

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 30<sup>th</sup> July, 2013

*The Senate met at the Kenyatta International  
Conference Centre at 2.30 p.m.*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order, hon. Senators! We need to determine if we have a quorum.

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have a quorum.

**The Speaker** (Hon. Ethuro): Let us proceed.

### COMMUNICATION FROM THE CHAIR

#### APPOINTMENT OF JOINT COMMITTEE TO REVIEW CONCURRENCE ON THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL, 2013

**The Speaker** (Hon. Ethuro): Hon. Senators, I have the following Communication to make with regard to the National Flag, Emblems and Names (Amendment) Bill, 2013.

As you are aware, the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.2 of 2013 was published on 5<sup>th</sup> July, 2013. The Bill is sponsored by Sen. (Dr.) Khalwale, Senator for Kakamega County. Following the publication of the Bill, pursuant to Article 110(3) of the Constitution and Standing Orders Nos.116 and 122 of the Senate and National Assembly Standing Orders respectively, by a letter dated 12<sup>th</sup> July, 2013, the Speaker of the Senate sought the concurrence of the Speaker of the National Assembly that the Bill concerns county governments and further that it is an ordinary Bill within the meaning of Article 110(2)(b) of the Constitution.

Hon. Senators, in a letter dated 18<sup>th</sup> July, 2013, the Speaker of the National Assembly responded and stated, among other things as follows, and I quote:-

“I am convinced that the aforementioned Bill does not concern counties within the meaning of Article 110(1) of the Constitution and further that the Bill does not satisfy the criteria stipulated in Article 110 of the Constitution for it to be regarded as either a Special or Ordinary Bill concerning counties and cannot, therefore, be regarded as such.”

Hon. Senators, on receipt of the letter by the Speaker of the National Assembly, by a letter dated 23<sup>rd</sup> July, 2013, the Speaker of the Senate disagreed with the position, arguments and conclusion of the Speaker of the National Assembly.

**Hon. Senators:** Yes!

*(Applause)*

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Further, in the letter, the Speaker of the Senate proposed that pursuant to Article 110(3) of the Constitution and Standing Orders Nos.124 and 122 of the Senate and National Assembly Standing Orders respectively, in order to unlock the impasse, it seemed reasonable to appoint a joint committee to advise the Speakers on the matter. The Speaker of the Senate has, therefore, appointed Sen. Kembi-Gitura, the Senate Deputy Speaker, Sen. James Orengo, Sen. (Dr.) Boni Khalwale, the author of the Bill and Sen. Kipchumba Murkomen to constitute the Senate membership of the Joint Committee. The Speaker has further requested the Speaker of the National Assembly to appoint a similar number of hon. Members of the National Assembly in order to complete the team.

Hon. Senators, the Clerks of the two houses shall, as required under Rule No.7 of the Houses of Parliament Joint Sitting Rules, constitute the joint secretariat to the Committee.

Hon. Senators, in light of these developments, I hereby direct that all further proceedings by the Senate on the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.2 be pended until the conclusion of the deliberations by the Joint Committee. This matter should be concluded within seven days, by Thursday.

Thank you.

*(Applause)*

### **PAPER LAID**

#### **REPORT OF THE COMMITTEE ON FINANCE, COMMERCE AND ECONOMIC AFFAIRS ON THE COUNTY ALLOCATION OF REVENUE BILL**

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House:-

Report of the Standing Committee on Finance, Commerce and Economic Affairs on the County Allocation of Revenue Bill, Senate Bill No.1 of 2013.

### **STATEMENTS**

**Sen. Keter:** Mr. Speaker, Sir, I have two Statements to give; one by Sen. (Prof.) Lonyangapuo and the other by Sen. (Prof.) Anyang'-Nyong'o. I had made a commitment to respond to them today but I have just received the Statements. I do not think it is good for me to read out something which I am not satisfied with. I can see Sen.(Prof.) Lonyangapuo is here, but Sen. (Prof.) Anyang'-Nyong'o is not present. I would like to

request for more time so that I respond to them tomorrow. It is of no use for me to read out a Statement that I am not convinced about.

**The Speaker** (Hon. Ethuro): Sen. Keter, you can issue the Statements on Thursday.

**Sen. Haji:** Mr. Speaker, Sir, I have several Statements to issue. One of them was requested by Sen. Ndiema. I do not see him here. The other one was requested by Sen. Munyes. I will read it out and hand it over, with your permission.

**The Speaker** (Hon. Ethuro): Sen. Haji, you can start with Sen. Munye's Statement.

DISASTER PREPAREDNESS AND MANAGEMENT BY BOTH  
NATIONAL AND COUNTY GOVERNMENTS

**Sen. Haji:** Mr. Speaker, Sir, on 11<sup>th</sup> July, 2013, Sen. Munyes requested for a Ministerial Statement on disaster preparedness and management by both national and county Governments. The Senator requested to be informed of which level of Government, between national and county, takes primary responsibility with regard to matters relating to disaster management at the county level. He further requested to be informed of the magnitude of disaster that should be handled by either level of government. Lastly, he wanted to know the early warning systems that have been put in place to address an imminent drought in Turkana County and other counties in northern Kenya.

Mr. Speaker, Sir, I wish to state as follows:

In line with the Fourth Schedule of the Constitution of Kenya, 2010, disaster management is assigned to both levels of government. The county government, therefore, takes primary responsibility with regard to methods of disasters occurring at the county level. Further, in the event of occurrence of disruption of the functioning of a community or society in a county causing widespread human, material, economic and environmental losses which exceed the ability of the affected county and community to cope using the available local resources, the intervention of the national Government will be called upon. However, if such disruptions occur but available local resources can be mobilized for mitigating the effects of the disruption, county governments will be expected to handle the situation.

Mr. Speaker, Sir, each of the county governments will be responsible for ensuring that it is well prepared to handle the local disasters prevalent in its respective area besides being charged with the following specific responsibilities:

1. Disaster risk management
2. Relief and rehabilitation
3. Mitigation and resettlement.

The national Government will handle all major disasters that have reached a level exceeding the capacities of the county government. These include cross-cutting disasters such as earthquakes, floods, drought, aircraft crashes, train accidents or major fatal road accidents. The national Government will mobilize national resources to meet the challenges posed by these major disasters and where the situation warrants, the intervention of international organizations.

Mr. Speaker, Sir, Kenya's Drought Early Warning System has been in place since the 1980s. It has been developed and refined over time and is now operated by the National Drought Management Authority (NDMA). Each month, data is collected by drought monitors across all the 23 arid and semi arid counties, including Turkana, against a common set of indicators. These indicators show the extent to which the conditions in each county are deviating from the norm in a range of areas including rainfall, environmental conditions, distribution, nutritional status and terms of trade. They also show the consequences of these changes for different livelihood groups.

The data from the drought monitor is combined with other sources of data such as satellite information or reports of conflicts and the conclusions and implications are discussed with stakeholders at the county level. The consolidated information is then published each month in a county drought monitoring and early warning bulletin and disseminated to stakeholders. The bulletins are also published on the website of the NDMA. The latest published bulletin for Turkana County is June, 2013, which I wish to table.

*(Sen. Haji laid the document on the Table)*

The bulletin indicates that the county is in its alert status and makes certain recommendations to the county authorities and national institutions to protect livelihoods during this period.

Mr. Speaker, Sir, in addition to the monthly bulletins, a food security assessment is conducted in each county twice each year, after the long and short rains. The long rains assessment for 2013 will commence during the week beginning 29<sup>th</sup> July, 2013. The piloting of information campaign on Lokichar and Turkwel has been launched. This will ensure that information on drought conditions is more effectively disseminated to communities and will now be scaled up across the ASALs.

Mr. Speaker, Sir, the NDMA is also working closely with the Kenya Meteorological Department in Isiolo to develop ways of bringing seasonal focus closer to communities and county stakeholders. This work is about to extend to the other ASAL counties. The NDMA has a combined approach to enhance resilience to drought. Some of the measures taken include adaptive social protection, climatic change adaptation and drought risk reduction, investment in peace and security infrastructure, human capacity and relief effort. The communities in Turkana County have been sensitized about the developing situation by Government organizations and other agencies through community meetings and *barazas*.

Mr. Speaker, Sir, the following activities have been going on as part of preparedness for the impending drought:

- (1) Community management risk reduction in Turkana County by the National Drought Management Authority supported by the European Union (EU).
- (2) Hunger safety net programme supported the Department for International Development (DFID) and Australian AID.
- (3) Mini and main launch for community level drought risk management and early warning information campaign in Turkana County by the NDMA.
- (4) Community based resilience assessment by the UNDP in collaboration with other stakeholders which include the NDMA and key Government departments.

(5) To avert loss of lives, the Government has put adequate measures to distribute relief food to the affected areas.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Munyes.

**Sen. Munyes:** Mr. Speaker, Sir, I want to thank Sen. Haji for that long Statement. However, I would like him to clarify on the issue of actually where the responsibility lies. This is a grey area. He has said that counties are responsible yet at the moment, Governors are not taking charge of food distribution and do not organize disaster management. At the moment, it is the District Commissioners (DCs) who are responsible. That is a national function. Could Sen. Haji clarify who deals with food distribution? At the moment, in Turkana County, we have not received relief food for the last four months. People are starving and they need to be assisted. Soon we will start seeing disturbing incidents of starving and dying children. What level and which officer is responsible for this?

**The Speaker** (Hon. Ethuro): Let us have brief clarifications.

**Sen. Abdirahman:** Mr. Speaker, Sir, I am glad that Sen. Haji has mentioned that key areas related to emergencies which matter to us, particularly in the areas of risk management, relief and rehabilitation and mitigation will be handled at the county level. About Kshs1.7 billion has been allocated to the Ministry of Devolution and Planning. In the past, in terms of practise, disaster management was done in a haphazard manner by the national Government. Could Sen. Haji confirm that the requisite funding for these county functions will be clearly put in the county budgets, so that governors along with their respective executive committees can implement them?

**Sen. Haji:** Mr. Speaker, Sir, in response to the question raised by my brother, Sen. Munyes, if he was carefully following the Statement I gave, I said there are two ways of handling disasters in the country. One is done by the national Government and the other by the county governments. As we all know, money has been allocated to every county. When governors were preparing their respective budgets, they were expected to take into consideration emergencies that will require their response whenever the need arises. But if there is any disaster which is beyond the capability of the county government, then the national Government will come in and help because that is the responsibility of the national Government.

Mr. Speaker, Sir, to respond to Sen. Abdirahman, we know that discussions are going on as to what resources will be devolved to the county governments. Therefore, the issue of disaster, though being handled now under the Ministry, definitely when the decision is reached as to how these funds will be devolved further to the counties concerned, this will be addressed.

**Sen. Munyes:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it, Sen. Munyes?

**Sen. Munyes:** Mr. Speaker, Sir, I want to understand the various levels of disaster management between the county and the national Government. For instance, how many people must die for the national Government to say: "This level is national?"

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir, for this opportunity. My colleague, Sen. Munyes, raised a very important issue about the Government response to these emergencies. Right now, there is nothing that is written clearly. The answers that have been given by the Chairman are also not clear. He has said that we

should wait for a meeting that will be coming soon to determine what will be transferred to the county governments.

Two days ago, there was a landslide in West Pokot. The county has to wait for the national Government to respond to this and yet there is a county government which can respond to the situation. We just wanted to know what level of response has been devolved to the counties so that we are satisfied, as a Senate. We have lightning that has struck people in our counties. Who should handle that? We also require a lot of money for masts to be raised.

**Sen. Haji:** Mr. Speaker, Sir, disaster is just disaster whether it affects two or ten people. Therefore, any disaster that cannot be managed by the county government has to be taken care of by the national Government.

With regard to Sen. (Prof.) Lonyangapuo, my answer to this is still the same. The magnitude of the disaster determines what can be done by the national Government and the county governments.

Mr. Speaker, Sir, you will recall that last week, hon. Ndiema was very furious that we had not replied to his statement. I was planning to give it today. In view of the fact that he is not here, should I go ahead to give it? Should I lay the statement on the Table so that he can read it at his own time?

