirinyaga or Vihiga where people live in less than a half an acre piece of land are hugely populated. That contributes to many other factors like poverty and the rest. That has not been taken into account in this formula.

We need to consult more. We should not be in a hurry to pass this formula because the first basis, second and third basis formula are all unconstitutional because they do not comply to Article 203 of the Constitution.

God forbid, if someone went to court, he would stop this process on the basis of Article 203 of the Constitution. We need to sit, reason together and consider that one principle that all counties should gain.

Second principle, we need to uplift the small counties. If we do so, then we will make sense. When we are discussing the formula depending on how we push is the point where we need to have a huge increase in shareable revenue. During the debate for the third basis, there was a huge increase in revenue because each county needed to gain.

For each county to gain, we do not need to look at the figures that have been there, Kshs387 billion or Kshs405 billion. We need to look at the figure, for instance, Kshs465 billion that we are proposing in the Division of Revenue Act (DORA). So, let us not put our minds on Kshs387 or Kshs405 billion. As we discuss, let us focus on Kshs465 billion. That is how you will help the small counties to make sense and be viable.

Mr. Speaker, Sir, I do not want to proceed beyond this. With humility I ask our colleagues to kindly be considerate. Think about those counties that cannot do development. Think about those counties that exist only to employ people and to pay salaries and there is no development.

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

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

I also encourage that the formula proposed by the Committee should have looked at the physical effort of the counties. Why are we giving money to the counties without making them accountable? The second base is trying to put it at two per cent. We have a lot of challenges in our county on physical accountability. Let us think about that, even as we struggle to put more money to our counties. Let us consider physical effort.

I also like the development factor that was used in the second basis. Let us look at how development is done in our counties and use that as a basis for the new formula. These are issues that I am raising, but we need to caucus more. We should not be in a hurry to pass this and come up with a formula that is acceptable to all of us. We are being asked where our formula is and yet, we have a competent budget office in this house. We are making proposals. They should come up with a formula with what I am discussing here, so that we agree, look at the simulation and move forward as one House.

Mr. Temporary Speaker, Sir, with those few remarks, I reject this formula as it is. However, I am open for more discussion to have an agreeable formula that will be fair to all the counties. I support.

(Interruption of debate on Motion)

The Temporary Speaker (Sen. Abdul Haji): Sen. Mo Fire, take your seat.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KIGUMO BENDERA
HIGH SCHOOL, MURANG'A COUNTY

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Kigumo Bendera High School in Murang'a County. The delegation comprises 114 students and five teachers who are in the Senate for a one-day academic exposure.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

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Senator for Murang'a? I thought he was in the House. The Senator for Kirinyaga, would you be so kind as to welcome the students?

Sen. (Dr.) Murango: Asante, Bw. Spika wa Muda, kwa kunipa hii nafasi. Kwanza, ninawakaribisha wanafunzi kutoka Kigumo Bendera kwa niaba ya Seneta wa Murang'a ambaye ametoka nje kidogo.

Murang'a ni mojawapo ya kaunti iliyotoa watu mashuhuri ambao wamewakilisha na kufanyia Kenya hii kazi nzuri sana. Kwa hivyo, wanapoendelea na masomo, wajue kesho yao, wanaweza kuwa Seneta katika Seneti hii ama hata Rais wa nchi hii.

Pamoja na kuwakaribisha, ningependa kuwaambia watie bidii katika masomo na watii walimu wao.

(Resumption of debate on Motion)

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. William Kisang'.

Sen. Kisang: Thank you, Mr. Temporary Speaker, Sir. I also rise to make my comments on this Motion. I confess that I was present in the first *kamukunji*. Today, I was here by 7.30. a.m. because of this important Motion and the *kamukunji* we had in the morning. In fact, I had to leave the burial of the priest who was killed, which is taking place today in Nandi. However, I attended the requiem mass yesterday in Eldoret.

The wisdom for devolution and the reason Kenyans were agitating for devolution was to ensure there is equitable development across the country. This is because some sections of the country perceived that if they are not in the Government or if they did not have somebody powerful to influence development to go to their areas, they might be disadvantaged. However, it is sad that 13 years into devolution, 11 counties have been very busy paying salaries and doing nothing, maybe maintenance.

That is why as a caucus, we said that for this Fourth Basis of the formula, we needed to talk, converse amongst ourselves and convince each other that we needed all our counties to do something meaningful, so that we can be proud of devolution. Currently, we are not proud. We are only proud that we have additional elected positions like the senator, the governor, the MCAs and the women representatives.

Mr. Temporary Speaker, Sir, for a county like Elgeyo-Marakwet, there is nothing much that has been done because of the meagre resources that we have been receiving since 2013. I will take you through Article 203 of the Constitution on equitable share and other functional laws.

Article 203(1) says-

“The following criteria shall be taken into account in determining the equitable share provided for under Article 202 and in all national legislation concerning county governments enacted in terms of their character-

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;

(d) the need to ensure that county governments are able to perform the functions allocated to them;

(e) the fiscal capacity and efficiency of county governments;

(f) developmental and other needs of counties;

Mr. Temporary Speaker, Sir, this Article is clear that we need to take care of counties and ensure there is equitable development. I have just said that for the last 13 years, 11 counties have been paying salaries. We are saying that because of the opportunity that has arisen as a result of the Fourth Basis of the formula, we should speak and talk to each other. Let us canvass and reason together.

The Bible is clear that when you come together and reason together, things will change. We would like to convince our colleagues from the four counties that Sen. (Dr.) Khalwale talked about. He listed Nairobi, Kiambu, Kakamega and Nakuru counties as getting close to Kshs15 billion each, every year.

Mr. Temporary Speaker, Sir, we are saying that Elgeyo-Marakwet County started with about Kshs2.7 billion. In this current financial year, we are getting Kshs4.8 billion and the functions that were transferred to Elgeyo-Marakwet County are the same functions these other counties are getting.

If it is CECMs, we all have 10 or 12 CECMs. The same applies to chief officers. We also have the same number of hospitals. In this formula, we are in agreement with what the Committee has proposed on the first Kshs387.25, so that no county loses and they get what they have always gotten. We are happy and comfortable with that proposal.

Then we are also asking, can we do affirmative action to ensure the 11 counties move towards Kshs6 billion? As a result of the *kamukunji* in the morning, the Committee proposed Kshs2 billion. We are saying that we should improve the Kshs2 billion that has been proposed as a result of the *kamukunji* in the morning.

Mr. Temporary Speaker, Sir, can we put it up to Kshs4.5 billion although our desire is Kshs6.7 billion? Then all the counties, apart from Lamu will be at a minimum of Kshs6 billion and then Lamu moves from about Kshs2.7 billion to about Kshs5 billion.

We are, therefore, asking if we can look at the affirmative action of Kshs2 billion for the 11 counties and improve it. Even if we do not go to Kshs6.7 billion, we should agree and have a middle ground, like Kshs4.7 billion. This is so that, before we share the amount that is above Kshs387 billion, each of the smaller 11 counties gets a minimum of Kshs500 million. From there, we subject the formula to anything above what we had agreed on.

Mr. Temporary Speaker, Sir, Sen. Osotsi has just talked about 35 per cent. When you tell us that we are sharing using equal share of 35 per cent, that equal share of 35 per cent is not based on the entire. It is based on anything above Kshs387 million. So, it is basically either it is Kshs17 billion or Kshs30 billion, where we will have equal share of that five per cent and also population still at 45 million people.

Mr. Temporary Speaker, Sir, it is basically still an advantage to the bigger counties. This is something that we need to reason together because this money is not going to any one of us; it is going to our people. If you reside in Nairobi or you are

Senator for Nairobi or Senator for Machakos, you have your people who are in Elgeyo Marakwet County, for example. They need to benefit; they need to get development. They need to have good hospitals; they need to have medicine in these particular hospitals. So, that is what we are saying.

Let us reason together and have something that is agreeable and acceptable. This is the formula that will take us for the next five years. I also agree that we need to be serious. We cannot accept the Kshs405 billion that is proposed by the National Treasury and the National Assembly. We need to move to the Kshs465 billion so that when we are putting our governors to task, on accountability, at least they have some reasonable resources to do something for us. Please, let us debate. Let us be sober as brothers and sisters, to ensure that we treat all our citizens equally.

Otherwise, some of us are really completely disadvantaged. This is because even when we get the oversight funds, what am I going to oversight in Elgeyo-Marakwet County? I will check on how Early Childhood and Development Education Centres (ECDEs) are being built. How much are they spending to do twin classrooms?

I urge all members to sit together, reason, agree and give us affirmative action. The proposal of Kshs2 billion, that is a start. We want to begin from the Kshs2 billion. Can we improve it? Can we push it? Say Kshs4 billion or Kshs4.7 billion and then from there, we also do not have to take a lot of time talking.

The biggest challenge, as the Speaker has said is that we have been conversing for the last one month. Why are we waiting? You know the Kenyan mentality, we always like the last minute. Even if you give us another time, we do not meet until the last minute again. Let us meet today, discuss, agree and then we pass the Motion and discuss other many things. This is because there are very many other pressing issues that we need to discuss as Kenyans.

Mr. Speaker, Sir, I thank you. I reserve my support for the Motion. I will support it with amendments if Elgeyo-Marakwet County at least get Kshs6 billion, so that something can be done for my people.

The Temporary Speaker (Sen. Abdul Haji): Sen. Edwin Sifuna.

Sen. Sifuna: Mr. Speaker, Sir, in our journey for leadership, we were told that sometimes it is good for you to concede that there are things that are complex, even for you as a leader. You need to take time to listen to experts and people who have experiences in those fields, so that they can guide you. I must admit that ever since I came to this Floor of this House, these matters of the formula and the parameters that are being proposed by CRA and the conversations from our colleagues is one of the most difficult conversations to grasp.

If you look at Article 215(4), on what qualifies you to be a member of the Commission on Revenue Allocation, which is the commission that makes these recommendations. It says:

“To be qualified to be a member of the Commission under this clause (2)(a), (b) or (c), a person shall have extensive professional experience in financial and economic matters.”

I remember the very first time the CRA put out a proposal in terms of a revenue sharing formula, I took time to seek out some friends of mine who are commissioners in the CRA.

First of all, the picture that they painted for our country was quite grim for me. We rely on data and statistics that are kept in the ministries, departments and agencies. However, that data is so corrupted and skewed that it is almost totally unreliable. If you start there, and knowing, for instance, that this formula that is being proposed by the committee attaches extreme significance to certain data sets, the first one being population.

