

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 12<sup>th</sup> November, 2013**

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

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

### PRAYERS

### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, let us determine if we have a quorum.

*(The Clerk-at-the-Table consulted with  
the Deputy Speaker)*

Hon. Senators, I am informed that there is no quorum. I order that the Division Bell be rung for ten minutes.

*(The Division Bell was rung)*

Hon. Senators, we now have quorum. Let us now go to the business of the day.

**The Clerk-at-the-Table:** Order No 6: Notices of Motion.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Deputy Speaker, Sir, I beg to move Motion No.12 on the Order Paper.

**The Deputy Speaker** (Sen. Ongoro): Senator, we have not got to that point yet. Order No.12 is not a Notice of Motion but a Motion.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Okay.

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## STATEMENTS

WITHDRAWAL OF SEN. MUTHAMA'S  
SECURITY DETAIL

**Sen. Orengo:** Mr. Deputy Speaker, Sir, I stand to request for two Statements from the Committee on National Security and Foreign Affairs, and I must declare here that I belong to that Committee. The Statement I request is as follows:-

(i) Whether the Government could explain the reason for and/or the circumstances surrounding and leading to the withdrawal of security personnel and bodyguards attached to the Senator for Machakos County, Sen. Muthama.

(ii) Whether the Government is satisfied that the security and safety of Sen. Muthama will not be compromised or adversely affected by the withdrawal.

(iii) Whether the Government could deny or confirm that the decision to withdraw Sen. Muthama's security is largely based on the stand he has taken on a number of issues of a public nature including questioning the results of the general elections held on 4<sup>th</sup> March, 2013, the International Criminal Court (ICC), sharing of national revenue between national and county governments, the reform of the electoral system and the need to hold a national referendum.

(v) Whether the Government will reverse the decision and have the officers returned immediately especially given the key role of the Minority Whip in the leadership of the Senate.

(v) In view of what has happened to Sen. Muthama and the alleged attempt to gag the media, could the Government confirm whether the Jubilee administration is committed to the freedoms of expression, the principles of open and good governance, transparency and accountability in the management of public affairs as provided for in the Constitution of Kenya.

(vi) What the policy and practice of the Jubilee administration is regarding the provision of security to Members of Parliament and in what circumstances can such security be withdrawn.

Mr. Deputy Speaker, can I pause?

**The Deputy Speaker** (Sen. Kembi-Gitura): Yes. Sen. Haji, I think this is for your Committee.

**Sen. Haji:** Mr. Deputy Speaker, Sir, I think this does not need a lot of time. It should be ready by Wednesday morning next week.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that okay, Sen. Orengo?

**Sen. Orengo:** Yes, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The security of Kenyans is very important---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! The Statement has been sought and the date when it will be issued has been set, so I cannot

understand why you would be standing on a point of order. That issue is now spent. I think I am right in suggesting that the issue has been spent because Sen. Orengo has sought his Statement and Sen. Haji, the Chairman of the Committee, has indicated when he is going to issue it. You will have ample opportunity to seek clarifications when that Statement is issued in the House.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I do not want to ask further issues on that Statement---

**The Deputy Speaker** (Sen. Kembi-Gitura): I think I am right in what I have said because I believe the issue is spent. If you want to ventilate on what Sen. Orengo has said, he has finished and I have made a ruling on when the Statement will be issued. If you want to discuss something else, go right ahead. I do not want to appear like I am gagging you but I want to understand where you are coming from.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I was saying that different from what Sen. Orengo is saying, it is possible when somebody is moving without security for him to be fixed within one hour---

**The Deputy Speaker** (Sen. Kembi-Gitura): But you are now riding on Sen. Orengo's Statement. If you want to seek a Statement, you do so and I will give you permission to do so. I will not allow you to ride on another Senator's Statement and what I do not accept is a point of order. If you want to discuss security generally, move a Motion of Adjournment, but if you want to ventilate on Sen. Orengo's Statement, then do so when the Statement is issued. Sen. Orengo has taken time to write a Statement and seek it. I think we are reading from the same page.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir---

**The Deputy Speaker** (Sen. Kembi-Gitura): Not when you are discussing Sen. Orengo's Statement. I will not allow that. I am not gagging you but I am saying that we must respect the procedure and I think you are not respecting procedure.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I just wanted to ask, in the meantime, could the Chair direct that Sen. Muthama's security detail---

**The Deputy Speaker** (Sen. Kembi-Gitura): I will not direct. Why did you not seek a Statement on behalf of Sen. Muthama?