**The Speaker** (Hon. Ethuro): Who sought the statement?

**Sen. Haji:** Mr. Speaker, Sir, the statement was sought by Sen. Ndiema.

**The Speaker** (Hon. Ethuro): Let us do it this Thursday.

**Sen. Billow:** Mr. Speaker, Sir, there was a statement sought by the Senator for Marsabit County and which I was supposed to respond to today. I do not know whether we should wait until Thursday because he is not in.

**Sen. Ong'era:** Mr. Speaker, Sir, the Senator asked me to interrogate the reply on his behalf. He is out of the country.

**The Speaker** (Hon. Ethuro): We will allow that because it is about a disaster. Ordinarily, this should come on Thursdays. You will do so on Thursday.

**Sen. Haji:** Mr. Speaker, Sir, I want to make a general statement under Standing Order No.42.

#### AMENDMENTS TO THE NATIONAL POLICE SERVICE ACT WITHOUT REFERENCE TO THE SENATE

**Sen. Haji:** Mr. Speaker, Sir, the Committee on National Security and Foreign Relations, a week ago, invited the police authorities to shed some light on what has brought about the differences that are being highlighted in the newspaper. They obliged and came.

This morning, in our meeting, we discussed among other things when we should invite the Inspector-General to also give us his side of the story. It came to our notice that there is a Bill which was amended by the National Assembly. The Bill states that it does not apply to county governments. The same Bill, Section 41 up to 42, refers to a county policing authority for every county.

In view of this, the Committee wanted to have your guidance on what your stand is in this respect.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me to support the statement made by Sen. Haji.

I am also a Member of this Committee.

*(Loud consultations)*

The three young Senators should pay attention.

**The Senate Majority Leader** (Sen. Kindiki): On a point of order, Mr. Speaker, Sir. This is a House of record. Senators are equal in this House. Is the Senate Minority Leader in order to refer to “young Senators?” At this rate, we will also start referring to that “old Senator” or that “woman Senator.” This is derogative. He should withdraw and apologise.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, obviously, my young friend is excited over nothing.

**An hon. Senator:** He is not your young friend. He is the Senate Majority Leader.

**The Senate Minority Leader** (Sen. Wetangula): You are the Senate Majority Leader but you remain my young colleague. That is a fact. Those are polemics that are totally unhelpful to debate in this House.

**The Senate Majority Leader** (Sen. Kindiki): Mr. Speaker, Sir, I will not sit here and entertain any derogative terms from any quarter. I will continue to insist that the Senate Minority Leader must apologise and withdraw references to some of the Majority Senators who are here as young Senators. He even had the audacity to refer to the Senate Majority Leader as a young friend. The youth are in school.

**The Speaker** (Hon. Ethuro): Order! The Chair is inclined to agree with the Senate Minority Leader. The youth are in the Senate.

Article 98(1)(c) says;

The Senate consists of- “two members, being one man and one woman, representing the youth;”

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Would it be in order for any Senator in this House to refer to any elected Senator from a distinguished county as “young” when in this House, we only have two young Senators?

**Sen. Murkomen:** Mr. Speaker, Sir, there are two Senators in this House whose constituencies are the youth. The rest of us are representing constituencies of all ages. Whereas I appreciate your reading of the Constitution, I do not agree that Sen. Sang, Sen. Melly and Sen. Hassan are in any way representing the youth.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! You need to follow the debate. When the issue of the young Senators was mentioned, there was no reference to particular names. The Senators who objected to the word “young” were objecting on the basis that the youth are in school. I thought that was very clear. I also made it abundantly clear that some youth are in the Senate.

Let us allow the “Lion King Senator” to speak.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I rise to thank you for giving proper guidance to the House. We should not use terms loosely. The term young is defined in the Constitution. This means any person below the age of 35. So, any Senator here who is below the age of 35, constitutionally, is a youth and that is not a derogative term.

Many people are dying to look young. So, the youthful Senators should feel good that they are young.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Thank you, Sen. Murungi. In fact, the Chair was shy to make that statement.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I thank Sen. Murungi for being so succinct.

I support Sen. Haji in the statement he has made. Two Bills were tabled before our Committee this morning. These two Bills are the National Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013.

They are described as Bills for introduction into the National Assembly. In the Bills, the promoter of the Bills, one Adan Duale, has indicated in the Memorandum of Objectives and Reasons in both Bills that the Bills do not concern county governments. This means that right from the word go, the participation of the Senate with regard to the two Bills is foreclosed. It is my well considered view, in consonance with what hon. Senator Haji - the Chair of our Committee - has said that these Bills concern counties.

Security is a major occupation of every level of Government, including counties. You only need to look at Article 110 of the Constitution, particularly subsection 3, and see what it says. But more importantly, one of the Bills seeks to amend the Police Service Act. If you go to Section 41 of the Act, it even has a chapter on County Policing Authority. It says that there shall be established a County Policing Authority in respect of each county, which shall comprise the governor and then it goes on to list the other members. How then can anybody in his right frame of mind say that these Bills do not concern counties? We are the custodians of the interests of counties and this includes security. Part of the budget that we are passing here is going to assist our counties in making sure that they are sufficiently secured to attract development, investment and so on.

Mr. Speaker, Sir, I want to urge you not to tire. You have made very Solomonic rulings and operated at a level that is admirable to even those who may not like you. Article 110 of the Constitution enjoins you and your colleague in the Lower House to take steps all the time that Bills are introduced, to determine how they affect the counties before they are debated. It is presumptuous, preposterous and unreasonable for a promoter of a Bill, on his own, to sit and draft a paragraph into it declaring it as not affecting counties. One would expect that this Bill, after the draft went to the Speaker of the Lower House, who on looking at it with those who advise him, should have noted that even in the Bill itself, Section 41 of the Police Service Act, that talks about the County Police Authority is reproduced. How can he then say that it does not concern counties? The same Bill must have gone to the House Business Committee of the Lower House. Before they allowed it to go to First Reading, it should have dawned upon them to understand and appreciate that this is a Bill that concerns counties.

Mr. Speaker, Sir, I want to urge you, as our Speaker, to invoke that authority under the Constitution, that you and your colleague in the Lower House must determine the effect of any Bill on the counties. Where you have a divergence of opinion, as is



expected, the Standing Orders also tell you how to come out of it. You set up a committee, like you have done of four Members from each side, so that they can look at the Bills and advise you. But for one House to arrogate itself the authority founded on no law or article of the Constitution to determine which Bill affects counties and which Bill does not, is actually to undermine the very noble idea of devolution that Kenyans voted for.

Mr. Speaker, Sir, I urge Members of this House to stand up in unison and defend our capacity, ability and constitutional responsibility to protect counties and all matters legislation that affect counties as such.

Mr. Speaker, Sir, I fully support my Chairman, Sen. Yusuf Haji, and urge the House that these two Bills concern nothing but counties, and must be part of our legislative process as a House.

Thank you, Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, this is one of the rare incidents where I agree completely with the Senate Minority Leader, Sen. Moses Wetangula. As you know, the only point that we disagree on is with regard to his realization that there is a majority in place and it has a leader.

Mr. Speaker, Sir, but having said that, it seems that there are people in this country who are yet to appreciate that we have a bi-cameral Parliament. There is no way that the Bills that have been produced here and brought to our attention can be declared as not concerning counties. In any case, the question of determination of what Bills concern counties is not for the promoter of a Bill in either House to make. The determination that a Bill concerns counties must be made, pursuant to Article 110 (3) of the Constitution, through a resolve of the Speakers of both the Lower House and the Upper House together. In fact, the Constitution says that the Speaker of the National Assembly and the Speaker of the Senate shall jointly determine--- Neither the Speaker of Lower House nor the Speaker of the Upper House can separately make that determination. The Mover of a Bill, like the case in question, cannot also make that determination alone. So, I think that this is a grave violation of the Constitution and a matter that requires strong leadership, especially from you, as the Head of the Senate. But also, as Senators, I think that the reality that we face is something that calls on each one of us to take our rightful position, because the message being sent to us is that this Senate has no legislative function at all. That position is wrong, unconstitutional, ill-advised, shortsighted and mission to nowhere. It will fail.

Mr. Speaker, Sir, I stand here to support vehemently the statements made by the Senate Minority Leader and the Chairman of the Committee on National Security and Foreign Relations. We insist as the Senate – and I believe that I am speaking on behalf of my other colleagues – that this matter must be resolved with finality; once and for all.

*(Applause)*

**Sen. Orengo:** Mr. Speaker, Sir, thank you for giving me this opportunity. One thing that I am worried about this trend of things since we first met, is that nearly every Bill that has gone to the National Assembly, which should have ended up here, has not been brought here for debate and scrutiny. It seems that the only Bill that has come here is the one that is now going for the Third Reading – The County Allocation of Revenue

Bill. The rest, including Bills which are emanating from the Senate, through my good friend here, Sen.(Dr.) Khalwale--- Even on that Bill, which is so clear on its intentions and to the extent that it deals with counties, we have been told that it does not deal with counties, although the titles of governors and county assemblies and where they should fly the flags are there in that Bill.

Mr. Speaker, Sir, I think that this is a life struggle for the Senate. In fact, Parliament actually acts through legislation. There is no other way that Parliament can put its authority in what is happening. Motions are not really the manner or mechanism for Parliament to take action. It is normally through legislation. Since we started debate in this House, the only Bill that has come before this House properly, so to speak, is the County Allocation of Revenue Bill. If this is going to be the trend, then in reality, the Senate should fold up. If that is the trend, then we are a fraud upon the people of Kenya. But I am convinced that this House is there for a purpose. That purpose is clearly spelt out in the Constitution and Article 110 which has been put before you by the previous speakers is so clear; that before any Bill is considered by either House – the National Assembly or Senate – the two Speakers should sit and make a determination. When you cannot agree, the procedure is there in the Standing Orders of both Houses.

Mr. Speaker, Sir, I would urge you, like the other Members, not to relent on this. You speak for us – the entire Senate – and I am so glad that the leadership of the Senate, when it comes to matters of policy and issues, genuinely agree. It is on little matters like age and others that they do not agree. But when the Senate Majority Leader gets to my age, these things will not bother him very much. It is only a matter of time.

Mr. Speaker, Sir, stand firm and we are behind you. The Committee that you have appointed has got the instruments of authority that is derived from the Constitution. If within those seven days the other Committee is not ready to sit with us, let us proceed with that sitting and advise both Houses, so that these Bills can come before the House.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the public would be forgiven if they are starting to get confused in this tussle between the two Houses of Parliament. Maybe it is at this stage that they need to be reminded that your office, as the Speaker of the Senate, is properly equipped with serious professionals with special discipline in law, who amongst other things, are supposed to advise you on such things. This equipment also applies to the Speaker of the National Assembly. I cannot, as a professional, understand how professionals can sit in a meeting with the Speaker of the National Assembly, give him advice as I believe they do, and then he goes contrary to it.

Mr. Speaker, Sir, the process of imagining, drafting and realizing a Bill is so tedious that it is so discouraging for a Member to prepare a Bill and then, out of the blues, without even thinking about it, the Lower House decides that, that Bill has no merit in so far as Article 110 (3) of the Constitution applies.

Mr. Speaker, Sir, I have followed some of the proceedings of the Lower House, and with all due respect to my friend, hon. Duale, who is now the author of this Bill, I have seen him many times not debating, but shouting at his colleagues. I do not know---

**The Speaker** (Hon. Ethuro): Order, Sen.(Dr.) Khalwale! I want to bring to your attention – and I thought that we had made it famous – Standing Order No.88 (5) which reads:-

“It shall be out of order for a Senator to criticize or call to question, the proceedings in the National Assembly, a County Assembly or the Speaker’s Ruling in the National Assembly, but any debate may be allowed on the structures and roles of County Assemblies or the National Assembly.”

So, deal with the structures and not the proceedings.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, with all due respect, I wish to recall the use of the word “shouting” and just say that I have heard and seen him speaking in a high-pitched voice.

*(Laughter)*

Mr. Speaker, Sir, it is important that especially the new Members of Parliament who are in the National Assembly appreciate that in operationalizing Article 110, it does not lie in the hands of the originator of the Bill to make a decision. That decision is made by the two Speakers of the Houses. Therefore, how did it even pass the Committee that looks at the draft before it is sent for publishing, that the Mover of the Motion was illegally giving himself powers, which he does not have, to try and interpret the meaning of Article 110 (3)?