Now, Mr. Temporary Speaker, Sir, you and I know that when immediately you raise the question of the census of 2019, there are people who will tell you that that census itself is flawed. In fact, there is already a court decision, Sen. Mungatana can correct me if I am wrong, on the legality of the figures that were put out by Government following the census of 2019. So, if you attach 45 per cent weight to that data set, there are already problems. However, we are willing to be guided.

The most heartbreaking thing is that there are professionals who sit in these ministries and government agencies who will massage numbers for data, health, agriculture and all sorts of things, to skew allocation of national resources towards their regions and even their communities. It is something that professional bodies in this country must look into.

We have a problem with the 2019 census, we have a problem with the poverty index. How are we supposed to navigate this entire process? So, for me, what I usually do, if there is a problem with the math and the numbers, we must always fall back to what we consider the guiding principles.

I have just seen breaking news now that, as expected, the National Assembly has rejected our proposal of Kshs465 billion to the counties, which is throwing us into another mediation, the fourth straight mediation since this Senate began. When we were in that last mediation, there are certain things that we agreed on. Also, there are certain positions that the political party that I belong to has taken with regards to devolution and which are supposed to be guiding my decisions in this House when it comes to devolution.

The first one, we as a party and even as this House, have set the standard somewhere that it does not matter what formula you adopt. No county must lose when you compare previous year allocations. Secondly, that after the allocation, whatever formula you use, year-on-year, there must be marginal growth of the devolution basket.

Mr. Temporary Speaker, Sir, to get the obvious things, including year-on-year inflation, including growth in salaries and wages due to implementation of collective bargaining agreements--- I sit in the County Public Accounts Committee (CPAC) and just the other day, the Governor for Makueni appeared before us and we had one of the most illuminating conversations. You will see that because of decisions that are made by national Government, for instance, they want county governments to do county aggregation in industrial parks. You are supposed to match the money that is put by the national Government to do that project.

He says that in Makueni because of the nature of the topography and the unique circumstances of the county, they tried to convince national Government that they did not need CAIPS. They did not need single centres for aggregation of produce because of the diversity of produce in that county. It would be very expensive for some people or some of the farmers to transport products from one place to the centre.

Mr. Speaker, Sir, he also gave us a very clear example that if you look at the amount of money increment for Makueni County in 2023, 2024, 2024, 2025, is about Kshs55 million only. However, in that same period, if you look at the fiscal responsibilities that have been put on the county because of the passage of laws that are here in the National Assembly and the Senate, for instance, on SHA and SHIF; this is a new levy that was introduced. The housing levy alone has added an additional burden to Makueni of Kshs55 million yet the annual increase in equitable revenue is Kshs52 million. So, it does not make any sense. So, we have said that year-on-year, we want to see marginal increase to cater for these things, including review of salaries and wages for the staff.

Mr. Temporary Speaker, Sir, the final principle was that any shortfall in national or shareable revenue should be borne by the national Government. We have no problem. Whatever formula is adopted, the position that we have taken is that no county should lose, and we are willing to have that conversation with our colleagues. Now, there is some plea that has come from 11 of our colleagues who represent counties. They are calling small counties and we have a few questions for them.

Number one, where did you pluck this Kshs6 billion figure from? What is the scientific basis for that figure? This is because although these conversations are complex, you owe a responsibility to explain to us where you got Kshs6 billion. Why not Kshs7 billion, Kshs5 billion or Kshs4 billion?

Number two, if the argument is that most of this money goes to recurrent expenditure, we sit in the CPAC, and if you hear the stories in those counties, you will see that there is absolutely no justification to add the money. My view has always been that at the advent of devolution, people thought that counties existed to serve their tribes, that this was our county.

It is the reason if you come from Bungoma and you go and apply for a job in Kakamega, they will tell you to go back to your county, even if you are a Bukusu born in Kakamega. Many people will not distinguish between a Kisii from Nyamira and one from Kisii County. However, they themselves at the local level know this one is from Nyamira and this one is from Kisii. Therefore, you cannot apply for jobs there because they will tell you, 'your share is there, go and get yours there.' That is the true situation.

We had a county entity that came to CPAC and a governor has hired over 30 advisors. That county has only two constituencies and less than 10 MCAs, but he has hired for himself over 34 advisors. That is where the money for the county is going. The governor wants to go to every village and say, 'I employed so-and-so's son, he is working in my county government.' All of them, I think with the exception of Nairobi, have never even complied with the requirement of ethnic balance in their counties, which is

demonstrating my point that people think these counties exist to serve the dominant communities in those regions.

The last question I want our colleagues from these counties to answer is if we are indeed amenable to meeting your request, so that we avoid those instances we have given. Where every single resource that goes to the county is still going to end up in personnel emoluments and governors adding themselves more advisors, can they agree that whatever amount is added in terms of what you have called affirmative, that we ring-fence it, whatever it is, for the development that you are claiming is going to us? We do not want a situation where you get that affirmative action fund, whatever it is you call it, it all goes to hiring more people on the ground.

We were elected to represent our individual counties. The people of Nairobi County expect that I will put up a fight for them to be able to get the highest possible allocation that we can get. However, I am very clear in my mind even when we were doing the Memorandum of Understanding (MOU) with our counterparts from United Democratic Alliance (UDA), that because devolution is something that we hold dear as ODM, we have drawn a certain line in the sand. I am happy that the Senate improved on the proposal from us under that MOU for Kshs450 billion, we have passed as a House Kshs465 billion.

Mr. Temporary Speaker, Sir, I do not know why people get upset when I speak about that MOU. I honestly do not understand because it is a reminder of the things that we have committed ourselves to. Every single day, we have opportunity to remind each other that this is what we agreed upon. In the morning, I was telling the Senator Majority Leader how I was very proud to hear him say on national television that some things that are happening do not make sense even to him when it came to the arrest of this young coder on Twitter for creating a website that we could harness feedback on the Finance Bill. Those things do not make sense to me. Why would you arrest such a person? For what?

Even on the question of devolution, we have a responsibility to remind each other that these are the things that we have agreed upon. When I say I am keeping score or I have the marking scheme, that is the job of the Secretary General (SG) of the party. That is the responsibility I have been given. So that we cut down all this noise and we are able to meet everybody's need, let us make sure that we get Kshs450 billion for devolution. Just to remind my brother, the National Treasury Cabinet Secretary (CS), that this is what we agreed to and we have an expectation that he will deliver for devolution.

I thank you and I support.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. Mungatana, please proceed.

Sen. Mungatana, MGH: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to debate this Motion. I support what the Chairman and the Committee has proposed before this House. I have been a beneficiary of the two informal meetings that we call *kamukunjis*.

When this formula was proposed, I had the idea that I must do and say everything and anything so that Tana River can get more money. I tried to talk to colleagues here so

that they can add one more per cent landmass which we then changed and called geographical area so that it covers water. I also said that the poverty index should go from 12 to at least 13 per cent to add another 1 per cent.

Nonetheless, when we sat with colleagues here and discussed, most of the colleagues were showing that 11 counties were going to lose money. We must speak as Senators of the Republic of Kenya. We must not speak as Senators just from our counties. With that in mind, we have agreed using the factor of 0.387, the baseline fact, no county will lose any money. This has taken care of what all of us were afraid of. So, if no county is losing money, what do we do with the rest of the other factors that we needed to factor in the formulation of the Fourth Basis formula?

When we sat here this morning and in previous *kamukunji*, we said that whatever the Committee on Finance and Budget had proposed, no county was going to lose. However, if we stuck strictly to the formula on the poverty index, the geographical area and the population index, then there are 11 counties that will get very little, if any or no increment at all.

As we sat here this afternoon, we convinced each other to allocate Kshs2 billion for those counties, so that they can have a reasonable increment. When we left here, the representative for the small counties was very happy. I left here knowing that even this afternoon, possibly we will finish this debate. In fact, we said that those who feel very strongly that they will come with a better simulation of the formula or an improvement of what we have, need to come with papers. That is what we agreed. They need to work with the Parliamentary Budget Office (PBO) so that figures can be created that will convince all of us.

We agreed in the morning that we shall move this Motion this afternoon. We also agreed this morning, as a principle, that anybody with a different opinion to bring us the paperwork for us to accommodate them. The most significant breakthrough that we had with the small counties was when we said that we shall ring-fence Kshs2 billion that will be shared equally amongst the 11 counties that were getting very little increment. We left here very happy.

Mr. Temporary Speaker, Sir, it seems that the people have tested blood. If you get injured in the sea, for whatever reason and blood leaks out a bit, all the other carnivorous fishes come to finish you. I do not know what is happening. We have agreed on this formula. We yielded and said that we are ring-fencing Kshs2 billion. We said, "let us start with this and if there is anything else, we will reconsider."

All of a sudden, we are seeing another attempt at increasing that amount to a higher level. It seems then that there are those who are playing with the cards that are open and there are those who are playing with the cards open and cards under that are hidden. This way, we shall not make progress. We have ring-fenced Kshs2 billion and we said small counties will get equal amount from that Kshs2 billion. My question is: what is the problem again?

I have now heard my colleagues talk of adding Kshs4.7 billion. That means that the amount will be taken away from the original kick. So, the whole thing will now collapse. Colleagues, with a lot of respect, if we have agreed on something, let us carry it

to the logical conclusion. Let us not look at this matter in terms of what is my county getting. We agreed in the morning that we are going to speak as Kenyans and not according to our counties such as Tana River and other counties.

We said that we will carry all of us and because of that spirit, we conceded. We agreed that whatever amount will be allocated, we should set aside Kshs2 billion to carry along the 11 counties. Right now, some colleagues are suggesting that we should go as high as Kshs4.7 billion. This is not the correct way to tackle these things because we would also like even a change of that formulation. We would like to look at it so that our own counties can benefit. However, we said that we should be patriotic and agreeable. The agreement was that what we agreed on informally is what we are going to put today in the House.

In the morning, we said that those who did not attend the informal meeting will come and bring confusion. The confusion has actually come. In fact, Sen. (Dr.) Murango gave us a very good Kiswahili proverb that I cannot quite recall, which says that those who are not there may come in the--- *Mheshimiwa*, can you remind us that proverb? It was about those who come in later---

The Temporary Speaker (Sen. Abdul Haji): Sen. Mungatana, do you want to be informed by Sen. (Dr.) Murango?