It is only when the Statement is given that we shall know whether or not facts are stated in the Statement. So, I cannot make a ruling or an order pursuant to any point of order that you may raise on this issue, I am afraid.

Proceed, Sen. Orengo.

#### ALLEGED INVOLVEMENT OF PUBLIC OFFICERS IN COACHING OF ICC WITNESSES

**Sen. Orengo:** Mr. Deputy Speaker, Sir, I also rise to request for a Statement from the Committee on Legal Affairs and Human Rights. The request is as follows:-

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Following the revelation made in the proceedings in respect of the Kenyan situation at the ICC and the Statement made by leaders in the Jubilee Coalition, could it be confirmed or denied by the Government that, indeed, there are public or state officers who have served in both the Grand Coalition Government and the Jubilee Government and are still occupying critical positions in the public service, who coached witnesses and who continue to support, directly or indirectly, the institution and continuation of proceedings at The Hague against the Deputy President?

Since such conduct or abuse, if proved to be true, amounts to commission of criminal offences and contravenes specific provisions of the Constitution, what is the Government doing to ensure that no such persons serve in a public or state office? Is the Government aware that the accommodation of such persons in their administration can lead to dysfunction in the Government and affect not just the delivery of services but also the safety and security of certain innocent persons in the administration?

**Sen. Sang:** Mr. Deputy Speaker, Sir, on behalf of the Chair of the Legal Affairs and Human Rights Committee, I undertake to respond to the issue in the next two weeks.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that satisfactory to your needs?

**Sen. Orendo:** Ten days would be more appropriate. I would have said a week but I want to extend a hand of accommodation, so I suggest ten days.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, what can you do?

**Sen. Sang:** Mr. Deputy Speaker, Sir, I was looking at two weeks as a reasonable time because I know the Chairman, Sen. Wako, is bereaved and possibly will be here in the next one week or so. So, I was just giving him an allowance of another week to deal with the issue.

**The Acting Senate Minority Leader** (Sen. Abdirahman): On a point of order, Mr. Deputy Speaker, Sir. The Committee is not necessarily the Chairman. The Committee has a vice chair and a membership. In short, these are institutions. Could the vice chair undertake to ensure that this is done within ten days?

**Sen. Sang:** Mr. Deputy Speaker, Sir, I appreciate that. This House will be adjourning this week for the county visits. That means that this entire week will be spent in the field. So, two weeks will be adequate for me.

**The Deputy Speaker** (Sen. Kembi-Gitura): Let us compromise and take two weeks. Sen. Orendo, I do not think that prejudices your situation too much.

**Sen. Orendo:** Mr. Deputy Speaker, Sir, I think this matter is extremely urgent and is a matter of concern to members of the public, including myself. Sen. Sang knows that I am normally very accommodative but on this particular one, I ask for ten days.

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

**Sen. Orendo:** And do not allow Sen. Murkomen, he has just come in and does not know what this is all about.

*(Laughter)*

**Sen. Keter:** On a point of order, Mr. Deputy Speaker, Sir. While appreciating what Sen. Orengo has requested for, I think two weeks is sufficient because it is good to have a Statement that is exhaustive. There is no need to rush and especially when the Chair, the Committee Members and indeed most of us will be in solidarity with Sen. Wako this weekend. So, I think the two weeks period is sufficient enough.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. This is an extremely urgent issue because someone who is in office that deals with serious matters such as security or other institution cannot continue being in that position of privilege especially when they know that the bubble is busting. Can we ask the Chairman to bring the Statement in five days?