Mr. Speaker, Sir, I beg to support and thank hon. Wetangula for the good remarks.

**The Speaker** (Hon. Ethuro): Let us take the last five standing.

Proceed, Sen. Hassan Omar.

**Sen. Hassan:** Mr. Speaker, Sir, thank you for giving me this opportunity. Mine is to support the sentiments echoed by previous senators. I also want to raise the concern by Sen. Orenge, who said that the Speaker of the Lower House cannot continue to take us in this kind of quandary, where we hardly have any resolution to this matter. They are committing the Senate’s time to sideshows. They are wasting the time of the Senate; they are putting us in a situation where the business of this House, time and again, has to be suspended so that we can debate or discuss matters that are very clear in the Constitution.

Mr. Speaker, Sir, in your own wisdom, you have told us that we should hold our horses because we are a Senate that must exude wisdom, etiquette and leadership. But I think it is high time that we also start to respond alike for alike. I do not think it is a solution for us in the Senate to continue processing Bills without reference to the National Assembly. We cannot be like them; they are a class lower than us by virtue of the Constitution and us, being the Upper House, we need to distinguish our “upperness” through real character.

But, Mr. Speaker, Sir, as Sen. Wetangula said, you also have young Senators in this robust House and I think we are agreed that a few of us will start responding to these matters tomorrow in a way which is effective in terms of the arena of public opinion. Sen. Murkomen, Sen. (Prof.) Kindiki, Sen. Sang, Sen. Melly and all of us have agreed that it is high time to start making responses that are of a quality that will enable us to have an arena of public opinion engaged in this kind of dispensation.

Lastly, Mr. Speaker, Sir, I also encourage you to soldier on. I know it is a very depressing state of affairs that the Speaker of the Lower House constantly puts you in. I think it is not fair; it is not right and we must tell it to him in no uncertain terms that we shall protect the institution and the person of our Speaker. It is not right for the Speaker of the Lower House to continuously engage our Speaker in a manner that tends to

demean the authority and the state of the Senate. Therefore, it is unreasonable for us to expect to react in a manner similar to the National Assembly. But it is also unacceptable to continue in the same charade that we find ourselves forced into time and again, by the Speaker of the National Assembly.

Therefore, Mr. Speaker, Sir, you need to take heart at this point in time. I think the Constitution is on our side; the people of Kenya are on our side; the legislative process is on our side, but it is for us to make a reaction that will send a firm message to the Speaker of the National Assembly; that this House shall not sit down and take one battering after another. As one of the key politicians in this country said, *Usione simba amenyeshewa ukadhani ni paka*. So, I also want to state very firmly that, the fact that our Speaker has been humble and solomonic, you must not confuse him for being anything less than a lion.

Therefore, Mr. Speaker, Sir, we are behind you as a Senate and we believe that, eventually, this matter will be resolved in a manner that will be appreciated by the Kenyan people. But you can only expect that, that leadership must come from the Upper House.

Thank you, Mr. Speaker, Sir.

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I also rise to express my shock and dismay to the actions we are seeing from the Lower House. From the Bill that is being introduced in the Lower House which seeks to amend section 41 of the Police Act, which clearly reads that:-

“There shall be established a County Policing Authority in respect of each county and which will comprise of, among others, the governor and a member of the county executive committee appointed by the governor, who shall be the chairperson.”

Mr. Speaker, Sir, in the light of this very clear and simple language, any person saying that such a Bill does not affect the counties must qualify within what we call in law M’Naughten rules, which are rules which state that there are some people who might not know what they are doing, and even when they know what they are doing, they do not know that it is wrong. Some are those people.

Mr. Speaker, Sir, neither the Leader of the Majority or the Speaker of the Lower House has absolute powers. There is no person in this country today who has imperial monarchical powers who can issue decrees to others. All the State Officers in this country – whether you are a leader of a political party or a leader of a House of Parliament – you are all bound by the Constitution. The power that you have is a trust that has to be exercised in accordance with the Constitution and for the benefit of the people of Kenya. We cannot allow individuals to undermine this Constitution by whatever name they are called.

(Applause)

Mr. Speaker, Sir, I rise to support the Committee that you appointed in accordance to the Constitution and the Standing Orders and I would request that all the other Bills which are coming, let that Committee look at them and advise you on whether they concern the counties or not.

Mr. Speaker, Sir, we have had a case where the Lower House was discussing the Marriage Bill and the Speaker again said that it does not concern the counties.

**Hon. Senators:** Shame! Shame!

**Sen. Murungi:** Mr. Speaker, Sir, the Marriage Bill does not only concern the counties as such, it concerns the Senators---

**Hon. Senators:** Personally!

*(Laughter)*

**Sen. Murungi:** It concerns the governors, it concerns our own wives---

*(Laughter)*

Mr. Speaker, Sir, how can such a Bill not affect the counties?

*(Laughter)*

So, Mr. Speaker, Sir, we cannot allow such ridiculous interpretations of the law and the Constitution to prevail in this country. So, it is for us to stand firm as the Upper House and give proper guidance. I am urging my colleagues that this is something we should not let go. We have fought very hard for this Constitution and now it is under threat by certain individuals. It is time for us to say no to them.

Mr. Speaker, Sir, we stand to support you, we will be with you until the Constitution is followed.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Proceed, Sen. (Dr.) Machage; and then we will conclude with Sen. Murkomen and the Senator from Nyeri.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, a few months ago when members of the public did, indeed, demonstrate with pigs and wrote a few names of legislators on them, I and the many Senators of this House thought that it was derogatory, unwelcoming and unacceptable; but I am beginning to see the wisdom!

*(Laughter)*

I am beginning to see the wisdom of the members of the public; indeed, they deserved it.

Mr. Speaker, Sir, ignorance is no defense. When somebody or some people refuse to read the Constitution and understand it as it is, clauses of Acts governing the administration and policing, Section 41 of the County Policing Act and Article 110 of our Constitution, really there is something wrong with such individuals requiring medical attention. I think it is high time that some of these people were subjected to medical examination and actually removed from that House on medical grounds.

**Hon. Senators:** Yes!

*(Laughter)*

Mr. Speaker, Sir, I beg to support you on this.

**Sen. Murkomen:** Mr. Speaker, Sir, I appreciate people like Sen. (Dr.) Machage, who are able to make us laugh at this very solemn moment. Actually, the joke is that the reason why hon. Harun Mwau lost the elections is because the picture which was used looked like Sen. (Dr.) Machage.

*(Laughter)*

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker Sir. Whereas I may not know the DNA makeup of hon. Mwau and I do not know the life history of our parents, if what Sen. Murkomen is saying is true, then Sen. Mwau should have been elected, because it is known in this country that I have made it in many subsequent elections!

*(Laughter)*

**Sen. Murkomen:** Indeed, Mr. Speaker Sir, it has not been confirmed; that is why I said it is a joke. But be it as it may, two things are very important; one is that we have been here several times to debate about the conduct of our brothers in the Lower House and, particularly, the manner in which the Speaker of the Lower House has conducted the affairs of Parliament. This is in public domain. The Bill which has been moved by my brother and the Majority Leader in the Lower House, hon. Aden Duale, I do not know where the Constitution gave him the power to designate whether a Bill concerns counties or not. So, in the first place, such a provision within the Bill is unconstitutional because the process is in Article 110(3). So, with all due respect, I would, first, like to say that even the content of such an advisory statement in the Bill is unconstitutional.

Two and most importantly is that, if you look at the Constitution, it says that the Senate will have a say in any matter that concerns counties. Now, if you want to know what is a matter concerning counties, you look at the functions. If you go to part 1 and 2 of the Fourth Schedule, you will find the functions of both the county government and national Government. None of these sections indicate that security is a function of county governments or national Government. You will have then to go to the interpretation of why do we need security? We need security for the counties to be safe, for the national Government to be safe and for the affairs of both the county government and the national Government to be conducted. In fact, if you read part 2(5), you will find that there is county transport including county roads, street lighting, traffic and parking; and public road transport. All these things require police and security, for example, if you want to handle issues to do with parking. In fact, in unbundling of functions – which I hope will be done soon – we will even be asking ourselves how the traffic police are going to operate in relation to county governments because the traffic function is a function of county governments. The parking function, of course, also remains with county governments; the public road transport, including which matatu can go to which direction and which place of a town is a function of county governments. So, ordinarily, therefore, security is a shared function between the two levels of government.

**The Senate Minority Leader (Sen. Wetangula):** Dual mandate!

**Sen. Murkomen:** Yeah, I hear the Senate Minority Leader saying it is part of the “dual mandate.” If you look at the Bills here, when the National Assembly sat as both the Senate and the National Assembly in the past, they recognized the importance of the

governor and a person appointed by the governor to sit in the County Policing Authority (CPA). Therefore, in the first place, these are Bills concerning counties.

Let me come to the Marriage Bill.

If you look at paragraph 4, it says that one function of county governments is cultural activities and marriage is a cultural activity in Africa. If you look at the details of the Marriage Bill, it seeks to recognise the various cultures and how they are going to be represented in the manner in which they marry including how many wives they can marry or whether one can marry more than one husband.

You will realise that the same Bill concerns counties but even if it does not talk about counties and even if you wanted to go through whether or not it touches counties, you need to look at the functions of county governments. So, the question of promotion of family values, the issue of culture which is very strong in our Republican Manifesto, I come from a party called United Republican Party (URP) and one of our key values is family values. Therefore, for the family to be stable, the county governments must have a role.

My question is; why are we in this situation? Why do we continue to be in this situation? I said and I will repeat again that if the National Assembly Speaker continues like this and our brothers in the National Assembly continue like this, the impending referendum will not even wait for December because we cannot continue being in this situation. We will have to find clear directions on this matter and stop putting--- By the way, the country cannot run like this. In fact, I dare say and announce today that we are in a constitutional crisis and I mean it because if Bills which are clearly concerning counties are being ignored by our brothers in the National Assembly, then what are we in? We are in a constitutional crisis. The Constitution envisaged one thing; good faith, consultation and co-operation. That is why it was not provided in the Constitution what would happen if a Speaker of the National Assembly and the Speaker of the Senate disagree on whether a Bill concerns counties or not. The objective was that the men and women who will sit in these offices, common sense and good faith will prevail but as it is, I do not think it is the case. We are now in a constitutional crisis and to solve this problem, let us do this referendum once and for all.

Thank you.

**The Speaker** (Hon. Ethuro): Finally, Senator for Nyeri County.

**Sen. Kagwe:** Mr. Speaker, Sir, from the outset, I rise to support the Senators who have spoken before me. I want to go further and say that we are discussing the symptoms of a disease but we are not facing the disease itself. Sen. Murkomen has just said that the law assumes that there will be utmost good faith amongst the people who are dealing with matters of the Constitution. The question before the Senate therefore is: What happens when the people who are supposed to have utmost good faith or when an individual who is supposed to have utmost good faith throws that through the window and assumes a situation where there is a fighting mentality and also assumes a situation where instead of interpreting the Constitution in a manner that goes towards uniting the country and uniting Parliament, the individual, and I am convinced that it is an individual because the Lower House is not a cult - It is a Lower House. I know people in the Lower House who are quite fed up with the kind of rules that are being made and the kind of interpretation of the Constitution that is being made by individuals within that House. Therefore, hon. Senators, the question is: What do we do when utmost good faith has

been thrown out through the window? What do we do when instead of coming up with a broad interpretation of the Constitution where everybody knows, even a Standard One pupil knows that issues of marriage are also issues of the counties?

Mr. Speaker, Sir, I will go further from what the Senate Leader of Minority, Sen. Wetangula, was saying that it is not just the two Bills but even the Bill in front of me; the Kenya Information and Communications (Amendment) Bill, if you read through it, you will find that if interpreted even narrowly it will form part of what affects our counties. We are here talking about supply of fibre cable to counties yet Bills that concern those issues are interpreted to be Bills that are only in the Lower House.