Sen. Mungatana, MGH: Yes, Mr. Temporary Speaker, Sir. I want to be informed.

Sen. (Dr.) Murango: Mstahiki Spika wa muda, katika falsafa yangu, nilisema ya kwamba katika siku mbaya, siku ya aibu ya kuku, upepo ambao unafungua kuku manyoya na kuiacha uchi huwa unatoka nyuma. Nilipeana mfano wa wale ambao watakuja nyuma na kuongea mambo mengi kwa sababu hawakuwa kwenye mkutano.

Asante sana.

Sen. Mungatana, MGH: Thank you very much, Senator. You have extremely good and fantastic capture of the Kiswahili language.

Mr. Speaker Temporary Speaker, Sir, nothing can demonstrate it more than what the Hon. Senator has put. He said that the wind that comes from behind the chicken is the one that makes the wings and the *manyoyas* to expose the skin of the chicken. They have come behind and have started exposing that skin again, yet we had covered it so well. We had agreed because we had that debate in the morning. We went through all the things and agreed not to destabilize things, quarrel or even fight. We agreed to speak like Kenyans and to carry those who are calling themselves small counties.

We said that a Member can circulate another simulation, developed by the PBO to improve on what we have and we can go with what has been proposed. However, that has not come. Up to now, no paper has been circulated. People are just speaking generalities. There is nothing wrong with bringing afresh formulation that will improve what we agreed upon in the morning by any margin. It should show how it was improved and with that, we will move.

We said that we will be open and we speak as Kenyans. We agreed not to fight because this formula is supposed to be the best that we can get for the next five years to guard how we will allocate our resources across the counties. Nothing has come out to

improve on the formulation that we agreed on in the morning. If it was there, we would have seen it on the Order Paper, something would have been circulated or the Chair would have told us. I do not know. I can see a paper.

Mr. Temporary Speaker, Sir, unless there is a tremendous improvement on what we did, I think the morning formula was the best. We took care to make sure no county has lost. We put aside Kshs2 billion for the counties that had very little improvement in terms of marginal increments. I do not see why we cannot agree on this formula and make progress.

I submit that the formula should go as proposed and seconded on the Motion.

I thank you.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM OSHWAL
ACADEMY, MOMBASA COUNTY

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, I would like to acknowledge the presence in the public gallery, this afternoon of visiting teachers and students from Oshwal Academy in Mombasa County. The delegation comprises 37 students and four teachers who are in the Senate for one day academic exposure.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

Sen. Kinyua, please welcome the students and teachers.

Sen. Kinyua: Asante, Bw. Spika wa Muda, kwa kunipa fursa niwakaribishe wanafunzi wa shule ya Oshwal Academy, Mombasa. Karibuni sana pamoja na walimu ambao mmekuja nao.

Hii ndio Seneti. Mmefanya vizuri kuja hapa kujifunza vile mambo yanatendeka hapa. Tunawataki kila la heri. Nyinyi ndio viongozi, maraisi na maseneta wa kesho. Mtabobea katika mambo yote ambayo mtafanya. Jifunzeni mengi ndio muwe viongozi wa kuaminika miaka ya usoni.

Asante, Bw. Spika wa Muda.

(Resumption of debate on Motion)

Sen. M. Kajwang': Thank you, Mr. Temporary Speaker, Sir, for this opportunity to contribute to the debate on a matter that is one of the most important functions of the Senate. Article 217 of the Constitution requires the Senate, and not just the National Assembly, to determine the basis for allocating among the counties the share of national

revenue that is annually allocated to the county level of government. This is one of the few original functions of the Senate.

Remember, even impeachment begins at the National Assembly. That is where the indictment and trial is done in this Chamber. However, when it comes to this formula, the Constitution is very clear that it is the Senate that originates it by a resolution. In the event the National Assembly disagrees with the Senate, the threshold has also been defined. The threshold is so high and it can only be amended by the National Assembly. If two-thirds of the Members of the National Assembly vote in support of an amendment. This is an extremely important exercise that is done every five years.

If you examine comparative jurisdictions, the United Kingdom (UK) has been struggling with the concept of devolution and the sharing of resources between the centre and the other entities like Northern Ireland, Scotland and Wales. However, in their case, they came up with what is called the Barnett Formula.

The Barnett Formula is fairly fixed. I know it has been criticised and has featured even when the regions are doing referendum for cessation. It has been accused of perpetuating disparities amongst the regions. However, in the UK, you do not need a resolution or Parliament to decide how resources are shared between Scotland, Wales and Northern Ireland.

In South Africa, they have the provincial equitable share formula. Their devolution structure is not very different from ours. Nigeria also have a formula, which has a lot of parameters given effect through an Act of Parliament.

Since we promulgated this Constitution, we have had three formulas. The first and the second formula were largely the same. If you looked at the factors that were there, it was slightly tinkering with the numbers. In the first formula, population was at 45 per cent and was the same in the second formula. Equitable share was at 25 per cent in the first formulae and was 26 in the second one.

Mr. Temporary Speaker, Sir, Kenya has not really changed the basis of allocation of revenue until the third formula. I was in the House when we had the classic debate on the third formula for revenue allocation. It took almost 11 sittings of this House. Each sitting was extremely volatile, noisy and contentious as we sought to find a middle ground to ensure that there was some equity in allocation of resources.

The Plenary and *kamkunjis*, which Sen. Mungatana has referred to, could not resolve the matter. As it was then and is now, we would go into *kamkunjis* and agree informally. However, when Members came to the Floor, they would play to the political persuasions that they subscribe to. For 11 meetings, we could not agree on anything.

Ultimately, the House resolved to set up a bipartisan committee. I was privileged to be a Member of it. This committee was co-chaired by the former Senator, Hon. Moses Wetangula, and the current Governor of Nairobi City County, Hon. Sakaja.

We spent a lot of time in this Chamber. We met for almost one week. However, the agreement that we came up with was not based on any science. It was based on this concept called holding harmless and making sure that nobody lost. We froze an amount and said that a certain amount would still be distributed on the basis of the second

formula. We introduced a new formula that would apply on increments from that threshold that we had defined.

In my view, the third formula was perhaps more scientific, service-driven and sector-driven. In the third formula, we brought in aspects of service delivery. We put a measure on health, where we were looking at picking data and analysing how many level four or level three dispensaries that a county had. The CRA had a worksheet that had all that data. However, the problem was that some counties in a bid to look good had upgraded a lot of their hospitals to be level four in name, but there was nothing in terms of facility.

As a result, I realised that between Homa Bay County and Migori County, Migori was getting almost Kshs200 million more on the health index because they had fewer level four hospitals. Homa Bay County was getting less because my governor then wanted to show that he was working. Therefore, he upgraded a lot of level four hospitals. It looked like Homa Bay County was doing better on the health index.

We had certain parameters on agriculture. I recall the then Senator for Nairobi City County brought it to our attention that agriculture is not just a rural preoccupation. He gave us as an example that one of the main dairy producers in this country is in Nairobi City County. There is someone who operates in Karen and produces a lot of milk, perhaps more milk than any other producer around.

The Third Basis formula was elegant in the manner in which it broke down the service dimensions. The only failure was lack of accurate data to back it up. Even the rural access index was based on the number of roads in a county. However, we have had a problem with classification of roads. The national Government does not want to let go of roads to county governments. Therefore, there has been some frustration in ensuring that roads are classified.

If we had accurate data, I would still insist that this country continues to use the third formula. However, the proposal by the Finance and Budget Committee is a de facto endorsement of the third formula. In the spirit of holding harmless, the Finance and Budget Committee has told us that Kshs387 billion would still be distributed on the basis of the old formula, and any amount exceeding that would be subjected to a new formula.

To some extent, it is a confirmation. I am not sure about whether in the Kshs387 billion, the factors or data that was used back then will be refreshed or we will just freeze the amounts as they were. If we freeze the amounts as they were, that would make sense. Going back to the data and tinkering with it might lead to unexpected results.

This Fourth Basis formula that the Finance and Budget Committee proposes, 96 per cent is a third basis, and only 4 per cent is a fourth basis. This is assuming that we will be allocating the Kshs405 billion that was brought to this House by the National Assembly.

I encourage the House to ensure we increase the base. That is where the solution lies. We are fighting over small fragments because we think that counties should only get Kshs387 billion or Kshs405 billion.

The political formation to which I belong has clear unequivocal instructions that we must support devolution. We must give effect to devolution as captured in the

Constitution. If we are to be faithful to the Constitution, we must give resources to our county governments. We have made it clear that Kshs450 billion is a bare minimum.

I know that the Senate has recommended Kshs465 billion. If we can get Kshs465 billion, I will be very happy. The instructions I have is to allocate Kshs450 billion to counties. Something could be more, but nothing less. With Kshs450 billion, the small counties and I do not know why we want to call some counties small.

Why should you call your county a small county simply because of the revenue? Why should you call your county small simply because you have a governor who does not know how to be fiscally responsible and prudent? Why should you tarnish the name of your county by calling it small? We have seen “big counties” that cannot make fiscal responsibility sense.

We have seen small “small counties” that have undertaken programmes that are transformational. This obsession of “County X” having done 10 kilometres of tarmac, but “County Y---” If we put pressure on the national Government to let go of the money that is sitting at Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA) or the Ministry of Roads and Transport, I am sure a few tens of billions will go to the counties and it will be shared out amongst them.

Mr. Temporary Speaker, Sir, water is a devolved function. However, we still have the national Government sitting with huge budgets for water. We see national Government officials moving around and commissioning boreholes in villages, a job that should be done by the counties. Let us push for that money to go down.

Housing is a function of county governments. Just last weekend, we launched affordable housing project in Homa Bay County. I congratulate the national Government for bringing this to fruition. Of course, those houses are being built using money taxed from Kenyans. It is not that the Government is a genius because the money is ring-fenced and, therefore, you have to pay it. Whether you like it or not, you must pay that money. However, we must find a way of building synergies with county governments.

The synergy cannot be that a county provides the land and the national Government builds houses then you have problems on who owns those houses. Let us give counties a share of proceeds from the Housing Levy Fund, so that they also make their own decisions on where they feel they should do housing. If we did so, we would be bridging the gap between Kshs387 billion and Kshs450 billion.

On the issue of markets, we must call out the governors. When the President goes to regions, he launches markets. When governors climb on top of vehicles to speak, they ask for markets to be built. The question is: Why can they not use the Kshs387 billion that we sent to them to do markets, so that we allow the national Government to do bigger things that can stimulate economic activities in those regions?