**The Deputy Speaker** (Sen. Kembi-Gitura): What exactly are you discussing, Sen. Murkomen?

**Sen. Murkomen:** The Statement that Sen. Orengo has just sought.

**The Deputy Speaker** (Sen. Kembi-Gitura): I notice you have just come in. There are two Statements that Sen. Orengo has sought. Which one are you talking about?

**Sen. Murkomen:** The one concerning those who are alleged to be coaching witnesses.

**The Deputy Speaker** (Sen. Kembi-Gitura): The one concerning those who allegedly coached witnesses?

**Sen. Murkomen:** Yes.

**The Deputy Speaker** (Sen. Kembi-Gitura): What we are going to do in this case-- In all fairness, Sen. Orengo, I know it is urgent and it is in public interest and domain, but Sen. Sang has given compelling reasons. Although I appreciate what Sen. Abdirahman has said, that the Committee exists whether the Chairman is there or not, we know exactly where Sen. Wako is and I think it is important that you allow the Committee to come up with a Statement that will be satisfactory to the House and to the nation. So, I would request that you accept the proposed two weeks so that we have this matter finished once and for all.

**Sen. Orengo:** If you allow me, since Sen. Keter has spoken on this, I will oblige.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Well, thanks to Sen. Keter, Sen. Sang you have a reprieve. You have two weeks to give a Statement.

Do we have any more Statements?

Sen. Moi! Are you asking for a Statement or issuing one?

STAND-OFF BETWEEN TULLOW OIL COMPANY  
AND RESIDENTS OF TURKANA

**Sen. Moi:** I am issuing a statement, Mr. Deputy Speaker, Sir.

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Sen. (Dr.) Khalwale, Senator for Kakamega asked for a Statement on the current issues related to the stand-off between Tullow Oil Company and residents of Turkana as follows:-

(i) the urgent measures the Government is taking to end this ugly and unfortunate incident;

(ii) how the Tullow Oil Company acted on the needs of the local Turkanas in their exploitation of the oil resource;

(iii) what the Government is doing to scale up involvement of locals in this grand project beyond the universally accepted practice of simple casual jobs, being offered opportunity as non-skilled task workers and being given simple small-scale businesses and contracts;

(iv) what guarantees the Government is giving on the safety of the non-Turkana employees from elsewhere who are reported being evacuated.

I beg to make the following Statement:-

Regarding the urgent measures the Government is taking to end ugly and unfortunate incidents, I take cognizant of the fact that the oil company has already resumed operations, so, this Statement came a little bit late. Nonetheless, the national and the county governments have engaged in a number of urgent discussions with the aim of bringing the suspension of operations at Tullow oil drilling sites in Turkana to an end and indeed, it has come to an end. These discussions have involved the Cabinet Secretaries for the Ministry of Energy and Petroleum and the Ministry of Interior and National Coordination, Governors, Senators, Members of Parliament from Turkana County and senior representatives from Tullow Oil.

The Government is committed to delivering a safe and secure operating environment for Tullow operations in the country. The Cabinet Secretary, Ministry of Energy and Petroleum will continue to hold regular meetings with Turkana leaders and senior Tullow officers to resolve all emerging issues amicably. In addition, leaders of Turkana County have held meetings in the county to sensitize the public on the need to allow operations of Tullow Oil Company to resume, which they resumed on 6<sup>th</sup> November, 2013. Also, Turkana leaders have agreed to support Tullow Oil Company to resume operations.

Regarding how Tullow Oil Company has taken care of the needs of the local Turkana in their exploitation of the oil resource, Tullow takes its relationship with local communities as key stakeholders in tackling all operations in Turkana. Tullow Oil has been exploring oil in Turkana since 2011 and currently employs over 1,000 people from the Turkana area. Tullow has informed us that they have spent Kshs80 million on Turkana suppliers since the start of 2013. As the oil industry matures in Turkana, more opportunities will be afforded to specifically local Turkana companies for them to benefit from increased petroleum operations.