Mr. Speaker, Sir, my position and my advice on this matter is that we urge you not to get tired of what you are doing. Sen. Wetangula described the manner in which you are interpreting it, but we must not also go too Solomonic that at some point, we begin to turn the other cheek today. If we continue turning the other cheek, there will be no cheek to turn in due course. Consequently, I urge that you engage that House but do so firmly knowing that behind you, there is a whole Senate and Members of a House who are willing to stand with you through thick and thin and knowing that there is a public out there that is also quite fed up with this tough protection. You cannot make an interpretation of the Constitution on the basis of protecting some imagined power, where you are so narrow that you begin to imagine that your name and that of the Constitution are synonymous and the same. This is simply akin to biting your nose to spite your face. Some of these people who are shouting very loudly will one day be running for the Senate. Just like it happened in the last Parliament, where some people sitting in this House, were there and they reduced the powers of the Senate. Little did they know that one day they would be sitting here and suffering from their own actions. Therefore, I urge that you do not surrender this issue and you do so with the wisdom that you have exhibited but knowing that this country is behind you.

The Senate is here to stay because its presence in this country is not a matter of debate; it is a matter that has already been concluded through a referendum. Therefore, at most, if we are not careful we are going to end up having Parliament run by the Judiciary because at every point, we will be going to the Judiciary to get an interpretation of what we can easily solve between us. So, we want to see maturity in the part of Parliament interpreting these things.

Mr. Speaker, Sir, you have our support. I support.

**The Speaker** (Hon. Ethuro): Hon. Senators, I wanted to conclude with Sen. Kagwe but the old Senator may have some wisdom to share.

Yes, Senator from Laikipia.

**Sen. G.G. Kariuki:** Mr. Speaker, Sir, there is wisdom in every age. I am getting very concerned when I hear this matter going this far the way it has gone. When you invite a constitutional crisis in any country, you are inviting people who are supposed to defend that Constitution to destroy it and sometimes take over from elected authorities. This matter is very serious. We cannot say enough by standing here, talking about our colleagues and brothers in the Lower House and then thinking that we have done a great job. We are repeating the mistake they did. We are also multiplying that mistake in the eyes of the public. A decision must be taken. In this country, we have all sworn to defend the Constitution; The Speaker, the Head of State, the National Assembly and everyone. We stood and declared that we shall defend the Constitution. The Constitution which we



swore to defend is being destroyed and if there was a way of using the majority in the Lower House, it would have been mutilated and it would not have been a constitution anymore.

Mr. Speaker, Sir, I think you are dealing with a very emotive matter but my concern is: How long are we going to discuss this situation in this House? We have the Speaker of the National Assembly, the Lower House, we also have the President of this country, we also have the Attorney-General who is supposed to advise the Government but he is just quiet. I think something somewhere is going on a different way that we do not understand. The Constitution that we have in this country is one of its kind in Africa and even the Far East. This is the best Constitution that people can have but because of international intrigues and other concerns, we have to see beyond our borders when we talk about the Constitution. Things can just happen. We can be mobilised to fight over this Constitution and we shall be back from where we came from.

So, I think we are discussing a very grave matter and time has come when the Speaker does not need us. We are being told that we are behind you but we are not behind anybody, it is the Constitution that is directing itself where to go and where it came from. When you stand to talk about the Constitution, you are being guided by the Constitution. If there was no such clause during the time of debating the Constitution, it would not have been passed. The Constitution of Kenya said it and also the people of Kenya gave the direction; that between now and tomorrow, I want you to do me like this or I want you to take me in this direction. That is why---

*(Laughter)*

Those people who want to be done and are here, they can still be done. I am just saying this with a very light touch. The Constitution has given instruction to the people of this country and also the people of Kenya have given direction to the leaders; that we have elected you to defend this Constitution---

**Sen. Kajwang:** Point of information, Mr. Speaker, Sir.

**Sen. G.G. Kariuki:** No, I do not need it especially from that “*samaki*” area.

*(Laughter)*

I better finish by saying that let us take this matter very seriously as it deserves. You have to guide this House so that we should not continue appearing as if we are crying or fighting with anybody. All we are saying is that they should follow the Constitution. If the Constitution is not working, then let us go back to the people so that they can give us instructions.

With those few remarks, thank you very much.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. G.G. Kariuki to refer to Sen. Kajwang as somebody from *samaki* area? I think he is from Homa Bay. I think it is in order to refer to him accordingly. He should withdraw.

**Sen. G.G. Kariuki:** Mr. Speaker, Sir, for sure you know that Sen. Kajwang knows more about *samaki* than my friend here. Therefore, I beg to withdraw it if it offended him.

**The Speaker** (Hon. Ethuro): Order, Senators! I am actually satisfied that the head of delegation comes from Homa Bay County which is a county with *samaki* just like your good Speaker is from another place of *samaki* known as Lake Turkana. I think there should be no big deal about that and Sen. Murkomen should not be mourning more than the bereaved.

Hon. Senators, I have heard your sentiments. I appreciate the fact that you have all conformed to Standing Order No.88(5). You all raised pertinent issues. That is the reason why our issues are at the Supreme Court. We went to the Supreme Court because of different opinions. We will wait until the Supreme Court finalises the matter and see how to proceed. However, we are all hoping that each one of us, according to Article 73, knows that public offices are state organs. We are acting on public trust and we must act and exercise it accordingly. Let us leave it there for now. We will do what needs to be done as a Parliament to ensure that we work together as one although we are two Houses in a presidential system.

**Sen. Kajwang:** Mr. Speaker, Sir, mine is to seek direction. We cannot take orders from the other House. If there is a Bill that we are convinced touches on counties, we are entitled to bring it to this House, debate it, conclude it or amend it or deal with it in any other way, make law and pass it to the Lower House. We cannot be listening and waiting for another House to decide whether the matter concerns counties or not and continue to mourn. This is not a House for mourning. This is a House with very serious people who want to debate Bills that affect counties. It is for us to decide.

Mr. Speaker, Sir, you should decide on a matter that you are persuaded. The Senate Majority Leader should bring the Bill here, we debate it and make conclusive resolutions that will be seen by the country so that there is a serious conflict because that is what they want. Right now, it appears as if we are ducking. Every time we are given a blow, we duck. For how long will we duck?

**Sen. Haji:** Mr. Speaker, Sir, this is a sober House. We would like to follow the Constitution as we have said. It would be totally wrong for us to bring a Bill that is already in the lower House and cause confusion in this country. I agree that we should wait until the courts make orders and guide us accordingly.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Whereas the Senator for Homa Bay is right to seek a clarification from you, it should occur to him as it occurred to all of us, that it is the version of the Lower House that was assented to by the President once upon a time. It is this precedence that forces us to feel that even if we did it now, we would be doing it in futility. We may as well wait for a pronouncement from the Supreme Court and go to the people of Kenya who are greater than any state officers, including us.

**The Speaker** (Hon. Ethuro): Sen. Kajwang, I hope that you have been given directions.

**Sen. Kajwang:** Mr. Speaker, Sir, it is unfortunate - this is an assumption - to think that in every issue, the President will behave the same. If we sit here and wait for the Lower House to tell us whether a Bill touches on counties or not, then we will be subject to them. We will be inferior and not an Upper House. We must do something that will show that we want to reverse this trend. We cannot do it by keeping quiet. I still insist that we get serious directions.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. It is important to remind ourselves, as a House, that there is no way we can proceed without the National Assembly if we are to follow the Constitution. That is why we are in this situation in the Bill which is sponsored by Sen. (Dr.) Khalwale. It is a situation where you do a letter to the other House and they reply by saying that the Bill does not concern counties and, therefore, they do not care.

I know that you have done your ruling. We will debate Sen. (Dr.) Khalwale's Bill and we will still send it to the National Assembly because we do not want to make the same mistakes they are making but I do not know what will happen after that. However, since we have a court case, I prefer we stick to the law as we appreciate ourselves.

**The Speaker** (Hon. Ethuro): Order hon. Senator. Sen. Kajwang has reminded me of an issue that I wanted to go quiet about. First, the Bill that was signed; the Division of Revenue Bill, did not take into account our Bill. So, the President was given one Bill and that is what he signed. Our Bill went there and was referred to the Budget Committee. Of course, a ruling was made while we were still interrogating the Bill. The report that came from the Budget Committee was that they did not even consider it. That is one of the matters that we have petitioned. It is a matter of due process.

However, to conclude, I am persuaded that all the arguments you have raised are to ensure compliance to the rule of law and constitutionalism. There is no way that we can accuse others of breaching the Constitution and suggest that we should also do the same just because we feel completely offended.

Decisions of either House are made by a body known as the House Rules and Business Committee. You have put all the suggestions in my view that the House Rules and Business Committee will consider. We have been considering. We will follow the path of the law and remain faithful to that path no matter the amount of provocation we will encounter. That way, I believe that both the law, justice and the people of Kenya will be on our side.

## MOTION

### APPROVAL OF MEMBERS NOMINATED TO SERVE IN THE PAN-AFRICAN PARLIAMENT

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. I beg to move the following Motion:

THAT, the Senate approves the nomination of the following members of Parliament to serve in the Pan-African Parliament pursuant to Article 5 of the Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament:-

1. Sen. Kipchumba Murkomen
2. Sen. Janet Ong'era
3. Hon. Zakayo K. Cheruiyot
4. Hon. Rachel Wambui Shebesh, and
5. Hon. Millie Grace Akoth Odhiambo-Mabona

I beg to move.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I beg to second this Motion. This is a bi-partisan, bicameral negotiated list. I want to remind the House that

we have serious business ahead of us on the County Allocation of Revenue Bill. We should let the Speaker put the question and we move to more serious business.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. Murkomen:** Mr. Speaker, Sir, on behalf of my colleagues and the Jubilee Coalition, I would like to thank my colleagues in this House for supporting us to go to this very distinguished institution. I promise to be faithful to the Republic of Kenya, to the interests of this country and those of Africa---

**The Speaker** (Hon. Ethuro): Order! Since your name is on the list that has been approved what you should have done was to persuade us. Since they have already decided, it is too late now. Let us proceed.

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Chairperson (Sen. Kembi-Gitura) took the Chair]*

### THE COUNTY ALLOCATION OF REVENUE BILL, 2013

**The Chairperson** (Sen. Kembi-Gitura): We are in the Committee of the Whole. I hope you know that at the end of it, we will vote by counties.

Order, hon. Senators! We are now in the Committee of the Whole. We will consider the County Allocation of Revenue Bill, 2013.

As you are aware, this Bill has 13 Clauses---

*(Hon. Senators consulted in high tones)*

**The Chairperson** (Sen. Kembi-Gitura): Order, hon. Senators! I wish we could have some order because we are in the Committee of the Whole for a very important Bill. So I hope that we will have some order so that we can follow the amendments that have been proposed. Already, we have received notice from the Chairman of the Committee, Sen. Kerrow Billow, of his intention to move several amendments to this Bill. For the convenience of the Senate, I wish to propose that we follow the following procedure pursuant to the notice that we have received from the said Chairman. You note that from clauses 3 to 6, we have amendments to be called out, then we shall deal with them like we have done in the past when we were dealing with the Division of Revenue Bill. If we go to division at each point for each and every item, we shall be here until next week

when I understand we might be on recess. So that we finish these issues, I propose that we do a cluster of issues and then we go to division, deal with it and then we go to the next issues, deal with them until we finish. That is how I want to propose that we proceed. That, in my view, will make it quicker. But the point to note is that we are going to vote in division at each of the points that we have to vote. This is because, of course, this is a Bill that has to do with counties.

**Sen. Billow:** On a point of order, Mr. Chairman, Sir. It is not very clear. Will we vote on the clauses separately and then on the schedules separately?

**The Chairperson** (Sen. Kembi-Gitura): I will take you through the motions. I want us now to start calling the clauses, so that we can start dealing with them. There are some issues that we cannot cluster together and that is why I said that we need to go to division depending on where we are at. I will take you through it.

Shall we proceed now?

### *Clause 3*

**Sen. Billow:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 3 be amended by deleting paragraph (a) and inserting therefor the following new paragraph.

(a) to provide, pursuant to Article 202(2) and 218(1)(b) of the Constitution, for the division, among the counties, of conditional allocations and equitable share of revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217 of the Constitution for the financial year 2013/14; and'

*(Question of the amendment proposed)*

**Sen. Obure:** On a point of order, Mr. Chairman, Sir. Could the Chairman of Committee just clarify that amendment?

**The Chairperson** (Sen. Kembi-Gitura): You have the amendment on your Order Paper.

**Sen. Billow:** Mr. Chairman, Sir, the only addition is to bring in the reference to Article 202 that talks of the conditional allocations. The Bill deals with not just the shared revenue but also the conditional allocations. If you look at the wording, it says "among the counties, of conditional allocations and equitable share." So, that "conditional" is what we are bringing in and making reference to the Constitution.