If the money for markets was sent to county governments, we would be bridging the gap to Kshs450 billion. We would not be having this conversation or contention of discussing a formula that is only going to apply to 4 per cent of the funds. That is the situation now because 96 per cent of Kshs405 billion has been held armless. This formula which is likely to split this House and the nation will be on 4 per cent. We must increase the base.

Agriculture is a devolved function. The only thing that remains at the centre is policy. Sen. (Dr.) Murango was a very able Chair of the Committee on Agriculture, Livestock and Fisheries. We know that there are budgets in Nairobi that should be pushed down. I am happy that those presiding over the Ministry of Agriculture and Livestock Development nowadays have seen the light.

Is it Saul who became Paul? Even though they brought fertiliser here for us to sniff and touch – I remember Sen. (Dr.) Murango sniffing the fertiliser – now they have realised that what they were sniffing were proceeds from a donkey mixed with sand and other things. Let us send that money to the counties. That way, we will be bridging the gap between Kshs387 billion and Kshs450 billion.

Mr. Temporary Speaker, Sir, if we were to carry out a comprehensive review of this formula, I would suggest a few things. We need to bring in a fiscal responsibility measure. There is too much fiscal irresponsibility, but there is no way to punish it. For our governors, the only punishment they understand is either to give or take away money from them. In the first formula, we had 2 per cent. In the second one, we also had 2 per cent. How I wish we considered a fiscal responsibility index.

From where I sit as the Chairperson of the CPAC, there are a few counties that have done fairly well. If you look at their wage bill, they are below 30 per cent of the 35 per cent that is required by law. If you look at their development, they are above the 30 per cent required.

It is not all doom and gloom when it comes to devolution. Out of the 47 counties, I believe we can highlight 10 counties that are fiscally responsible. However, at the bottom of the pile, there is serious irresponsibility.

Sen. Sifuna has just narrated some of the scenarios we have come across. I have seen a schedule of counties that we are calling “small by revenue” circulating. Isiolo is not a small county; it is supposed to be the capital of Kenya. It was designated as such under the Vision 2030. Isiolo is at the centre of Kenya and that is where the centre of gravity of this nation ought to be. Let us not call it small because of this allocation.

If you were to add own source revenue, ideally Isiolo should have many economic activities. Let us put pressure on the state to live to the aspirations of the Vision 2030 and take services, facilities and activities to Isiolo. That way, it will no longer be called a small county.

When you tell me that you want Isiolo to get Kshs6 billion, I will also challenge the proponents of that argument to advise me on how to hold accountable the leadership of Isiolo County. That could have been achieved through a fiscal responsibility index.

They are doing bad things in terms of employment of advisors and Chief Officers (COs). You will find that a county has got six County Executive Committee Members (CECMs) with 10 Members of County Assembly (MCAs), but there are 36 advisors and 36 COs. It means that under every Ministry, there are about five or six accounting officers. Even Nairobi with more complex functions does not have that kind of crimp when it comes to advisors and COs. If there was 2 or 3 per cent to be shared by 10 counties that are doing a good job then those pulling at the bottom get nothing, I would have supported this formula more robustly.

Secondly, we must ask ourselves about the blue economy. We just had Madaraka Day celebrations in Homa Bay County. The theme was about blue economy. Sen. Roba, I am not sure whether when we take land at 8 per cent, we are also looking at the concerns of people with vast water bodies. This is not just a Homa Bay, Kisumu, Siaya, Migori and Busia thing. It also affects Turkana, Marsabit, Mombasa, Kwale, Lamu and Kilifi.

There are residents of Mfangano Island in Lake Victoria where I come from. Mfangano is quite a big island, but the gap between Mfangano and the mainland is thousands of acres or hundreds of kilometres, yet they demand services. They want hospitals, markets and roads. Do we have a component here that can accommodate the blue economy?

Thirdly, we should stop glorification of poverty. I have seen in the report by the Committee on Finance and Budget that poverty has a weight of 12 per cent. It is the CRA that proposed 14 per cent. Are we incentivizing poverty? What if while Sen. Roba was a governor, he improved the lives of his people and his poverty index moved from “x” to “y”? In other words, his people are less poor.

Why should he get less money? Should he not be incentivized for pulling more people out of poverty? I do not know how we will ever get to put that as a criterion. Otherwise, as it appears, we are glorifying and rewarding poverty, so that the poorer you are, the more money you should get. There needs to be an instrument for incentivizing.

I spoke about data accuracy. We cannot be a leader in Sub Saharan Africa yet we are still complaining about the data that is held by the Kenya National Bureau of Statistics (KNBS). I have seen in the report that KNBS convinced the committee that their data is verifiable and accurate. I thought that the only data we should dispute in this country are Independent Electoral and Boundaries Commission (IEBC) numbers.

When it comes to KNBS data and revenue sharing, people even went to court over the issue of population census. It is untidy that we have got a court order nullifying the results of the population in a certain region in this country.

Mr. Temporary Speaker, Sir, allow me to say this. Recently, the President talked about removal of vetting for issuance of Identification (ID) cards in the border counties. That is not a North Eastern problem alone. I was also forced to go for vetting when I was applying for my Identity Card (ID) because we neighbour Uganda. So, this suspicion about Northern Kenya around population, is part of systemic discrimination of certain parts of this country. It is not just Northern Kenya, it affects us in Homa Bay, Migori, Busia and other counties that border Lake Victoria.

Mr. Temporary Speaker, Sir, can we demand for more money to go to counties? The Constitution requires us to base it on the most recent accounts. The most recent accounts, going by Article 203 should be the revenue accounts for Financial Year (FY)2023/2024. The National Treasury is trying to convince us to use 2021. That is unconstitutional. If we had Kshs450 billion, then we will not be in this situation. Could we, as a House, agree even though some of us are in Broad-based Government--- One key point in the Broad-based Government was support for devolution. It is Kshs450 billion. That is what we signed for. We did not sign up for Broad-based for small markets here, a small stadium there, a small road there---

(Sen. M. Kajwang's microphone was switched off)

The Temporary Speaker (Sen. Abdul Haji): Have you concluded?

(Sen. M. Kajwang spoke off record)

The Temporary Speaker (Sen. Abdul Haaji): Thank you, Senator.

Sen. Murango, please, proceed.

Sen. (Dr.) Murango: Asante, Bw. Spika wa Muda. Kwanza, ningependa kuondoa dhana ya kwamba zile gatuizi ndogo zinaitwa “ndogo” kwa sababu ya mambo mengine. Zinaitwa “ndogo” kwa sababu kijiografia ni ndogo. Ukiangalia vigezo ambavyo vimetumika katika ugavi wa pesa ambayo inabakia kama vile wingi wa watu, zinahesabiwa zikiwa ndogo. Vile vile ukiangalia kigezo kingine kama kile cha umaskini na ufukara, zingine haziko. Kwa hivyo, ndio maana zinaitwa ndogo kwa sababu ni ndogo kwa mambo yote mazuri na mabaya pia.

Bw. Spika wa Muda, taarifa iliyonifikia sasa ni kwamba *Division of Revenue Act (DORA)* ambayo tulikuwa tumepitisha katika Jumba la Seneti ya kupatia gatuizi zetu takriban shilingi bilioni 465, imeangushwa katika Bunge la Kitaifa. Mara nyingi, huwa nasema machozi ya mtengeneza jeneza hayaaminiwi kwenye matanga. Wakati mwingine huwa wanakuja biashara ila si kuhuzunika na waliofiwa.

Wale waliomo katika Bunge la Kitaifa pia wanafaa wajue kwamba wakati mtu anawania kiti chochote, anawania akijua ile fedha atakayopata atafanya nayo nini. Kwa hivo, tunapojaribu kupata pesa zaidi kuenda katika gatuizi zetu, lakini inapofika katika Bunge la Kitaifa DORA iliyopitishwa inaangushwa, inaonyesha ya kwamba adui wa ugatuizi ni akina nani. Kwa hivyo, tunarudi pale pale tulipoanzia.

Bw. Spika wa Muda, nimetoka Kaunti ya Kirinyaga. Mimi ni Seneta wa Kenya kutoka Gatuizi la Kirinyaga. Hata hivyo, itakuwa sijafanya haki kama sitaongea kuhusu Kirinyaga pia nikiongea kuhusu gatuizi zingine katika nchi ya Kenya.

Tunapopata fedha ambazo tunapata miaka ambayo imesonga, tukitoa ile fedha ambayo inafaa kulipa mishahara na mambo kama hayo, pesa inayobakia kufanya maendeleo huwa ni finyu sana. Mwamba ngoma wakati mwingine ngozi huvuta kwake. Ukienda katika eneo ambalo lina ukubwa, robo tatu katika Kirinyaga County, iko sehemu ambayo inakuzwa mpunga. Ni kubwa mno lakini mashamba na njia za kupitia kwenda kwa yale mashamba toka tupate uhuru haijawahi guzwa, kwa sababu pesa tunazopata ni kidogo mno.

Nikiruhusiwa, hizi gatuizi ndogo tujiite wadogo kama sisi kwa sababu sisi ni kama wadogo wenu. Ndio maana nawasihi wakati meza ya chakula cha jioni ama meza imewekwa, imetengenezwa ili watu waweze kukula kwa ile meza na uko na ndugu mdogo amabao hawafikii meza. Si vibaya kumpatia tonge angalau pia akue ili siku moja aweze kukaa na wewe katika meza mkule pamoja.

Bw. Spika wa Muda, kwa mfano, tuagazie kaunti ya Elgeyo Marakwet ambao Bajeti ya mwaka waliyopewa juzi waliweza tu kununua tinga tinga moja la kulima

barabara. Wangalifanya jambo lingine lolote pesa haingekuwa. Kama tungsikizwa tu kidogo na ndugu zetu kwa sababu sisi wote ni ndugu, tuweze kuinuliwa kidogo tufikie meza ili sote tuwe tunapata lishe pamoja.

The Temporary Speaker (Sen. Abdul Haji): Sen. Murango, ningefurahia zaidi kama ungesema “yule mchanga ambaye hafikii meza, abebwe awekwe juu ya meza akule kama ako juu ya meza.”

Sen. (Dr.) Murango: Bw. Spika wa Muda, nikisema hivyo, itakuwa ni madharau kwa sababu atakuwa amekanyaga juu ya meza. Tunataka tu kupewa anagalu tonge tuweze pia kukua na zile gatuzi ambazo zinafaidika zaidi.