Regarding what the Government is doing to scale up involvement of locals in this grand project beyond the universally accepted practice of simple casual jobs, being given

opportunity of non-skilled task workers to being given simple small-scale business and contracts, at this early stage, the Government is challenging the oil sector to provide guidance and support for communities to enable them to build capacity in the supply chain. Tullow Oil has informed us that they are committed to developing local capacity to achieve oil and gas standards regarding provisions of goods and services to oil operations.

The Government will support this initiative through insisting that oil companies increase local content in their operations and also be transparent in tender awards and employment. Tullow Oil has offered scholarship opportunities to Kenyan nationals including four Turkana local students to pursue post-graduate studies in highly specialized areas related to the upstream oil industry in top overseas universities through its group scholarship scheme.

Regarding what guarantee the Government is giving on the safety of non-Turkana employees from elsewhere who are reportedly being evacuated, provision of a safe and secure working environment is critical for all employees and sub-contractors working on behalf of Tullow Oil. During the engagement between all stakeholders, all parties made commitments regarding safety to all employees. The Cabinet Secretary in charge of internal security has agreed to enhance security in Turkana which will be supported by enhanced engagement with the community, increase in Corporate Social Responsibility (CSR) funding and transparency regarding opportunities in oil operations in Turkana.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much.

*(Sen. (Dr.) Khalwale walked towards  
the Dispatch Box)*

Sen. (Dr.) Khalwale, where are you going?

**Sen. (Dr.) Khalwale:** It was mine---

**The Deputy Speaker** (Sen. Kembi-Gitura): Please take your seat.

Sen. (Dr.) Khalwale, what exactly were you coming to do at the Dispatch Box? This is not a casual House where you just walk in and walk out. We have laws and procedures and even if it is your Statement, you must rise and seek permission to speak. You cannot just walk to the microphone. That is not acceptable and not allowed. I am not saying this for the first time. I think we must have some decorum in this House and respect for the laws and rules that we have set for ourselves. I think it is important that we do that.

**Sen. Billow:** Mr. Deputy Speaker, Sir, I would appreciate if the Chair would clarify on the policies of the Government, particularly this Ministry, regarding the equitable distribution of resources. The main thing today in this country is about equitable distribution of resources. That is why we are having devolution. The concern here is that the company called Tullow Oil is not actually benefitting the people of Turkana in terms of procurement of goods and services.

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This is a major concern to all. Could the Chairperson confirm that it is now going to be the policy of the Ministry of Energy and Petroleum that all these oil companies as a matter of policy, procure goods and services from the residents of that county? For example, in transport, we are told that out of the 300 trucks and vehicles they have hired, only 20 come from Turkana but the rest are from outside the county. Could the Ministry confirm that they will in fact develop that policy?

**Sen. Munyes:** Mr. Deputy Speaker, Sir, so much has gone wrong in the way Tullow Oil operates in Turkana in terms of employment, award of tenders, Corporate Social Responsibility (CSR) and in terms of the general attitude towards the locals. I want to give an example; for them to outsource charcoal, a product readily available in Turkana is outrageous, to actually give 20 scholarships and award Turkana only two and not four as he puts it where the courses offered are like business administration which are available in the local universities but they give the best petroleum courses to their own people, is also outrageous; to get 14 international non-skilled labour is really outrageous. For example, an American coming to sweep or a Nigerian coming to cook is a job that I would imagine is for a local resident.

Therefore, I want to ask two issues; in terms of the US\$1,000,000 they talk of as CSR, who decides where the money is to be spent? Whom have they consulted for the purposes of implementation of that initiative? The second issue that I want to talk about is progress. We met as leaders and also consulted the President and resolved the matter but only with few conditions; let them allow us to audit employment in that company. We want to do due diligence. We want to be shown who has been employed.