**The Chairperson** (Sen. Kembi-Gitura): Senator, I trust that, that is clear.

**Sen. Obure:** Yes, Mr. Chairman, Sir. I am happy.

**The Chairperson** (Sen. Kembi-Gitura): Let me now tell you how I propose to proceed, to answer what Sen. Billow said. I will not put the question. I will do it when we have dealt with the whole cluster. We shall then go to Clause 4.

*(Voting on Clause 3 deferred)*

*Clause 4*

**Sen. Billow:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 4 be amended by deleting the words “Column C of the Schedule” appearing immediately after the words “the manner set out in” and inserting therefor the words “Column C of the Third Schedule”.

Mr. Chairman, Sir, now we have three schedules as opposed to one schedule. That is the import of the amendment.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. Kembi-Gitura): Again, I will not put the question at this point. So, we will proceed.

*(Voting on Clause 4 deferred)*

*Clause 5*

**Sen. Billow:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended by deleting the words “Column D of the Schedule” appearing immediately after the words “the manner set out in” and inserting therefor the words “Column B of the Third Schedule”.

Mr. Chairman, Sir, the import of the amendment is that it is just for re-organization, because of the new schedules that we are putting.

*(Question of the amendment proposed)*

**Sen. (Dr.) Khalwale:** Mr. Chairman, Sir, I want to support the Chairman of the Committee for this amendment, but really emphasize here that my support goes beyond just the rearrangement. After looking at it critically, I have found that compared to the Bill, the Committee has improved on the management of the conditional allocations.

Mr. Chairman, Sir, if one was to give grades to this Committee in this improvement, then it has actually scored a B, but it means that you could still have scored an A. What do I mean? I have taken the trouble and looked at the functions of the hospitals that are the reason these conditional allocations are being made. I have found that just like the Senate Majority Leader, the Chairman in improving that allocation, was to a large extent doing it arbitrarily. If you look at the pecking order of our hospitals, they are decided on the strength of their capacity. A hospital’s capacity is based on the number of beds and cots. So, going by this strength, the hospital that should have gotten the highest amount of money should have been Embu Provincial General Hospital, because it has got a total capacity of 715 beds plus cots. It is followed closely by Nakuru Provincial General Hospital, Mombasa Provincial Hospital and Kakamega Provincial Hospital. This is by way of the number of beds and cots.

Mr. Chairman, Sir, I am also aware that besides the capacity, the Chairman of the Committee was guided by the other projects that are currently ongoing in these particular institutions. Maybe I would like to invite him to now tell us what are these special

projects that are going on in these hospitals, that can cause Homa Bay to get Kshs1 billion and yet, it is not even half the size of, for example, Nakuru Provincial Hospital. Could the Chairman enlighten us?

**The Chairperson** (Sen. Kembi-Gitura): Maybe we could also get a clarification from the Chairman regarding the effect of this new Schedule. Does it keep the final figure the same for all the counties or are they changing?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Chairman, Sir. I beg your indulgence. There is something very important that was escaping me.

Mr. Chairman, Sir, I have gone to the Government website and actually downloaded the status of all our hospitals, and Prof. Anyang' -Nyong'o who was midwifing these particular functions in the hospitals is here. It is so clear where our hospitals are. This would have made a very useful attachment or appendix to this particular list.

Mr. Chairman, Sir, I also noticed that the conditional allocation in the Bill was Kshs43 billion, but in the matrix of the Committee, the conditional allocation is now Kshs20 billion. Maybe you also want to explain to us what has happened. Where has the Kshs23 billion that was in the Bill gone to? We were assuming that the Government had Kshs43 billion to give us unconditionally, but now you are only speaking to Kshs20 billion. Please, explain to us.

**Sen. Billow:** Mr. Chairman, Sir, I appreciate the questions raised by the Senator for Kakamega.

Mr. Chairman, first, to respond to your query, the rearrangement of the schedules does not change the final figure. The total sharable revenue in the Bill remains Kshs190 billion and the conditional allocation remains Kshs20 billion. The total is Kshs210 billion.

Mr. Chairman, Sir, the original Bill that was before the House, before these amendments, was premised on the original Division of Revenue Bill, which subsequently went through a number of amendments. One of the key amendments was to eliminate the requirements of that Kshs43 billion, which was largely to address a concept called "holding counties harmless." What has happened subsequently is that all the revenues that are sharable are shared based on the formula that takes into account a number of factors, which are in Schedule "A." Based on that, therefore, the need for having substantial amounts of money, as a condition, was found unnecessary and the amounts were shared out to all the counties based on the formula on Schedule "A". What remains is the Kshs20 billion. Only Kshs3.6 billion out of that is for the Level 5 hospitals. The balance of Kshs16.5 billion, just to clarify the point by the Senator for Kakamega, is indeed, for the donor-funded projects. These are not necessarily projects regarding hospitals. They are projects in various sectors of our economy and depending on which donor project is in which county--- You will find that, for example, in Homa Bay, there is a major project that covers a number of sectors.

**Sen. Kajwang':** On a point of information, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Billow, do you want to be informed?

**Sen. Billow:** Mr. Chairman, Sir, I will accept it.

**Sen. Kajwang':** Mr. Chairman, Sir, I just wanted to inform the Chairman of the Committee on Finance, Commerce and Economic Affairs that, although my good brother,

Sen.(Dr.) Khalwale was talking about Homa Bay derogatorily, actually we have a huge irrigation scheme, which is not quite complete, called Oluch Kimira Irrigation Scheme, that is funded by the African Development Bank (ADB). This is the Government's contribution to that effort from the ADB. So, when you see something in Homa Bay, it is not that there is some misdirection of public funding.

**Sen. Ndiema:** On a point of order, Mr. Chairman, Sir. While I do agree with Sen.(Dr.) Khalwale that the Committee has done a better job, I think that it could have done even better. Is it possible for the Committee to go further and itemize per county, indicating the figures and projects involved, just like we do in the Appropriation Bill, so that we are clear as to what the conditions are? This is because you cannot say "conditional" when you have mixed. It may not be understood by whoever will be implementing or issuing the funds. So, if it is an ADB funded projects, it will be better if it is clearly indicated. It should not only be indicated for this financial year, but also for the subsequent years until the project is over, so that when these unconditional allocations are going to end---

**Sen. (Dr.) Khalwale:** Mr. Chairman, Sir, I am rising on a point of order just to correct what has been advanced by the Senator for Homa Bay. Probably, he did not hear me very well. There is a very big constituency of young people who admire me in Homa Bay. I am aware that the Kshs1 billion given to Homa Bay is for special projects. I have downloaded this information and I know the status of Homa Bay Hospital. So, the Committee should annex those projects so that Sen. Kajwang and this Senate can be aware that such and such a project is being funded in Homa Bay County. This is the only way the Members of the County Assembly (MCAs) in Homa Bay can oversight the Executive Committee when they are implementing that particular budget item. It is important to do so. I was not saying that we deny them. I support.

*(Sen. (Prof.) Anyang-Nyong'o stood up in his place)*

**The Chairperson** (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, are you up on a point of order?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Chairman, Sir, I can understand the anxiety of hon. Senators regarding the rationale behind these figures. However, one thing that we should realize is that the whole budgetary process when it started this particular year was upside down. If you read the Constitution, the County Government Act and all that, you realize that there are a lot of things that need to be done prior to budgeting. As I said before in our Committee, there was even a false start which we have to live with. So, if one looks at the rationale of these figures, you will really not get it anywhere because what should have been done or, rather, there should have been policy papers, planning and so on prior to this budget. Therefore, because of the delays coupled with other things which ought to have been done prior to budgeting, the whole process is actually upside down. What we may have to accept as a reality now is that we have to live with this false start in this financial year and make sure that next year, we do a better job.

Mr. Chairman, Sir, from the proposal that we are making in the Devolution Committee, we, as Senators, will be in charge of the Committee on Planning in all the counties. This will make it better for all of us. We want to get seized of the process of budgeting at a much earlier stage, so that when it finally arrives here we can actually



audit it and find out whether it is in line with the planning process that we, ourselves, have husbanded and midwived. But, for the moment, I think if we try to answer the questions that we are raising here, we will not be able to do so.

Thank you, Mr. Chairman, Sir.

*(Sen. Ndiema stood up in his place)*

**The Chairperson** (Sen. Kembi-Gitura): Sen. Ndiema, is it a point of order? We need to move on and finish with this issue.

*(Sen. Ndiema spoke off the record)*

You are not satisfied; so you are seeking a clarification from whom?

Please, go on then because I do not want to shut out anybody.

**Sen. Ndiema:** Mr. Chairman, Sir, it is true that this is the first time we are doing this. I believe that in arriving at these figures, there was some information somewhere. It is really not just about bringing it. When you look at the figures, these are not estimates. If they were rough estimates, you would see a lot of zeroes. Probably, these figures have been rounded off. As I said, these are specific figures. I am sure they were from somewhere.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Billow Kerrow, please?

**Sen. Billow:** Mr. Chairman, Sir, I appreciate the questions by the Senators. Indeed, there is a schedule on which the list of projects is based. They are not abstract figures out of nowhere. As you saw in the example by the Senator from Homa Bay, it is an irrigation scheme. So, for all of them, there are specific projects for which the total amount of money assigned for all those projects is what is indicated here. So, if you require, we will get a list from the Treasury and give it to you.

Thank you, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Okay! I think that is satisfactory. I think I had proposed that the amendment to Clause 5 as proposed by the Chairman. Again, I will suspend putting the Question.

#### *Clause 6*

**Sen. Billow:** Thank you, Mr. Chairman, Sir. I beg to move:-

THAT, Clause 6 be amended –

(a) in sub-section (1) by inserting the words “to be” immediately after the words “the functions”;

(b) in sub-section (2) by inserting the word “Third” immediately after the words “set out in the”;

(c) in sub-section (3) by inserting the word “Third” immediately after the words “Column E of the”;

Specifically, Mr. Chairman, Sir, I want to read sub-section (d) because it has significant amendments.

(d) by deleting sub-section (6) and inserting therefor the following new sub-section-

(6) Where the allocation of monies to a county results in a county being allocated an amount that is less than the amount commensurate to the cost of the functions devolved to the county, the national government shall allocate part of its share of revenue to provide the additional resources needed.

Mr. Chairman, Sir, we thought that this is necessary to cover those counties that may run into a deficit because of the allocations that have been provided.

Thank you, Mr. Chairman, Sir.

*(Question of the amendment proposed)*

*(Voting on Clause 6 deferred)*

*(Voting on Clauses 7, 8, 9, 10, 11 and 12 deferred)*

**The Chairperson** (Sen. Kembi-Gitura): Let us proceed, Sen. Billow Kerrow?

*Clause 13*

**Sen. Billow:** Thank you, Mr. Chairman, Sir. I beg to move:-

THAT, Clause 13 be amended in sub-section (1) by inserting the words “with the approval of Parliament” immediately after the words “Cabinet Secretary”.

Mr. Chairman, Sir, this is to be in line with the Constitution. It says that regulations by Cabinet Secretaries should be approved by Parliament.

*(Question of the amendment proposed)*

**Sen. (Dr.) Khalwale:** Mr. Chairman, Sir, I want to strongly support this amendment. We had some very bitter experience in the last Parliament where we passed an excellent Alcohol Control Bill and allowed the then Minister to go and gazette regulations. He brought very unreasonable regulations that have frustrated the alcohol industry to the extent that we do not want this to happen in the current times. We would like any regulations to come here for us to exercise our minds on them.

Mr. Chairman, Sir, I beg to support.

**The Chairperson** (Sen. Kembi-Gitura): Fine; now that brings us up to Clause 13. You do appreciate, Sen. Billow, had asked for my direction on this issue. We should not go to Division on the parts that we have dealt with because, then we will be proceeding to the new Clauses. Is that right? In fact, we do not have the numbers to go to Division.