Vile vile, tunapotafuta hizi fedha, kuna mambo ambayo yanafanyika katika gatuzi zetu ambayo tunafaa tuyamalize pia. Tunapowapatia magavana pesa kwenda kwa ugatuji, lazima wajue pia wako pale kwa sababu ya wale waliowachagua na kuna sheria za kufuata kwa sababu Katiba lazima ifuatiliwe.

Mfungwa hachagui gereza. Kwa hivyo, lazima wafuate sheria. Mara nyinyi huwa tunang’ang’ana kupata fedha lakini zinapofikia magavana, wanaanza kuwa wajeuri na wakiitwa katika kamati hawaji, wakiulizwa maswali hawahjibu lakini sasa hivi, wanataka tuwapatie pesa. Najua kuna mpango na jamaa fiche hata zile pesa zinaokotwa katika Gatuji la Kirinyaga katika malipo ya ndani kwa ndani kwamba nyingi zinapotea na kuibiwa. Kwa hivo, ni lazima magavana waajibike.

Nikimalizia, ningetaka niseme ya kwamba fedha ambazo tunaomba katika zile kaunti ambazo si kubwa sana--- Wakati kigezo kimewekwa cha kuangalia wingi wa watu, hakuna kigezo kiliwekwa cha kusema msongamano wa watu katika kaunti ndogo. Hiyo ni kusema ya kwamba, unaweza pata kaunti ambayo iko na watu wengi kwa sababu ni kubwa lakini kuna kaunti zingine kama vile Kirinyaga ambazo ziko na msongamamo wa watu, yaani ni ndogo. Utapata kama kwa hekari moja wanaishi kama familia nne ama tano. Hii inakuja pia na shida zake za kupeana huduma kwa watu wanaoishi hapo.

Kama vile Sen. Mungatana alikuwa amesema, kuna mambo ambayo tulikuwa tumeskizana kwamba, katika mkutano uliokuwa asubuhi, tuangaliliwe hata kama ni kidogo tuweze kukaribia wale wakubwa wetu ambao wako na gatuji kubwa. Kwa sababu mbuzi wa kuazimwa au kupewa haangaliwi meno. Kile ambacho tutapata, tutaridhika zaidi ili iweze kunufaisha wananchi wetu ambao wako mashinani.

Bw. Spika wa Muda, nashukuru Mwenye Kiti wa Kamati ya Seneti ya Fedha na Bajeti kwa kazi nzuri waliofanya. Si kazi rahisi kuja na kuleta ile *formula* amabyo tumeiona hapa. Ingekuwa si vizuri kukaa na kukashifu ile kazi ambayo Kamati ya Fedha na Bajeti na Mwenye Kiti walifanya. Walakini, wakati mwingine kuna watu hata ukifanya nini hawaridhiki. Kuna mtu hata ukiogelea atasema bado unamtifulia vumbi. Kunao watu bila msingi wowote watakuambia wewe ndiwe sababu jangwa la Sahara halina nyasi.

Kwa hivyo, kazi waliofanya kufikisha mahali tulipo, kuhakikisha kuwa hakuna gatuji linapoteza pesa ni jambao ambayo anafaa apewe kongole. Asiulize kwa nini nisimwambie “hongera” kwa sababu “hongera” hupewa wanawake. Kwa hivyo, sisi tukipewa chochote hata kama ni chenye naona katika simulizi iliyoletwa hapa na

takwimu ambazo nazona hapa, tutakubalia. Walakini, ningependa kusema kwamba, adui wa ugatuzi ni Bunge la Kitaifa.

Sasa hivi, ukiangalia taarifa, wameangusha ule Mswada ambao tulikuwa tumepekela kule. Ndio maana nimesema kwamba, machozi ya mtengeneza jeneza hayaaminiwi katika Matanga, anakuanga biashara. Hawa ndio naongelea.

Asante.

The Temporary Speaker (Sen. Abdul Haji): Sen. Prof.) Kamar, please, proceed.

Sen. (Prof.) Kamar: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to join my colleagues, first, in thanking the Standing Committee on Finance and Budget for the rigorous work that they have done.

[The Temporary Speaker (Sen. Abdul Haji) left the Chair]

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

Madam Temporary Speaker, I stand to support this report with the amendment that was introduced this morning; the amendment that introduced an affirmative action fund that ring-fenced Kshs2 billion for the 11 counties that had the lowest figures.

I want to support because in the third formula - where I was present and I sat on the chair you are sitting on. It took us about 11 very difficult sittings, but something that came out very clearly was the unity of the House. Sen. Kinyua will remember that the House was united in speaking fairness. I want to thank this Committee because, if you look at the observations that they have given, they have not deviated from fairness.

The parameters that have been used are slightly different because in the Third Formula we wanted to look at the second part of the Fourth Schedule. We had asked for more money, so that we could have the devolved functions being followed by resources. When we did not succeed, this House decided to break the boundary between the two sides of the House. They debated and came up with a formula that was implemented and made everybody happy. I am appealing to the House that we do exactly the same. Let us think in terms of our unity and fairness.

In the Fourth Basis, according to the Committee, sharing is still looked at as a devolved function, not within the parameters that we had used. They have looked at the functions globally. They have ensured that first, nobody loses, which was the principle that came out very strongly in the Third Basis that nobody should go below what they had gotten.

I want to support that as we look at this formula, let us think in terms of sustaining the momentum of devolution. This is the House that protects devolution. It will be very sad that we squabble and have squabbles that derail us. Our focus should be on how we can protect devolution by sustaining the growth of everybody. We know that some colleagues feel that they should have been fast-tracked a little bit, but if you look at the agreement of this morning to release the Kshs2 billion, that is a step in the right direction.

I still think that we should persuade all our colleagues to agree with this formula. The reason we need unity in this House is because the amount of money that we are

getting is still not the figure that we wanted. The Committee's initial proposal was Kshs465 billion and we only got Kshs405 billion. So, we need unity of purpose to look for that Kshs60 billion. We must reach a point where we can talk in one voice, so that we get the figure that we are looking for. A divided House will not be able to do that. At the end of this debate, we must remain united and consider the fact that all of us must move together. I want to persuade my colleagues to accept the resolutions that came from today's *Kamukunji* because we called for it for that very purpose.

Madam Temporary Speaker, where is the actual problem with the money, because we seem to be fighting over a little money? The actual problem is the progression in funding the counties. At the Bomas of Kenya, the ideal situation was that in 20 years, 50 per cent of the resources of this country would be in the devolved units. We expected 50 per cent to be in counties in 20 years. Right now, we are only in the third term and the rate at which we are going, we will not reach 50 per cent. As a House, we need to be united to refocus and fight for resources to go down to the counties.

That is possible because there are functions that have been devolved, but resources have not followed. Even though the committee is saying in Paragraph H that the funds have been shared in the context of the devolved functions, we still have a lot of functions that are supposedly devolved in the Constitution, but they have not been funded.

I said this during the debate of the Third Formula and I want to repeat it that Kilimo House is still full. The Ministry of Health is still full of staff who were supposed to have transitioned to take care of our counties. If that is done, if we transfer resources that are in the Ministry of Agriculture and the Ministry of Health rightfully to the counties, there is hope of us reaching the 50 per cent in the next 10 years, if not 20 years. That calls for unity within this House.

It is very important that we stand united as we debate the division of revenue, so that we do not fight over the little that has arrived when we know that there is a lot more that should be coming. We know that roads and housing should be devolved. Of course, as I said, also agriculture, except for policy makers. The occupancy of the Ministry of Agriculture should just be one floor where the Minister is, his principal secretaries and directors; nothing more than that. All other functions and monies should be devolved.

The same thing with the Ministry of Health. If health has been devolved and we still have everybody in Nairobi, most of the money is still in Nairobi. We are informed that what the counties are getting in health is less than 50 per cent. This has been raised several times by the CRA when they are explaining to us that we seem to be fighting over what we have seen with our naked eyes, but there is a lot more that we are not seeing.

I would like to really appeal to the House that we go for unity of purpose while we are debating and while we are approving. I am glad my brother, Sen. Osotsi, is here. If we start fighting over the little things, we will not be able to devolve everything. Let us devolve agriculture and health, except for the policy, the way the Constitution says and look for new monies. I am looking for new monies that will follow the functions that have been devolved by the Constitution.

If we had Kshs465 billion, the debate would not be here because everybody would have jumped in billions. However, now that we have restricted ourselves to the minimum increment that we have been given, we still need to have this conversation with the National Assembly at some point because it is like they have never understood what devolution is all about.

No wonder we are still fighting over who supports and who does not support the NG-CDF. The national Government has the right to devolve its money and resources to the lowest unit, but while they are doing that, that is not money that belongs to the devolved units. We want the money that belongs to the devolved units according to the Constitution, so that we can develop the agendas that were devolved.

Madam Temporary Speaker, I was not going to say a lot because most of my colleagues have said most of the things that are here. However, I want to emphasize that there is need for unity in this House. Let us negotiate and let us finish the way we did with the Third Formula. Let us negotiate and move together to ensure we are looking for money that has been touched since devolution came, so that we move forward with devolution. Devolution is one thing that Kenyans are not going to take a risk in diminishing. Since this is the only avenue for Kenyans to develop, we must all be together.

My cry is, “let us move together. Let us not be divided by the division of revenue. Let us look for money that has not been given to us and the devolved functions that have not been followed by money. Let us demand for that money with one voice. That is going to move us far.

I support with the amendments introduced this morning in the *kamukunji*.

Sen. Kinyua: Asante Bi. Spika wa muda kwa kunipa fursa hii. Ninashukuru Kamati ya Fedha na Bajeti kwa kazi nzuri waliyofanya kwa kuleta mpangilio wa ugavi wa fedha.

Ikumbukwe wazi kama vile Sen. (Prof.) Kamar alivyosema ya kwamba Seneti iliyopita kauli mbiu ilikuwa hakuna kaunti ingepoteza pesa. Huo ndio msimamo kwa sababu Katiba yetu inasema kazi ya Seneta ni kulinda na kutetea kaunti zetu. Sen. Mandago hatetei Uasin Gishu tu bali ana jukumu la kutetea kaunti zote za Jamhuri ya Kenya kwa sababu ni Seneta wa Kenya.