**The Deputy Speaker** (Sen. Kembi-Gitura): “We” as who?

**Sen. Munyes:** “We” meaning the Turkana people.

**The Deputy Speaker** (Sen. Kembi-Gitura): I think it is important to say that.

Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. In the course of this particular unrest, the Member of Parliament, hon. Lomenen, was arrested. He was even made to record a statement. Now that demonstration on this matter has been found to be legitimate, will the Government apologise to the Member of Parliament and allow elected leaders to lead because we were elected to represent people?

Secondly, the seriousness of this matter is that on analysis, you will find that there are two jobs of coordinating activities between Tullow and the local community. Could the Chairman tell us why they have refused to employ Turkanas in these public relations jobs? This is one area you would expect the company to use local people to connect to the community. Why have they chosen people from communities that are believed to be controlling events in the country?

Finally, as evidenced by what took place in Ikolomani, in the first quarter of the last century, regarding gold mining, these people just came, took all the gold, started joking the same way that Tullow is joking and pretended to be training some people from Kakamega but nothing could be seen on the ground. What measures has the Government



put in place to ensure that whatever they leave on the ground is not just hospitals and the simple things as part of CSR but that the oil industry and technology will eventually be handed over to Kenyans?

**Sen. Kagwe:** Thank you Mr. Deputy Speaker, Sir. I also rise to seek clarification from the Chairman regarding matters of CSR. When we talk about CSR, this is pegged on a percentage of earnings especially in civilised nations. You could be operating a plant of USD100 million, which may sound like a lot of money, when in corporate terms, this is nothing. I want to ask a question regarding some of the things we are saying here. We cannot say that Nyeri County needs to control who Barclays Bank is employing in Nyeri County and to audit; that is what Sen. Munyes has proposed. We cannot go, as leaders, to micromanage organizations. We can only deal with them in terms of policy and concepts that we have agreed upon. However, we cannot tell them who they will employ where.

**Sen. Orendo:** On a point of order, Mr. Deputy Speaker, Sir. My understanding is that you gave the distinguished Senator from Nyeri a chance to seek clarification. However, he is now giving us a lecture which I agree with. However, this has been brought at the wrong time. This is a time to request for statements, answers, or clarifications. He has given us a very long lecture which should be given by the Chairman.

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. Kagwe, are you giving us a lecture? You should be seeking a statement.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I was simply explaining this so that I eventually ask a question. Is it the national Government's policy or any county policy to micromanage an organisation?

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. Munyes wants to give you some information. Do you want to be informed?

**Sen. Kagwe:** Yes, I want to be informed.

**Sen. Munyes:** Mr. Deputy Speaker, Sir, we worked in harmony with these organisation. However, for three years, they refused to give us information. So, in that case, what do you do when a company - which is Kenyan - refuses to disclose its employment structure? Later, we found out that they were bringing in unskilled expatriates. Is it not fair to ask for that kind of disclosure?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the Constitution provides that when resources are found in a particular area, a particular percentage should be given to the local community. Is the Senator from Nyeri in order to mislead the House that hon. Munyes is wrong to advocate for the share of the Turkana people in a resource that is located in his area in accordance with the provisions of the Constitution of Kenya?

**Sen. Sang:** On a point of information, Mr. Deputy Speaker, Sir. I wish to inform the hon. Senator that he is referring to Article 66(2) of the Constitution.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, on the contrary, I spoke about the corporate social responsibility (CSR) and expressed that in most jurisdictions, organisations and companies, this budget is a percentage of the revenue of an

organisation. I did not talk about the percentage in terms of the profits from an organisation that should go to the county. I did not mention that. However, indeed, I totally believe and agree that a fair percentage should go to the county government.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Billow, are you seeking for a clarification? You have a good understanding of procedure.

My understanding of a point of order is that it can come in the course of a contribution. However, if you wait until the contribution is over, I take it that the matter is spent. It is sad and unfortunate for me that I did not catch your eye.

**Sen. Okong'o**: On a point of clarification. I want the Chairman to clarify, with regard to payments, about Kshs80 million paid to local businesses. Could the list be provided so that we see who benefited from the Kshs80 million?