**Sen. Billow:** Mr. Chairman, Sir, I stand guided. But I thought that the additional clauses can also be covered in this session so that we can vote on them. In essence, we are simply bringing it in as a new item, but it is an amendment of a particular clause. It is not something out of those clauses.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Yes, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Indeed, Mr. Chairman, Sir, I also propose that we deal with all the issues because we have decided that we shall have two divisions. Apart from the Chairman who has put duty before religion and has remained here to prosecute this, the rest of our Muslim brethren have left to observe their religious obligations. So, we will go through the whole Bill. At the end of the day, we will move the House to adjourn to report progress tomorrow at which time we can then put the questions and then vote in accordance with our procedure through divisions.

**The Chairperson** (Sen. Kembi-Gitura): Thank you, Sen. Wetangula. I have sought opinion on that. I was of the same view, but there is a problem there with the new clauses. Clauses 3(A), 12(A) and 14 are new clauses which we want to insert. They have to go to second reading. Is that right? Because of the fact that they have to go to second reading, there will be debate on them. Remember that for the clauses we are dealing with right now, we are in Committee and we have finished with the issue of debate. But with the Motion that “the New Clauses now be inserted,” this is a completely different procedure because then they have to go to the second reading. They have to be proposed. There has to be a seconder and then there will be debate on them. Therefore, we cannot now move from Clause 13, deal with the new clauses and then go on to the Schedule, long title and all the others. That is why I had indicated that what we need to do now is to go to Division to deal with the clauses that we have already dealt with; that is Clauses 3 up to 13. But we cannot do that now because we do not have numbers. Do you want us to ring the bell and assume that people will come? We cannot afford to lose this Motion!

**Sen. Murkomen:** On a point of order, Mr. Chairman, Sir. Can we give the Whips three minutes to establish that?

**The Chairperson** (Sen. Kembi-Gitura): You see the trouble is that I have to follow the procedure, Sen. Murkomen. So, we have to make a decision on whether we go to Division now. We ring the bell and take the risk of not having numbers or adjourning and then reporting on progress. This is not an issue we can afford to gamble with because if we do not have the vote, we do not have the vote. Period!

Yes, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Chairman, Sir, I am just being adventurous. Whereas the Whips will be trying to whip the Senators who out there having coffee, in the meantime, you would use Standing Order No.1 to allow us to go into that stage on schedule.

**The Chairperson** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I am not stopping you. You know very well that I like to do that. However, you can only use Standing Order No.1, if there is no other specific Standing Order to deal with the situation. I may have a specific Standing Order. I think we need to be correct. Technically, what we need to do is to proceed under Standing Order No.97 where somebody will need to move in the Committee of the Whole that the Chairperson do report progress. That is the only option we have at the moment.

**Sen. Keter:** Mr. Chairman, Sir, I beg to move that, pursuant to Standing Order No.97, the Chairperson do report progress and seek leave to sit again tomorrow at 3.00 p.m.

**PROGRESS REPORTED**

## THE COUNTY ALLOCATION OF REVENUE BILL, 2013

**The Chairperson** (Sen. Kembi-Gitura): I would like to move, under Standing Order No.97, that the Chairperson does now report progress so that we can then proceed with the matters tomorrow.

**Sen. Elachi** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sit down, please? Order! Who is going to report progress?

**REPORT**

## THE COUNTY ALLOCATION OF REVENUE BILL, 2013

**Sen. Keter:** Thank you, Mr. Speaker, Sir. I beg to report that a Committee of the Whole is considering The County Allocation of Revenue Bill, 2013, and has instructed me to report progress and seek leave to sit again tomorrow.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Elachi** seconded.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order, Sen. G.G. Kariuki?

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, if you look at the records, you will see that we have adjourned this House so many times for lack of our Members to vote for a particular Bill. Are we trying to take credit out of that? I think you have to issue a very stern warning if we are going to be serious in our business. We cannot just claim to be very responsible people and yet we cannot find a quorum here to pass our Bills.

**Sen. Keter:** On a point of order, Mr. Deputy Speaker, Sir. While I agree with Sen. G.G. Kariuki, it is good to put the record clear that this is the first time we are coming to the Third Reading of the County Allocation Revenue Bill. Right now, it is wrong to send a wrong signal to the whole country because this is a Bill which is being awaited for, so that resources can be allocated to our counties. It is also very crucial for us. Since it is coming for the first time, we have only sought leave to adjourn until tomorrow. We need to pass this Bill, so that our counties can operationalise.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! Order Sen. Wetangula. I want to make it clear, not just to Sen. G.G. Kariuki, but to the whole House. We are not adjourning the House. This needs to be understood very clearly. After we have dealt with the issue of the Committee, we have business of the House to deal with. What we are doing now, is not just a matter of practicality or convenience, but we expect a report from the Committee. Since this is a Bill originating from the Senate, we are not going to vote in futility when we do not have numbers. We shall vote when we have the numbers so that Members can agree whether to adopt the amendments or not to enable us move on. So, we are not adjourning the House at all. That needs to be made clear.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. What the distinguished Senator for Laikipia said should not go unchallenged and I laud Sen. Keter for saying what he has said. It is not that we lack quorum. We have quorum. But what we do not have is the threshold to vote on a county issue. This is only the second Bill that has come to this House and we have gone to where we are, to vote. I explained. I thought Sen. G.G. Kariuki understood because he appeared to be looking at me when I was explaining. I said our Muslim brethren have gone to observe their religious obligations and that is why we have a shortage of numbers in the House. It is not right to send mixed signals to the public in a manner that the distinguished Senator for Laikipia is attempting to do because it is absolutely not necessary.

**Sen. G.G. Kariuki:** On a point of order, Mr. Deputy Speaker, Sir. Let us not bury our heads in the sand. If you remember, how many Motions we have adjourned for lack of quorum and lack of numbers to vote---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. G.G. Kariuki, with respect to you, let me make this clear. You said that the whole world is watching us. If you count the number of Senators in this House, we have much more than the quorum we need. However, we must distinguish, and this is important, the difference between quorum and the threshold upon which we can vote on a matter that affects counties where we have to vote by delegations. There is no way I am going to put this House to a vote on this issue when I can clearly see with my own naked eyes that we do not have the threshold that we require. That is why I am saying that we must now follow the procedure. That is why I said that I am not going to invoke Standing Order No.1 because the rules are very clear, indeed. So, we must follow the correct procedure. So, for the avoidance of doubt, let me make it very clear that we are not adjourning the House. What we have adjourned is the Committee of the Whole so that we can report progress and then proceed with matters when and if we have the threshold to vote. I think it is important to make that clear.

*(Question put and agreed to)*

## MOTIONS

PROVISION OF COMPUTERS AND ICT TRAINING  
TO MEMBERS OF COUNTY ASSEMBLIES

THAT, appreciating the significance of technology in the development of counties and also acknowledging the important role that Members of the County Assemblies (MCA) perform; determined to increase the efficiency of the legislative process and other parliamentary procedures and consequently save costs for counties; further recognizing that technology in Government fosters innovation and transformation, enhances performance and capacity in delivery of services and leverages support towards good governance, recognizing the important role played by the media in enhancing democracy and accountability; the Senate urges the County Governments to provide offices, computers and ICT training to Members of the County Assemblies, and to establish network infrastructure as well as a data bank for reference in all County Assemblies, and to provide a specially equipped media centre in all County Government offices.

*(Sen. Kagwe on 24.7.2013 – Morning Sitting)*

*(Resumption of Debate interrupted on 24.7.2013- Morning Sitting)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is the Motion by Sen. Kagwe. It is a resumption of the Debate adjourned on Wednesday, 24<sup>th</sup> July, 2013 and the balance is one hour and 20 minutes.

Sen. Hassan, who is not here, was on the Floor and he had a balance of six minutes.

Hon. Senators, the Floor is open.

*(Sen. Wetangula stood up in his place)*

Order, Sen. Wetangula! I now allow you to speak because you were the next one to speak, but I think you cannot just stand on your feet then walk to the microphone. I think that negates the procedures and rules.

**The Senate Minority Leader** (Sen. Wetangula): I was going to switch off the microphone.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, the microphone is off now.

So, now do I ask the Mover to reply?

Yes, Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, if you had noticed, this microphone was on and I came to switch it off.

I support the Motion for the simple fact that it requires capacity building within our county assemblies. For us to have vibrant county assemblies, we need to capacitate members so that they can work efficiently, properly and promptly. In this age of Information and Communications Technology (ICT) development, where ICT makes it easier to do your research and to do your work, I support the desire by the Mover of the Motion, my own very good friend and distinguished Senator for Nyeri, that it is incumbent upon the county governments to provide capacity to their Members.

Indeed, we have county assemblies and county governments that are very unequal in character, unequal in representation and very unequal in capacities yet we expect them to discharge equal and similar responsibilities to their counties. It is, therefore, important

that a Motion of this character, nature and content be passed by this House, so that ICT training to members of the county assemblies, provision of offices for them, computers and I wish the Senator had included their staff, be provided. There is massive legislation that is going to be passed by county assemblies. If you look at the Fourth Schedule of the Constitution and see the responsibilities cut out for the county assemblies, which cannot be legislated by the National Assembly or the Senate, but by the county assemblies themselves, then you fully understand why capacity building becomes a critical component of their work. They are going to legislate on agriculture, crop management, animal husbandry, marketing, management of county roads, revenue collection, revenue allocation, revenue auditing, education and so on. Each of this will not be undertaken through any *ad hoc* pronouncements or any whims of anybody, but through methodical clear legislation that will give force of law to what the counties are doing. For them to do so, it is important that they have capacity.

Mr. Deputy Speaker, Sir, I believe this cuts across the country, we have a big transition from county council members or councillors to county assembly members with changed structures, new responsibilities, new expectations and with an entire new profile on how they are expected to work. Many of them like their counterpart in the senior Chambers of the Lower House and this Upper House can generate or originate Bills. Other Bills may originate from political parties or the executive and be send to the county assemblies for debate and legislation. We need to empower them to enable them research. We need to empower them, for example, to have a county representative sitting in Bungoma and go on the internet be able to see how the county assembly of Murang'a has handled a similar thing. We need a county assembly member sitting in Lamu to see how a county assembly in Turkana has handled certain matters. This can only come through the process that this very good Motion envisages.

One thing that I would want to encourage the Mover of the Motion is that this capacity building should not necessarily eat into the meagre budgetary resources we are allocating to the counties. With proper organization, we have lots of benevolent organisations like the United Nations Development Programme (UNDP) that are ready to help build capacity for these county assemblies and their staff. After the Motion has been passed, the Mover and other Members of this House who are well exposed, like the distinguished Senator for Kisumu, among others, should put their heads together and profile a matrix and blue print that can be sold to organisations like the UNDP. If you talk to the UNDP, you discover that they are more than willing to capacity-build county assemblies in the manner in which this Motion envisages. If you have a good profile document, you can take it to the Department for International Development (DFID), Japan International Cooperation Agency (JICA) and many other organisations. We should not go and eat into the budget we have allocated.

This afternoon, I was talking to my governor and asked him how much his recurrent budget is. He told me that his recurrent budget is over Kshs4 billion. When you have Kshs4 billion on an allocation of just about Kshs6 billion, you are left with Kshs2 billion for development. That cannot even supply drinking water to every household in one ward. That means that we have to be innovative in looking for alternative sources of resources to achieve what we are looking for. Those alternative sources are there. This is just a question of how we can guide county assemblies.

I do not want us to be narrow-minded and to use the phrases that the distinguished Senator for Nyeri was using in another argument this afternoon. We do not have to be narrow-minded such that every Senator is on a misadventure seeking what suits his county. We want our counties to grow and develop at par. This Senate can form a committee that can assist. I heard that our Speaker and county Speakers have a forum. We can enrich that forum with some of the Senators from here, including the Mover of this Motion, who can sit in a small group and map out whom to go to for support in which regard. Once we get the support, we should agree because there may not be enough money to deal with all the counties at the same time. We should cluster them because they are 47.

We can ask the UNDP to deal with the first one batch, go to the DFID and ask them to deal with the next one, go to the United States Agency for International Development (USAID) to deal with another one third and to the Ford Foundation (FF) to deal with other matters. All the people who supported the movement to the new Constitution and embraced devolution are still available to ensure that devolution works despite the engagement that we are having that is not adding any value to devolution from the conduct of Members from the Lower House. Until and unless county assemblies are capacitated properly to know what budgeting, oversight, auditing and procurement processes entail, they will not work. They should know that the money we are sending to counties belongs to the people of a county and not to one or two people who can sit on their own and decide on how to spend it. Those oversight agencies will only work if they know what they are doing.