Nakumbuka Seneti iliyopita tuliketi hapa zaidi ya vikao kumi bila makubaliano, lakini dakika ya mwisho tulikubaliana. Mpangilio wa ugavi uliotumiwa katika muhula wa tatu wa ugavi, ndiyo huo unaotumika wakati huu. Wakati ule watu walijadiliana na mambo mengi yalifanywa. Kuliundwa Kamati iliyokuwa ikiongozwa na Sen. Sakaja na Spika wa Bunge la Kitaifa wakati huu, Mhe. Wetangula. Tuliongea mengi na kukubaliana.

Ninasema hivi kwa sababu Sen. Mungatana alipokuwa akichangia alisema ya kwamba waliokuja nyuma wameleta kuchanganya yaliyokuwa yamezungumziwa hapo asubuhu. La hashu! Si kuchanganya; ni kuleta mwamko mpya, fikira na nguvu mpya. Watu wanapojadiliana, Wazungu husema ni mjinga tu asiyebadilisha mawazo. Wanaoleta mawazo mapya hata wao wanapaswa kusikilizwa.

Bi. Spika wa Muda, kwanza kabisa ijulikane wazi kwamba pesa zinapaswa kufuata majukumu. Majukumu mengi yamepelekwa katika kaunti zetu lakini pesa zinabaki katika Serikali ya Kitaifa. Ikiwa hatutalivalia njuga jambo hili la pesa kufuata majukumu, tutakuwa tukipigania mkoba mdogo wa pesa, lakini mkubwa unao Serekali ya Kitaifa.

Sisi tunapigana hapa lakini hatuwezi kufuatilia mahali palipo na hela kwa sababu majukumu mengi ambayo yamepelekwa katika kaunti zetu hayajafuatwa na pesa zake. Kwa Mfano, Mwenyekiki wa Kamati ya Afya yuko pamoja na sisi hapa. Hela nyingi za afya ziko katika Serekali ya Kitaifa ilhali Serikali imebaki na jukumu la sera na hospitali za kitaifa karibu tano ambazo ni Moi Teaching and Referral Hospital (MTRH), Kenya National Teaching and Referral Hospital, National Spinal Injury Referral Hospital, Kenyatta University Teaching and Referral Hospital na ile ya Mathari National Teaching and Referral Hospital. Hizo ndizo tu za Serikali ya Kitaifa ilhali asili mia 70 ya pesa zinabaki huko.

Mfano kuhusu barabara, Katiba inasema barabara zimegawanya mara mbili, za gatuza na za kitaifa. Hata hivyo kuna halmashauri na taasisi kama vile Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA) na Kenya National Highways Authority (KeNHA) ilhali hizo pesa zingepolekwa moja kwa moja katika gatuza zetu kwa sababu kuna aina mbili pekee. KeNHA ingebaki ikishughulikia barabara za kitaifa ilhali KeRRA na KURA zipelekwe katika gatuza zetu kwa sababu huwa wanashughulikia barabara zilizo katika gatuza zetu.

Tunapongea kuhusu pesa ni vizuri tuwajibike vizuri na kusema kwamba gatuza zinapaswa kuangaliwa. Kwa mfano hela zinazopewa kaunti ya Laikipia na majukumu tunayotakiwa kufanya pale, hizo hela ni chache sana. Hazitoshi. Kwa sababu leo asubuhi tulikuwa na huu mdahalo wa kujadili tutakavyoweza kuongeza hela zinakwenda katika kaunti ndogo kuliwekwa Kshs2 billioni kama hatua ya kuleta pesa za usawazishaji. Hizo fedha ni nzuri kwa sababu walionekana wana nia lakini hazitoshi. Pendekezo langu ni kuwa tuongeze ziwe shilingi bilioni tano ndiposa kaunti 11 ndogo zote zipate kadiri ya bilioni sita kila moja. Hilo litaonesha nia nzuri upande wa Kamati. Tunawauliza wasonge tu kidogo ifikie bilioni tano ili kaunti hizo ziridhike. Haya ni kwa sababu hata hizo kaunti zina majukumu mengi

Ukitembelea Laikipia, hospitali zetu hazina dawa, barabara hakuna na shida ni nyingi. Kaunti ile ni kubwa sana na majukumu ambayo gavana anapaswa kutekeleza hayatoshelezwi i na hela zilizopendekezwa. Ndiposa kila mtu katika gatuza anasema kwamba anangoja Rais aje afanye miradi. Wanatutuma kwa Rais ili aende akafanya ilhali gavana yuko pale. Ni kwa sababu hela nyingi zimebaki katika Serikali kuu. Ni jukumu letu kama Seneti kusema kuwa hela zinapaswa kufuata majukumu. Mfano ukulima umegatuliwa. Mambo ya masoko yamegatuliwa lakini majukumu hayo yanatekelezwa na Serikali ya Kitaifa. Hayo ni mambo tunayopaswa kuangalia hapa.

Bi. Spika wa Muda, ninapendekeza rekebisho moja. Badala ya shilingi bilioni mbili ya usawazishaji kwa kuinua kaunti zilizo chini ninapendekeza kuongezwe ziwe shilingi bilioni tano na hilo linawezekana. Tusieme tu hayo. Tueleze kinagaubaga kwa sababu kiwango kilichopendekezwa ni Kshs405 bilioni. Tunapaswa kusukuma zaidi kwa

sababu Seneti ilipitisha kuwa tunataka shilingi billion 465 na hiyo inawezekana tukifanya pamoja. Seneti iliyopita tulitembea pamoja na tukawa na kauli mbiu kuwa hakuna kaunti inayopaswa kupoteza hela.

Bi. Spika wa Muda, nataka kuongea na Sen. Mungatana. Tulipofanya hivyo Seneti iliongeza ugavi wa pesa kwa shilingi bilioni 50. Hata sasa tuna uwezo tukitembea pamoja na tukiwa na nia kwa sababu umoja ni nguvu utengano ni udhaifu. Ninawaomba Maseneta wenzangu, tuiseme kuhusu shilingi bilioni nne na tano. Tulenge shilingi bilioni 465 kwa sababu, hili ndilo jukumu letu kubwa katika Seneti hii, kutetea gatuji.

Bi. Spika wa Muda, siku ya leo, Mswada tunaoadili leo ni mwafaka. Huu Mswada ndio umetuleta Seneti hii. Haijali mambo mengine yeyote. Hayo mambo mengine yawe kando kwa sababu, maneno tunayoongea kuhusu makaunti, vile kutafanyika na kutekelezwa, kutatekelezwa kulingana na hela ambazo siku ya leo tunatetea hapa. Hakuna mambo mengine tunapaswa kufanya kwa sababu, leo tunafaa kuongea kuhusu hizi hela na tukipata zile hela tunazozitaka, ziende kule gatuji.

Kuna mambo ya ufisadi na kuvuja kwa hela na hayo yatafwatiliwa na Kamati husika iliyowajibika vilivyo. Lakini, sisi tunafaa kutetea pesa ziende kwa kaunti. Hatuwezi tukasema kuna ufujaji wa hela na ufisadi kwa kaunti zetu, kwa hivyo, hatutatetea pesa. Si gatuji zote zinafuja pesa. Kuna gatuji zinafanya kazi vizuri, walio waeredi na stadi kwa kazi waliochaguliwa kufanya.

Bi. Spika wa Muda, nitakwamwa hapa nikiwarai Maseneta wenzangu, haswa, Seneta wa Tana River pamoja na Seneta Mandago, wakubali hii jedwali, mahali pa udhibitisho ili tusawazishe kaunti hizi, tupewe bilioni tano. Ndio Seneta Mungatana akitembea Laikipia, apate barabara. Ukitembelea zahanati zetu, upate dawa. Sitaki kumwambia Seneta Mandago kwa sababu, yeye ni mwenzetu nani jirani pia. Yeye siwezi kumhubiria, tayari ameokoka.

Asante, Bi. Spika wa Muda, kwa kunipa fursa hii. Pia, ninaunga mkono ikiwa marekebisho ya bilioni tano katika jedwali hii yatafanywa.

The Temporary Speaker (Sen. Mumma): Sen. Mandago.

Sen. Mandago: Thank you, Madam Temporary Speaker. This is an important Report that has been tabled by the Committee on Finance and Budget, which goes to give resources to our counties.

From the onset, I agree with my colleagues who have advanced their argument that the so-called small counties be allocated a minimum of Kshs6 billion. It is not too much to ask. I say that, not because I am against any county from getting any allocation, I say that as a Kenyan who has trans-versed this country and understands the challenge the so-called small counties undergo.

I will say the following in support of additional allocation of funds to the small counties. If you look at the cost of development for similar works, like the cost of doing a road in a county like Elgeyo-Marakwet; one kilometre of road to cut through the hills will cost the county government - we are just talking of rural access roads, we are not talking about paved roads - will cost not less than Kshs5 million to do a kilometre of murrum road.

In Uasin Gishu, it will cost Kshs1.5 million. Why? The terrain in Elgeyo Marakwet is so hilly. There are hills and valleys. To construct a kilometre of road in Elgeyo Marakwet might take two to three weeks. To construct a kilometre of road in Uasin Gishu will take less than three hours. We must appreciate that these counties have very unique challenges.

Madam Temporary Speaker, if you go to a county like Lamu, for you to access Lamu from Nairobi, you need to cross the ocean. The people of Lamu are not less privileged. They must get services, roads and a transport network to access the rest of Kenya, like all other Kenyans. If you go to a county like Tharaka-Nithi, a good percentage of Tharaka-Nithi is ASAL. It has been marginalised from independence.

If we want to bring development across the country in a fairly equitable manner then we, as a House, should be in the forefront of making sure that the so-called small counties get additional allocation. Whether it is going to be affirmative action or whatever formula is going to be applied, let us have those counties getting a minimum of Kshs6 billion.

Madam Temporary Speaker, if you look at health facilities in Elgeyo Marakwet, Lamu, Vihiga, Tharaka Nithi and the others that we call small counties; they almost have a similar number of health facilities as the rest of the counties. Every health facility regardless of the number of people who patronize it requires the same number of human resources.

If you upgrade a facility to Level 3 and the requirement for a Level 3 is that you must have 10 nurses, five clinical officers and two laboratory attendants, it does not matter whether that health facility is in Elgeyo-Marakwet, Lamu, Tana River, Uasin Gishu or Nairobi. If we want to provide quality, affordable and accessible health care, we must provide that number of human resources required. Therefore, these counties that we call small will suffer an irreparable damage, especially now that the county and the Government is rolling out Universal Health Coverage (UHC) and is trying to make sure that every Kenyan, regardless of their geographical location, can access quality and affordable health care.