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not know about that, Sen. Okong'o. I do not know how that would fit in. Sen. Moi, could you react to that?

**Sen. Moi**: Mr. Deputy Speaker, Sir, I want to reiterate what Sen. Munyes has said. The standoff has been resolved. This has been resolved in consultation with all stakeholders. A committee has been formed. The committee consists of all local stakeholders and inter-ministerial committees. Therefore, in future, we will not get into such situations.

We also need to note that safeguards have been put in place so that we do not fall into this situation. However, it is important for us to note, as a Senate, that the Energy and Petroleum Act of 1997 will be amended and that will be brought to this House. That should cover all the concerns we have here today. Between now and then, I am satisfied to say that all is well in Turkana. The committees have been put in place and, in fact, all the grievances have been ironed out. The issues of the monies that were shared out, USD 1 million will be increased in the next financial year to USD2 million. The issue of scholarships to locals will also be doubled. This year, they paid Kshs24 million to primary and secondary schools best students bursaries. That will be doubled. However, what is important is for us to focus our eyes on the amended Energy and Petroleum Act where we will set things right.

Last but not least, the company paid Kshs500 million towards taxation in 2012. The revenue allocation that locals will get, under our new Constitution, is 5 per cent. However, I think it is up to us, as the Senate, to increase this. This allocation is divided between the community, county governments, investors and the national Government. It is up to us, as a House, to set the record straight and to increase this for the benefit of our people in the counties.

**Sen. Billow**: Mr. Deputy Speaker, Sir, the fundamental issue in the statement sought was about equitable distribution. When a petroleum company is carrying out an exploration, all the costs incurred are recovered later from the revenues that come out of

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the production. That is why the Ministry of Energy announced, last week, that they want auditors to audit all the expenses incurred by all the exploration companies so far.

That means that in reality, all those expenditures are operating as public entities. Those costs will be borne by us, the taxpayers. That is why, under the County Governments Act, there is a provision which says that when you are recruiting or carrying those kinds of things, 70 per cent of the resources should be for the local people in that county.

Since this issue is happening in that county, the Chairman should be very clear. This is not just about doubling the number of scholarships or CSRs. Could he confirm that the distribution of the scholarships and the money or resources will be based on the 70 per cent being retained for the Turkana people and 30 per cent will go to the people in Turkana because that is what they are supposed to do?

**Sen. Moi:** Mr. Deputy Speaker, Sir, that is the policy. However, the Act has to be enacted. That is for us, as a House, to do.

**The Deputy Speaker** (Sen. Kembi-Gitura): I think that is the end of Sen. Khalwale's Statement.

#### RAMPANT KIDNAPPINGS IN KIRINYAGA COUNTY

**Sen. Haji:** Mr. Deputy Speaker, Sir, on 24<sup>th</sup> October, 2013, the Senator for Kirinyaga County, Sen. Daniel Karaba, requested for a statement on the rampant kidnappings in Kirinyaga County.

Mr. Deputy Speaker, Sir, I have the statement with me. However, I know that the hon. Senator asked this with a lot of interest. He has been very patient to wait for the statement. I hear that he is now out of the country and would like to have your guidance on how to go about it.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Haji. Are you seeking my view on that? Sen. Karaba is out of the country. I know that the statement is the property of the House. However, since he is the one who had sought it and this is a matter that touches him very much, I direct that you give it next week on Tuesday when I hope that Sen. Karaba will be back in the country.

Is that okay?

**Sen. Haji:** Mr. Deputy Speaker, Sir, let me give it on Thursday.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thursday next week is fine. Next Order!

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, you had an issue you wanted to raise.