We should give them capacity to understand that we are no longer in a stage where a governor can pick a few county assembly members who constitute a majority and hide them in a hotel so that they are made to vote on an anti-people issue. This is what is happening in some counties where county assembly members have not understood their role. They are still being used as councilors. I keep on telling them that they are Members of a Parliament known as the County Assembly. They must conduct themselves as such. They are custodians of public good in their counties. They must be armed with sufficient knowledge to be custodians of public good. They are public trustees in their counties and not councillors of those days where they would be shown the door. They have an authority derived from the Constitution and other enabling legislations. That authority will be understood and executed if we have the knowledge.

I agree that we must empower them in every way possible, so that they can discharge their functions, responsibilities and to make sure that they sit, budget, oversight and audit through County Accounts Committees and County Investments Committees. People must have confidence in devolution. Devolution must work and we bring to shame the enemies of devolution which this country does not seem to have a shortage of, then we must make it attractive and beneficial to the ordinary person. In fact, we must assist county assemblies to work in a manner that will make the people the constant defenders of devolution because they see the benefits.

I have been telling my friends who are governors whom I meet, if five years down the line, if you go back to the electorate and tell them that you have done very well because you were paying salaries promptly to the workers of the counties, you will be shown the door. People are not keen on seeing that you pay workers' salaries. They want to see devolution working.



In the County of Wajir, children can only read about a tarmac road in a book. There are counties where people only read in a book that water can flow through a pipe to a house. After five years of devolution, people want to see a difference. For instance, people want to see a road cutting through Wajir and the people of Homa Bay will no longer go to the lake to draw raw water and drink it, but they will drink treated water and have tarmacked roads and sell their produce and get good money. If they will enjoy their drinks in their neighbourhood bars and will not be followed by goons who ask people to share their money with them and that there will be adequate security. These will be the benefits of devolution that people are waiting for.

The distinguished Senator from Kericho will agree with me that those who come from areas that are blessed with cash crops face problems when payment is being made to farmers. Nobody sleeps at home on such days because of thugs. If they get to know that you were given Kshs100,000, they will be there with you in the evening asking; *leta hizo pesa ulizopewa*. These things will change if devolution will work. If governors will preside over the security committee to ensure that we do not have marauding youths terrorizing people because they have a few shillings in their pockets, among other things.

For this to work, the Senate as a custodian and protector of devolution must have a very robust partnership with county assembly members who must constantly be advised to know what their role is and how that role affects the ordinary person. The likes of my good friend, Justine Muturi, has been embracing obstinacy and intransigence that is totally unhelpful. People will deal with these people. We are not the ones who will deal with them. The public will come to them and tell them that they are engaging a reverse gear on what they shed blood for.

There are counties that are getting Kshs2 billion to Kshs3 billion in revenue allocation when in the entire 50 years of Independence, they had not received Kshs100 million because of skewed programmes of development in this country. Now, at least, people like my good old friend, Sen. G.G. Kariuki, can sit with his people there and decide how to police against their marauding neighbours who come and take their cattle at will. You do not have now to wait for Nairobi to come and protect you. You can protect yourself because you have capacity. My good old friend, Prof. Anyang'-Nyong'o can now tell the people of Kisumu that they do not have to hang on the lake the whole night, precariously, swimming through water and then come out with fish and somebody takes it at a song. Now he can use some of this money to build cold rooms, keep the fish and sell it at the correct price. For all these, it is not legislation to be done here; it will be done in the county assemblies. Those county assembly members must be capacitated to do this.

Mr. Deputy Speaker, Sir, there is a group of young women who are very clever. When cruise ships dock in Mombasa, they are there. When cane farmers are being paid in Mumias and Nzoia, they are there. When tea farmers are getting bonus, they know. They are very clever. They arrive there and clean off all this money from the poor farmers. Now the ICT can help on that.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I rise to support this Motion.

Mr. Deputy Speaker, Sir, one of the things which is not realized is that devolution is not just about the headquarters devolution where the governor and county assemblies

are. Devolution is also about setting up the constituency administrators' office, ward administrators' office and village administrators' office. It has got structures all down to the village. So far, we have only set up the executive headquarters of devolved governments. We are yet to go down up to the village. Now, this whole structure of governance at the county level is very important. This is because for the first time, we have in the Constitution and County Governments Act, a very clear chain of authority answerable to the people at the local level. You will remember that in the old system, apart from the President's Office which went up to the village, where the answerability as it were was up, there was no horizontal answerability to the people in this kind of system. That is why they were always regarded by the people as those who bear the crown. If you see the crown, yours is to obey orders and not question them.

Mr. Deputy Speaker, Sir, what Sen. Kagwe has done is to introduce a proposal for a technology that will make governance much more effective. It will help in the delivery of services, communication, transparency and accountability. We all know the revolution that was brought about when the mobile telephony came in this country. It led to M-pesa and a very easy way of summoning people to meetings and so on. In a timely manner you can reach Senators through text messages all at once, without writing a letter or sending an e-mail. Now, if we have this technology at the devolved government level, you will see how effective communication will be within this structure of government.

Mr. Deputy Speaker, Sir, we live in a very interesting time. I am glad that Sen. Wetangula mentioned how clean water is important for the health of the people and also economic productivity. You will be surprised that in very developed nations that we know today, like the United States of America (USA), as late as 1970s, there was no running water in certain parts of Alabama and Louisiana, as it were. It was President Johnson with his war on poverty who realized that there were actually two nations in the USA. The underdeveloped nation of the south where there were dirty roads and no running water and the developed nation of the north where there was a telephone in everybody's house, tarmacked roads and so on. This was very similar to what we have here today. We have two nations; that is the urban nation and rural nation.

I remember we built hostels for girls in my own sub-location, because we realized that when girls in secondary schools were going home, they were very disadvantaged compared to the boys. This is because when they go home, they have to fetch water, cook and do all kinds of things, when the boys are doing their homework. So, you will find that in the end, a girl joins Form One very brilliant, but by the time they go to Form Three, they are really lagging behind. But much more than that, when they leave school and are going home, there are all the naughty young men who waylay them and visit them with all kinds of "weapons." In the final analysis, they are disabled and the drop-out rate is very high. So, if you have 25 girls and 25 boys in Form One, by the time they will go to Form Four, the girls will be five and the boys continue to be 25. So, my mother decided with other women that we put up this hostel for girls. What is interesting is that when a survey was done among the girls who were there and they were asked what was one of the things that had really made a change in their lives, one of them said:-

"For the first time, I have seen a toilet with running water."

This was a great revelation to her.

Mr. Deputy Speaker, Sir, that reminds us that unless we do something about the running water for flushing refuse and not just drinking water in the rural areas, we will be

in a lot of problems. This is because pit latrines are a disaster waiting to happen. You know that populations are increasing and people are cultivating and building houses and so on. Also, some people are digging boreholes to have water in schools and so on. You might find that there is a school which is downhill with a borehole, and then there are natives living uphill with pit latrines. No wonder it is very difficult to get rid of waterborne diseases like cholera. This is because however much we have facilities in health centres and so on, to cure people, the cause of the problem remains ourselves, with our pit latrines and lack of running water in our houses.

Mr. Deputy Speaker, Sir, President Johnson, as early as the 1960s, realized that this was a dilemma in southern parts of the USA. Actually, they went drastically to reduce the use of pit latrines in the southern states and begun using piped water in those states. They also made the sheriff system more effective in terms of security. Now, in this day and age, you do not need to wait for the Government to do something. Making people aware through technology and educating them through information will make them demand these services from the county governments. When people demand something from a government, and it wants legitimacy and support, it will supply it. In other words, we must make it possible for people to know that there is a government which represents them in the local scene to which they pay taxes and must demand services from. Devolution will not just go to the people benevolently. There must be created a dynamic for devolution to work in our rural settings in particular which empowers the people to make certain demands.

Mr. Deputy Speaker, Sri, I was talking to Sen. Kajwang there. I thought it was Jesus who said that, he reminded me that it was said by a man who shares a name with me, called Peter. This is what interests me and I have to study it. When Peter was coming out of a synagogue and he saw a beggar who was saying "*Saidia! Saidia! Saidia!*" then Peter said "silver or gold have I none, what I have give I thee; stand up and walk." He preferred empowering that fellow than giving him something free. Now, I think that this Motion by Sen. Kagwe – unfortunately he is not here – is meant to empower the people, especially to make demands so that they do not expect that they will always extend their hands saying "*Saidia! Saidia! Saidia!*" That is not the best way to get going, as it were. Empowerment is very important. So, the aspects of empowerment are very much related to information. Information and communication empowers and improves. Knowledge also empowers. There is a saying that "if you think poverty is serious, try ignorance" or something to that effect. I may have got it wrong, but, in the final analysis, it just tells you that ignorance is actually much more dangerous and destructive than anything else. So, our people in this day and age will definitely be better off with access to technology that gives them information and that empowers them.

Finally, Mr. Deputy Speaker, Sir, I am glad that our Standing Orders give us the opportunity to address our county assemblies. Once this technology is available, I think there should be a highway of communication between us, as a Senate, and the county assemblies.

Mr. Deputy Speaker, Sir, I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kajwang.

**Sen. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I came to learn of ICT quite late in life because it is something which found us when we were already past university. So, we would not have learnt it if we did not put enough effort to learn some of the good

things that technology can give. Our children sometimes surprise us with what they can do with technology. But I want to thank Sen. Kagwe for bringing this Motion because, essentially, it is an empowering tool for us here and, I think, even more for our assemblies at home. First of all, I am already quite worried that the Senate has not provided us with the normal tools of communications in our offices as we usually have whenever we open a new Parliament. We should be having our computers, printers and all those things that facilitate work there, so that we communicate, investigate and we also produce useful information.

Mr. Deputy Speaker, Sir, our counties have actually started on a completely new slate. It is good that this Senate is populated by people who have been in Parliament before and they know what a chamber is; they know what debate, Bill or Motion is. So, it is sometimes helpful that this Senate will grow faster in terms of engagement than a House in the county which, sometimes, may have somebody who has never appreciated what the role of a parliament is; because they are a parliament. Before at the county council, they were just busy about how much market dues were collected and how they should divide it. How many plots are coming online so that they might harvest. Now, they are involved in making serious decisions about government. They need to be brought up to speed on how to make those decisions.

Mr. Deputy Speaker, Sir, it is only yesterday or the other day when we were in Kwale. We were looking at how we should transfer functions to the counties. One of the things that our experts were telling us is that we cannot transfer those functions unless the counties are ready to receive and manage them. They talked of capacity building. They said that counties do not have capacity to handle, first of all, the kind of resources that are being devolved. They do not have capacity to even handle the other complicated contracts and what-have-you that will face them. But, of course, if we do not start somewhere, we will never get there. If we keep on being shy saying that they have no capacity, then they will never have that capacity. I think we decided wisely that those functions should be devolved. Any county that feels inadequate to deal with those functions can seek help. That is the way to go.

Mr. Deputy Speaker, Sir, one of the ways of seeking help is this one; that we must provide a highway of information where they can access even our debates. In fact, if our HANSARD would go down to the counties through this information system, they would have something to read every morning and see how we have dealt with this and that; our vision of this and our vision of that. When they sit in the afternoon, it will be a serious engagement on some of these small issues that bother us. Otherwise, they might end up being counsellors all the same and not engage at the level at which we want to engage them. I can assure you that the county assemblies are made up of very good people who have gone to school. There are engineers, lawyers and other professionals. I think even them, they need capacity building because they have not been in a Parliament before and they do not know what goes on there. This House could be a resource House for them. The easiest way in which to help people is to give them information through their computers so that when they open them in the morning, they find the HANSARD there. They will see what was being discussed in the Senate yesterday. They could even access the HANSARD of the National Assembly. That way, we would be building capacity for this country.