If these counties are not supported, they will have a huge problem in coping with the rollout. I, therefore, persuade my colleagues in all the other counties to agree to re-look this formula with a view of making sure, that the least amount of resources that will go to any county is Kshs6 billion.

Madam Temporary Speaker, having said that, there is now need to use existing Government entities to check on the funds that have been given under affirmative action in order to assess the impact, so that it informs our decision in the next development of the formula. If you look at the parameters like the poverty index, a couple of counties have got huge allocations by virtue of that parameter.

It is time we asked ourselves; out of the money that was sent to those specific counties under the poverty index, has there been any improvement reducing the poverty levels in those counties? In order to boost the oversight of Senate and all the other entities involved in accountability measures, including our county assemblies, it is time we got an integrated financial management system that allows you, as a Senator of the county and

you, as a member of the county assembly, even on a read-only basis, to look at the financial position of your county in order to see what has been requisitioned, what has been approved, and what has been paid out.

It has been paid out. As we speak, we are operating silos of financial management systems that do not talk to one another, and it makes the work of oversight and accountability a little bit difficult. In this age of technology, it is possible to integrate IFMIS together with the system the Controller of Budget (CoB) is using and the CBK payment platform and allow for real-time availability of data and the use of finances.

Madam Temporary Speaker, this will not only apply to county governments, it should also be applied to the national Government entities, so that even members of the National Assembly should be able to oversight state departments on real-time basis, we avoid the wastage that occurs, and only deal with the matter when the money has already gone. That will ensure that the resources that we, as the Senate, keep fighting for to go to our counties is properly utilized.

On the issues of accountability and in making sure that we have proper oversight, I thank this Senate for first accepting that our county assemblies must become autonomous. The position the Senate has taken is so that county assemblies will be able to perform their work. As we speak, there is very little oversight in terms of what the MCAs are doing in their counties. I am a little bit disturbed that when you look at the financial prudence now in the counties, it looks like the accountability standards have been lowered.

I say that because in my own county, I am surprised that the executive in my county can have up to Kshs400 million in unaccounted imprest. I do not understand what kind of development is being done using imprest. Imprest collection is not any form of procurement. It is not any recommended procurement procedure. If you find a county with over Kshs400 million, in excess of Kshs100 million, unaccounted imprest, you have reasons to worry. That is particularly when you do not even hear anything from the county assemblies.

We must strengthen county assemblies for them to be able to conduct oversight. One way to strengthen county assemblies is to increase the salaries of the members of county assemblies. The Salaries and Remuneration Commission (SRC) in their duty, in my view, I think committed an error of omission by increasing the salaries of the County Executive Committee Members (CECM), the county *Waziris*, to close to Kshs400,000 a month. We expect the member of county assembly to earn Kshs132,000 and oversight the functions in the county, while also being the first point of call of every citizen of this country, whenever they have a problem.

Madam Temporary Speaker, remember, Members of Parliament are in Nairobi. Unfortunately, in this time, more than 50 per cent of the governors operate from Nairobi. So, they can also not be found in their counties. Who is left at the county level to deal with the general population? It is the MCA.

Madam Temporary Speaker, we must live life realistically. We must be practical. I have heard people make arguments that, you know, fundraisings are not part of your job description. If an expectant mother comes to a house of your house, as an MCA and

needs Kshs1,000 to go to hospital to deliver, will you say that is not part of your duty or you will have to find a way of giving that mother the Kshs1,000 to be able to go to the facility? That is what our MCAs go through every day.

If we want to strengthen accountability in counties, so that when we send resources the primary level of oversight is properly conducted, then we must empower the county assemblies. I must thank this Senate for giving them autonomy. We must now also give them the financial capacity to be able to do that.

Madam Temporary Speaker, I know the courts have pronounced themselves in the matters of qualification. As is now in this country, it is only the governors who are required to hold a degree. The rest of the positions, as long as you are a Kenya citizen with a birth certificate, it is sufficient for you to become a leader. We do not dispute that you do not have to have degrees to be a leader. However, I think we need to put some bare minimum in some functions. For example, for you to be the chairperson of finance and budget committee in the county assembly, there is need for us to put some qualification there. This is because it requires capacity, to even internalize and check the figures that are being given by the executive and to be able to interrogate the audit reports from the Auditor-General. There is need for some specific qualification, for some specific jobs, so that we can improve on our accountability.

Finally, there are still a lot of resources that have been left in some state departments that still continue to perform their functions. As a House, we must continue to reign on these state departments and make sure that these functions are fully devolved and that resources follow functions. As I speak, I have two state departments in my mind; the State Department of Health and the State Department of Agriculture.

If you look at those two functions, they are about 95 per cent devolved. In health, the 47 county governments are dealing with close to 14,000 health facilities. The national Government through the State Department of Health is dealing with less than 50.

If you look at the functions that are being run by the Ministry like malaria control, distribution of nets, for instance, does not require anybody to go to school. In fact, that is a function that should be done by our Community Health Promoters (CHPs). Now that we have a number of them across our counties, and they are even more distributed than the health workers, they are in a better position to perform the preventive activities of health. However, you will still find they are also responsible for distribution of nets in the Ministry. The function of nets is still in the Ministry. Functions like teaching and sensitizing the general population on washing hands is still domiciled at the Ministry. The Ministry officials want to still travel across the country to sensitize people now to wash their hands.

On oral health, money is being spent at the State Department of Health to teach people on how to brush their teeth, something we used to be taught by our teachers and a few public health officers across those times. Why is this money still in the Ministry of Health? We need that money to go to county governments. We also need to strengthen accountability in county governments.

The lazy excuse that has been used all the time of saying, “oh, there is corruption in our counties, corruption has been devolved.” If we are to do consolidated values of

corruption in the national Government and in counties, what we see in counties is child play. The corruption that happens at the national level, funds are being moved out of this country. If there is corruption in counties, the funds revolve around the county. If you are to choose the lesser devil, then the money that revolves around the counties might even be easy for EACC to trace and all the other agencies that are involved. What happens when money has been sent to some countries? When we want, we are told that those fellows have diplomatic immunity. You cannot talk to them. Therefore, let us send the resources to follow the functions. Let the agencies responsible for accountability do their job.

Let the Auditor-General's office be strengthened in terms of human resource. It is also another weak link. As much as the Auditor-General wants to do a good job, but with the little budget they are given and the number of staff they have, they cannot handle seven county governments, 300 parastatals and many other national Government and state agencies.

Madam Temporary Speaker, there is need to enhance the capacity at the office of the Auditor-General. We ask the National Assembly to enhance the allocation to the Auditor-General. I disagree with the Auditor-General's engagement of private auditors to audit Government agencies, including counties. The inconsistency that happens when you hire an audit firm today to audit Uasin Gishu County, and in the next financial year, you have another audit firm, will make it difficult to track the improvements that are desired from audit.

Audits are meant to improve. They are supposed to enhance efficiency. The reports are supposed to be used to improve Government processes and procedures. I would ask that the National Assembly adds funds to the Auditor-General to recruit more auditors, so that Government auditors from the office of the Auditor-General can be auditing all Government agencies, both at the national and county government levels.

With that, I support this Report with the amendments that the so-called small counties, that every county must get the least minimum of Kshs6 billion, so that we can have equitable development and we can make sure that this country is moving as one nation. The reason those counties are behind is not their own making. It is the marginalization that happened over the years. The purpose of devolution was to correct that marginalisation, so that any Kenyan can be able to work in every part of the country.

We know these are counties where you could post health workers and they would either fail to report or report, and the first letter in their files is to seek a transfer out of that station. Devolution has stabilized human resources in health. Even in the early childhood centers, we are seeing increased access to basic education. Therefore, I support this with the amendment that the least county gets Kshs6 billion.

The Temporary Speaker (Sen. Mumma): Sen. Wamatinga, please proceed.

Sen. Wamatinga: Thank you, Madam Temporary Speaker, for giving me an opportunity to add my voice to this very important function that is one of the main roles of the Senators.

A lot has been said about the allocation of revenue. There has been a lot of debate about the most appropriate formula that will ensure that all counties get the resources

they need. There was a major mistake that we did in the promulgation of the 2010 Constitution. We created so many counties and, therefore, duplicated very many roles. Indeed, if we would spin the wheel of time, we could have created like 12 or 15 counties, so that we do not have to duplicate so many roles, and create units that mostly are defined along ethnical lines.

Having said that, I have looked at the formula and the report as proposed by the Committee on Finance and Budget, and indeed, they have done a good job. However, there is one question that has been lingering in my mind, and that is, why do we not get a variable that will ensure that we give incentives to those counties that practice financial prudence? This will encourage innovations, encourage a lot of startups, and most importantly, get a variable that will encourage counties to ensure that the young generation gets involved in creation of cottage industries.

In any case, we are where we are, and we must face it as it is. Indeed, I support the Committee on Finance and Budget Report with various amendments. One, it is unfortunate, and I say this as a patriotic Kenyan. We have continued to use the poverty index for the last 10 years of devolution. I wish we could have paused to ask ourselves what the effect of this equalization or this affirmative percentage that we have allocated to counties has been that we think are disadvantaged. I think by using modern tracking formulas, we could have tried to track down this 14 per cent that was there previously. Now, it is 12 per cent. What impact has it had on counties?

Having visited many marginalized counties and being involved in the construction industry, I realize that 80 per cent of the landmass of Kenya does not contribute in the Gross Domestic Product (GDP) of this country. This is a very unfortunate. The problem is not that we only devolved the units and the functions, but most of the crucial functions were left in the central government.

When I was the Chairperson of the Committee on Energy, we paid a visit to Wajir and Mandera counties. We were quite dismayed by the fact that they run their power generation using diesel generators. The distance that the trucks have to travel to deliver the heavy oil to land the diesel makes it almost unaffordable for anybody to use that as a means of production. That is why we have to rethink the way we distribute our resources, the way we connect our people to the main grid and the strategic plan that we must embrace, as a country, to ensure that even the 80 per cent of the landmass of this country contributes to the GDP and hence, leading to increased revenue collection.