Mr. Deputy Speaker, Sir, we are laying fiber optic cables to our counties. I think sooner or later, almost all counties will be connected. But what are we going to do with them, because these cables are supposed to be highways for information? So, unless you tap that information and use it, then the cable is wasted. I can tell you that private people will not take their cables where the use of that cable will not be maximized because they will not be getting revenues from it. They will want to lay it in Nairobi here; especially the rich suburbs of Nairobi where they think people read a lot of information and seek a lot of data. If you tell them to lay the cables in Kibera and Mathari, they will tell you that there is no readership there. The country is going to a large expense - in Kiswahili language they now say *kusambaza* these highways to every county. We must now make use of them. The best place to make use of them is our county assemblies, county executives and in our schools.

Mr. Deputy Speaker, Sir, when I was the Member of Parliament for Mbita, I invested in a library in the village. The teachers asked me to spend some money on them for the library. They needed to get information through reading. So, I built for them a library. But up to now, it is not in use. The library could be useful if they had internet which they could use to find as much information as they want. That is what should happen to our county executives. Maybe some of us have not even had an opportunity to go and speak to our county assemblies, but we will be doing that soon although one should do so through e-mail and give them useful information. For example, I have some information on forestry which I want to share with the assemblers. I would easily pass it to them so that they can discuss it. Tomorrow you might have good information on chicken keeping. I learnt that the American Government through the department of agriculture is actually supporting chicken rearing in the whole of South Nyanza counties because they want to eat the chicken, they are tired of theirs. So, they want to use us, as a source, of that. That information is not available to the county assemblers. This is a God-send Motion. We should open channels of communication between this House and other Houses in the whole country so that we might all together interact. If we want to improve agriculture or get clean water, this is the way to do it. It is done through information. If you want to do something about public health, it is through information.

Information is a powerful tool to change the way we think and the way we live for the better.

I support.

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I also rise to support this Motion knowing very well that it is during the innovation of ICT that this country moved to a different level. It is during this time that we were able to access information. This is what has also enhanced the social media and everyone is buying a mobile phone back home to access information. When you look at the infrastructure of the county governments, you will realise that one of the things they really need is a solution to how they can pass information to their citizens within the counties and also let the citizens know what is happening at the county government. It is through the training of ICT that you are able to open your own web. So, the county assemblies can use this avenue to show what is happening in different wards and what developments are going on. This will also enable the county to share such information so that they can grow together.

Mr. Deputy Speaker, Sir, today we lag behind our brothers in Rwanda because of ICT in their government system. They have the best solution that can identify who is who

within the country. We have the best solutions to even tell you who has just walked into hospital and whether that person has a history from another hospital. If the county assemblies will be empowered, they will start doing the same in the county governments. In Kenya, we fear ICT so much because we know it will close some of the corruption loopholes that we see. For example, if you create such a solution in our hospitals, we will not want the system anyway. But I know we should start it at the county government and the county assemblies should enact a law which enhances solutions in the health sector and even for tracking food security within the county.

When you look at the national government today and remember we took a long time to ensure that Sheria House has transformed. I am not sure if they have really transformed. It has been difficult to even trail a file. You will find so many files there. They will trick you with those files, taking you round and round for a whole week, looking for the file. So, when you are empowered, trained and you have an ICT programme, you will not need papers.

Today, when you visit the memorial hospital next to Kenyatta National Hospital (KNH), you will see nobody walks in with papers. Everything is computerised. All you do is walk in, give in your card and the doctor will know who attended to you last and the kind of prescription you were given. So, if we want to track and solve most of these problems, especially in parastatals, it is only through ICT. Therefore, for our county assemblies to be empowered even to monitor the tendering system that the governors will put in place, they need to understand ICT. We even want to move to a different level. I believe this will help the county assemblies and county governments to ensure that they can get information from a different county and see what they are doing. This will also provide a library in the county to ensure that anything that a citizen needs to know is available. We do not need to use papers to hang them on the wall the way the Constituencies Development Fund (CDF) used to do. One had to go to the chief's office to see how money had been spent.

Mr. Deputy Speaker, Sir, if we are able to enhance the network in the whole country then somebody can see what is happening in Treasury or county government, for example. This will also embrace participation. If I am unable to work maybe because there is no transport within that county, I will be able to send an e-mail to the county assembly and inform them of the situation. They will reply immediately instead of staying for long until we have a meeting where we all converge to discuss an issue. This is one thing that we all need to embrace, including the Senate. We should amend our Standing Orders so that we can allow someone to send an e-mail dealing with issues of county governments. Therefore, this system will enhance the discussions between the Senate and the county assemblies so that they deal with the challenges they face in terms of legislation. In case they need assistance, we will be able to e-mail them directly our recommendations.

This is an avenue where the Senator for a county is able to send any statement. Therefore, I stand to support and I believe as we move on, the Senate should urge all county governments to use these solutions to enhance their service to the people.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Ongoro): I will now call upon the Mover to reply.

**Sen. Kagwe:** Madam Temporary Speaker, I rise to reply. I thank you for giving me this opportunity. At this point, I wish to thank the contributors to this Motion. There has been a lot of interests and a lot of valid contributions which I will take on board as we close the debate.

You heard the Senator from Homa Bay, Sen. Kajwang, who talked about the importance of having a fiber optic cable to support or make effective the Motion we are passing today. I will, indeed, be moving a Motion to this effect to urge the Government to supply fiber optic cables to all counties because counties cannot do that. That has to be done by the national Government. We will bring that Motion to the Floor of the House.

I also take into consideration the hon. Senator from Bungoma, Moses Wetangula, who pointed out that it would be important for us to include staff in the supply of technology that will be given to the Members of County Assemblies (MCAs) so that they will not only be effective, but ensure that the entire county government is effective.

Sen. Elachi, in her contribution, a few minutes back also pointed out a very important part of the advantages that we will get through the use of ICT. However, I would like to summarise what I heard in the contributions. The first one, in summary is that there will be efficiency and enhanced services which will save time and money. It is always the right time to save money.

ICT solutions will create faster communication. Every time we communicate faster, we save time. There are also benefits to the wider economy. Building an ICT infrastructure and the training of government officials sends a signal to the public that we have moved to the ICT age. Even those who will walk to those offices and see MCAs working in good offices with viable computers will also begin to domestic the use of ICT.

We cannot over emphasise the use of ICT as a benefit to rural and marginalised populations. When you look at the impact of affordable mobile connection to the rural areas you will begin to appreciate what ICT can do at that level. We even have people who are getting jobs out of this country. I know somebody who got a job in Borneo by simply searching for jobs under the ICT. Therefore, centralizing thinking around the ICT will help us a great deal. Of great importance particularly to the Kenyan population is the creation of transparency and fighting corruption through the use of ICT.

From what we have been hearing and seeing, it is clear that those intentions are there. There will be people who will be hanging outside offices of county governments with the clear intention of exploiting county governments as much as they can. One of the ways to ensure that this does not happen is to make sure that there is clear use of ICT, especially in the area of procurement and oversight for the same procurement. The MCAs are charged with oversight. It is necessary for them to access information instantly on any issues of procurement, expenditure on any amount spent by any county governments and, therefore, the use of ICT in their offices will greatly enhance this.

Communication with the Senate and searching for easy reference regarding the Public Procurement and Disposal Act and all other legislation that is necessary for them to be effective overseers can be found in the computer instantly. Therefore, we are convinced that if we want the county governments to be run in a transparent manner, it is vital that our legislators in the county level are empowered sufficiently to do so.

Of critical importance to this matter is training. We cannot emphasise this more. It is one thing to put computers in front of people and quite another to make them use them. We would like to see a programme where there is training. As the Chairman of the

Committee on Education, Information and Technology, we will be going round counties and asking county executives responsible for ICT and education what kind of programmes they have in place for their MCAs and other staff members in their counties.

We, as a Senate, and as a Committee of the Senate, intend to ensure that counties are totally integrated and efficient in the use of ICT. The only way to do that is to ensure that there are budgets within county administration for training of people who will be given the computers.

I also concur with Sen. Wetangula in his contribution when he said that we should also use the forum that the Speaker has with the county Speakers and make contributions that are viable. Together, we should approach the donors that he proposed like the Department for International Development (DFID), United States Agency for International Development (USAID) and others. We should also remember that this is not something we should take lightly and think that we can just talk about it with donors. Donors are welcome to support. However, we have a Ministry of Devolution and Planning whose responsibility is to provide capacity at the county level. Therefore, in addition to the donors we will approach, we will also require that the Ministry of Devolution and Planning steps in to see that it happens.

I would like to reply. However, I seek your indulgence under Standing Order No.51(3) since this is a matter that affect counties so that you put the question when there is a full sitting in of the House, tomorrow at 3.00 pm.

**The Temporary Speaker** (Sen. Ongoro): That is my prerogative.

**Sen. Kagwe:** Madam Temporary Speaker that is why I was seeking your indulgence. I apologise.

**The Temporary Speaker** (Sen. Ongoro): Do not propose the time because you will be speaking for me.

**Sen. Kagwe:** Madam Temporary Speaker, I withdraw and leave you to decide the time.

**The Temporary Speaker** (Sen. Ongoro): Well, your request is in order under Standing Order No.51(3). I will assign the putting of that Question to tomorrow at 3.30 pm.

Next order!

#### ESTABLISHMENT OF COUNTY PUBLIC HEALTH COMPLAINTS BOARDS

THAT, concerned with the rising cases of patient mistreatment, negligence and professional malpractice by medical personnel in public and private health institutions in Kenya which take the form of misdiagnosis, wrong decisions on treatment and prescription, medical or surgical errors, physical or verbal abuse, detention for inability to pay for services and alcoholism; aware of the devastating effects of such acts of commission and omission which have resulted in suffering, permanent injury or death of innocent Kenyans contrary to Articles 26, 43(1)(a) and 53(1) of the Constitution; concerned that most of those affected are the rural poor; further concerned that there are very few channels of addressing these abuses; the Senate urges the Government to establish



public health complaint boards in all the forty-seven counties to address the systematic accountability issues that underlie rights violations in healthcare facilities in Kenya.

*(Sen. Wetangula stood up in his place)*

**The Temporary Speaker** (Sen. Ongoro): Yes, the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I am the leader of the oppressed.

**The Temporary Speaker** (Sen. Ongoro): There is no such title in this House. You are the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, seeing the numbers in the House, the next Motion to be moved by Sen. Nabwala is what we have to deal with next.

I seek the Chair's indulgence so that it is moved tomorrow in the morning. In the House Rules and Business Committee, we gave it an opportunity for today and tomorrow so that we can have full debate on it. Probably, she will move it, but the person she had planned to second her is not here.

**The Temporary Speaker** (Sen. Ongoro): You cannot put words into the mouth of a fellow Senator who is present in the House. We cannot keep on moving business because people have decided not to be in attendance. The Mover of the Motion is in the House. If she is ready, I find no problem in her moving it.

**Sen. Nabwala:** Madam Temporary Speaker, the Secunder of my Motion is not here. He had asked leave, which I granted him, because he had some other engagement elsewhere. So, I concur with what---

**The Temporary Speaker** (Sen. Ongoro): You are seeking leave that you move the Motion tomorrow.

**Sen. Nabwala:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): That is all right since you are in the House.

We will move on to the next Order.

*(Motion deferred)*

#### RESTRUCTURING OF PROVINCIAL ADMINISTRATION

THAT, aware that the recent actions taken by the Inspector General of Police to appoint police commanders at the County level have raised concerns on the implementation and interpretation of Article 246(3) of the Constitution; realizing that the Government has since then gone further to appoint former Provincial Commissioners to hold Regional positions raising further concerns on the implications of Article 1(4)(a) and (b) of the Constitution; aware that paragraph 17 of the Sixth Schedule to the Constitution states that "within five years after effective date, the National Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and

respect the system of devolved government established under this Constitution”; the Senate hereby calls upon the Government to clarify the actions taken by the Inspector General of the Police given the constitutional provisions and to table in the Senate a Policy Paper providing a time action plan for the restructuring of the Provincial Administration

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, the Mover of this Motion, Sen. (Prof.) Anyang’-Nyong’o left the House and informed me that he has an appointment with his doctor. So, he is not here. His anticipation also was, perhaps, that the Motion that we have just deferred would go on.

*(Motion deferred)*

### **ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no further business in the House, the Senate is adjourned to tomorrow, 31<sup>st</sup> July, 2013, at 9.00 a.m.

The Senate rose at 5.55 p.m.