Having said that, let me also quickly note that we need to look at innovative ways of tracking whatever we disburse to the counties. More so, we have to leverage modern technology, that is the Artificial Intelligence (AI) technology, with the auditing functions. Moreso, we know that most county governments and especially those who get heavy amounts--- I am talking about counties like Nairobi, Kiambu and Turkana that have equally very huge pending bills. This would be my prayer to my colleagues, to the sitting governors and to those who are interested in becoming governors. We must be alive to the fact that most of the counties give their contracts and service provision from small scale traders.

When they hold onto their money in form of pending bills for two or three years, they end up crippling these business people. We know that voiding has been a common practice among many county governments. Where they lay the requisite and they list the requisition from the National Treasury, but once the money hits the account, they do not pay the intended beneficiary, but end up paying the beneficiaries they want. The reason being all the successors of governors who vacate office and leave huge pending bills, do not honor those pending bills.

As Senators, as we fight for county governments to get more allocation, we must also be quite firm that as is in the law, the first charge should and must be the pending bills. I am a proud resident and Senator of Nyeri County that we have minimal pending bills. It is very disheartening when you read about counties like Nairobi that owes suppliers billions of shillings. It is quite unfortunate that most of the counties that keep on changing governors, like Kiambu, have equally very huge pending bills.

As we fight to get more resources directly to the counties, it is my prayer that we strengthen not only the oversight, but also the execution of the first charge pending bills. We know that we are living at a time when climate change has become a global challenge. I wish that we had a variable in the formula that would ensure that counties that invest heavily on mitigation of climate change get incentives. We should start looking at things from a global approach and should be future-centric. We, as leaders, must become responsible and know that we have a moral obligation to leave a continent, country and counties that are safe for the future generations. This cannot happen unless we invest and get involved. We must be intentional and put variables that will create incentives. With that, a number of our citizens will participate in matters that will go a long way towards mitigation of climate change.

I wish that the Committee on Finance and Budget came up with a variable that will cater for counties that have huge forests. This is because those counties are always disadvantaged. The density of their population is always undermined or disadvantaged by the forest coverage. I am talking about a county like Nyeri that has 40 per cent forest cover. We may not have people living in those forests, but we should be rewarded for being the owners of this important component to the country and the global stage.

We know that the strategic plan made by many counties are not married to the audit report that is given. We should leverage that with modern technology, to make it easy for us to have a follow-up. With that, we will have a consistent way of tracking what we are supposed to achieve within a particular time. With such technology, it would have been easy for us to follow up on President Kibaki's Vision 2030 or Uhuru's Big Four agenda.

Madam Temporary Speaker, this will ensure that we do not lose a lot of money. When we went to Turkana, we visited the fish landing port in Lake Turkana and were dismayed by the neglect of the place. This is despite the fact that a lot of money had been put in the investment. That investment was ambitious and it could have been life-changing. It was neglected because the successor of the county government could not see the vision that was driven by their predecessor. Therefore, we must get a way of ensuring

that each successful governor takes over and pays the pending bills. Most importantly, they also have to follow the national and county footpath for us to have continuity.

We have very huge potential, both at the national and county governments, but we must create mechanisms within which we can fight corruption by making the officers accountable. We must also train and build the capacity of our people for them to be in a position to complain. Capacity building will not just be for the elected leaders, but also the general public.

We should have civic education as it was before we introduced public participation. It is something that we need to ask ourselves, as a country, if we need to go back there or should we introduce it in our curriculum from the early childhood education for it to be ingrained in our children. If we do that, it will become part of our culture.

We know that this country has a huge potential. We know that the richness and the diversity of every county, if well managed, can be a major contributor to the economic growth of this country. However, most of the times, we find ourselves engrossed in petty politics. We forget that our diversity is what makes this country as beautiful as it is and it is what makes it very rich. We forget that our cultural difference could be the richness that we need to ensure that we become a stronger community.

As we move forward, and as we debate sharing of the revenue among the counties, let it not be lost to us that development in any part of this country is development across the country. That is why I want to join hands with my colleagues and say that no county should get less than Kshs6 billion. The reason being, if we consider economic growth, inflation rate, taxes such as the Housing Levy and all the other components, including the progression of human resources within counties, it is evident that this leads to additional costs.

Therefore, it would be prudent to ensure that growth in human resources, salary increments, recurrent expenditures as well as increased taxes and inflation shifts are incorporated. If we factor these components, it would be fair for Senators to advocate for a county government allocation of at least Kshs460 billion. This would ensure adequate funding for recurrent and development expenditures and facilitate the overall progress of counties.

I want to emphasize the importance of strengthening the oversight role. Additionally, we must embrace modern technology, including artificial intelligence. This will ensure that we track the utilization of funds in development and assess the socio-economic impact of allocated resources. This will prevent a situation where, after 10 years of devolution, we are left asking what tangible progress has been achieved.

I believe this country is on the right path. However, we cannot fully achieve our goals unless we are intentional about transferring all devolved functions and ensuring they are accompanied by adequate resources at the county level. This raises an important question. Do all county governments have the capacity? However, that does not matter.

We must also encourage the formation of regional blocs where counties can pool resources, such as field extension officers and agricultural extension officers, especially in regions cultivating similar crops. This approach will encourage counties to invest in their strengths while trading with others that produce different commodities. For

example, Nyandarua County, which neighbours Nyeri County, is very good in milk and potato production. Nyeri County, on the other side, specializes in onion production, coffee, tea, and other commodities such as bananas, not found in Nyandarua County.

If we had better infrastructure linking these counties and enhanced value addition, we could strengthen the entire supply chain. This would ensure that farmers and investors in these sectors maximize their returns. As we consider these efforts, we must also acknowledge that the world is increasingly becoming a global village. It is therefore very important that we position ourselves strategically. This cannot be achieved if counties receive insufficient or barely adequate resources to sustain themselves.

As I conclude, I commend the Chairperson of the Standing Committee on Finance and Budget for a job well done. I wish that amendments can be introduced to ensure more resources are allocated. As we do that, this must be a concerted effort by every Senator in this House. We must lobby and engage the necessary stakeholders to ensure further unbundling of functions and a more equitable horizontal distribution of resources that follow devolved functions.

Madam Temporary Speaker, I support this Motion with amendments.

Sen. Osotsi: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Osotsi, do you have a point of order?

Sen. Osotsi: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No.110 (1), I beg to move that debate on this Motion be now adjourned.

We have been engaged in serious consultations with the Chairperson of the Standing Committee on Finance and Budget and the leadership of this House, and we are about to produce white smoke. I would, therefore, like to propose that this Motion be adjourned, so that we can file amendments and debate the amended Motion on this.

The Temporary Speaker (Sen. Mumma): Who is seconding that Motion?

Sen. Ali Roba: Madam Temporary Speaker, I second.

(Question proposed)

The Temporary Speaker (Sen. Mumma): Hon. Senators, I will now put the question.

(Question put and agreed to)

(Debate on the Motion was adjourned)

Let us move on to the next Order.

BILL*Second Reading***THE BUSINESS LAWS (AMENDMENT) BILL
(SENATE BILLS NO.51 OF 2024)***(Sen. Cheruiyot on 29.5.2025)**(Resumption of debate interrupted on 29.5.2025)***The Temporary Speaker** (Sen. Mumma): Proceed, Sen. Osotsi.

Sen. Osotsi: Thank you, Madam Temporary Speaker, for the opportunity to also add my voice on this important Bill. This Bill seeks to amend various business laws, including the Investment Promotion Act, the Employment Act, the Land Act, the Anti-Counterfeit Act, the Affordable Housing Act and the Occupational Safety and Health Act. These laws are very important.

When you look at the Investment Promotion Act, this Bill seeks to provide for accreditation of facilitators of foreign investment. That is an important requirement, especially in terms of supporting foreign direct investment. It is important to register all people who facilitate foreign investors.

We have an upsurge of conmen who con investors. Investors come to this country with a lot of money to invest and create employment for our youth, but in the process of seeking for approval, they are conned their hard-earned money. Therefore, it is important to have a database of facilitators of investors especially for foreign direct investments, so that foreigners are not conned by some conmen and in the process this country ends up losing the much-needed foreign investment.

Madam Temporary Speaker, the amendment to the Investment Promotion Act also provides for issuance of investment certificate, as well as setting out conditions for determining whether any investment or related activity are beneficial to Kenya. It is important that investors who come to this country must be given an investment certificate after the Government has certified that whatever they are going to do will not contravene the law or have an adverse effect on our economy or Kenyans; it has to be beneficial. This will provide a system of determining that.

We saw the case of Worldcoin (WLD) investors who came to this country and started taking biometric data of Kenyans. That would not have happened if they went through the process of certification. So, this is an important amendment.

The amendment to this Investment Promotion Act also requires that we have an Investment Promotion Authority to provide Government services at a centralized facility. This is also crucial for investors because they will have a centralized place where they can go to seek services, therefore, further avoiding all the troubles that foreign investors face.

Madam Temporary Speaker, when you talk about the Employment Act, the amendment to this is basically trying to define the keywords like who is an employee, who is an employer and other terms like business process outsourcing. It also sets out the obligation of business process outsourcing companies. These are companies which are established here to offer services, mostly customer-related services to multinationals abroad. This is a huge business, but it has not been regulated before. So, this Bill will provide a process in which people will be engaged, contracted and possibly comply with the obligations under our laws.

Madam Temporary Speaker, when it comes to the amendments to the Occupational Safety and Health Act, this will also provide further definition of the words, “employee, employer, workplace”, to provide recognition of remote locations as workplaces. This is very important, particularly for business outsourcing companies.

The Business Laws (Amendment) Bill also seeks to amend the Affordable Housing Act in Section 2, by defining affordable housing scheme. It also introduces a new definition of the words, “administration fee, social, physical and urban infrastructure”. In my opinion, this is important, to provide clarity where we had ambiguities in the Affordable Housing Act, so that the fees that are charged, for instance, administration fees, are clearly defined in the law.

The Land Act amendment amends Section 90 by reducing the timelines given to a chargee, to 40 days when dealing with affordable housing. It goes further to amend Section 96 of the Land Acts by introducing a new sub-section, which requires the chargee before exercising the power of sale to take 20 days while seeking to sell property. This is important, under the Affordable Housing Act.

Madam Temporary Speaker, with those contributions, I support this Bill.

Thank you.

The Temporary Speaker (Sen. Mumma): Hon. Senators, there is no other speaker. I would like to thank Sen. Osotsi for your contribution to this Bill. This debate can continue tomorrow.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 4th June, 2025, at 9.30 a.m.

The Senate rose at 6.30 p.m.