WITHHOLDING OF KCSE CERTIFICATES  
BY SCHOOL HEADS

**Sen. Musila:** Mr. Deputy Speaker, Sir, I apologize for coming late. But I sought for a Statement from the Chairman of the Committee on Education and Information Technology over a month ago. This concerns the withheld certificates of students who finished schooling, did examinations and head teachers continue to hold their certificates on account of unpaid fees balances, notwithstanding that we passed a law last year making it illegal for anyone to withhold a student's certificate. I would like to know when this Statement will be brought to the Senate because it is over a month since I sought for that Statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kagwe let me first point out to you that this Statement was sought on 17<sup>th</sup> September, 2013 and you undertook to give a Statement before 16<sup>th</sup> October, 2013 which is a month ago. What is the current position?

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, first, I want to apologize to Sen. Musila for the delay. If you recall, I read a Statement here on this subject, but the Statement was unsatisfactory in the eyes of the House. I, therefore, sent the Statement back to the Ministry, to the Cabinet Secretary concerned, but unfortunately he has been away. When an attempt was made to give the Statement through another office, I advised them that this matter was too important to be handled by somebody else. In fact, what we have done as a Committee is that we have asked the Cabinet Secretary concerned to appear before the Committee so that we can interrogate him and then subsequently come with a Statement that we believe that the House can accept. So, if I am given two weeks, I will ensure that as soon as the Cabinet Secretary is back into the country, we will be able to engage him and bring the Statement.

**The Deputy Speaker** (Sen. Kembi-Gitura): Indeed, the record shows that you gave the Statement on 16<sup>th</sup> October, 2013 and you were supposed to give a further Statement.

**Sen. Kembi-Gitura:** Yes, Mr. Deputy Speaker, Sir. Sen. Musila, does that satisfy your need?

**Sen. Musila:** Mr. Deputy Speaker, Sir, I thank the Chairman of the Committee, but it is to be appreciated that the more these certificates are delayed in the hands of head teachers, the more the former students suffer because they cannot access employment. Recently, as you are aware, there was a recruitment exercise into the armed forces and many youth all over the country could not attend the recruitment exercise because they lacked this important document. Could it be the final promise, that within two weeks, he will bring the Statement here?

I know the Chair is also concerned because Murang'a County also has a lot of problems with regard to this issue and I also know that every Senator is concerned. We want a concrete answer as to why the head teachers are keeping those certificates when the law is there. This amounts to impunity.

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**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kagwe it so ordered and you should come with a comprehensive Statement because it is affecting youth in all counties.

CIRCUMSTANCES SURROUNDING THE  
DEATH OF HENRY NYABUTO OMWANGE

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir. You will recall that last week the Chairman of the Committee on National Security and Foreign Relations, Sen. Haji, promised to issue a Statement today regarding the death of Mr. Henry Nyabuto Omwange. In fact, we applauded the speed at which he was going to give this Statement but I have not had that response to date.

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

**Sen. Haji:** Mr. Deputy Speaker, Sir, my good friend and former colleague Minister should appreciate the fact that sometimes we try to do our best but people in the Ministry are a bit slow. I have been pursuing this Statement and hopefully by next week, I should be able to answer.

**The Deputy Speaker** (Sen. Kembi-Gitura): Could you make a commitment?

**Sen. Haji:** Mr. Deputy Speaker, Sir, next week on Thursday.

**The Deputy Speaker** (Sen. Kembi-Gitura): Since the Clerk-at-the-Table had read the next order, we shall move straight to resumption of debate on the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.2 of 2013.

I want to say the following: As you know this is an open ended debate, but if it gets to 5.30 p.m., we shall interrupt debate on this Bill and go to Order No.12, Motion for Adjournment so that we can give you time to ventilate on the Motion.

**BILL**

*Second Reading*

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL,  
(SENATE BILLS NO. 2 OF 2013)

*(Sen. (Dr.) Khalwale) on 7.11.2013)*

*(Resumption of Debate interrupted on 7.11.2013)*

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I rise to support the Bill by Sen. (Dr.) Khalwale and say that it has been long overdue. In 1950, India moved a Bill to stop the use of emblems and titles that people were not entitled to. Therefore, it is only fair and timely that as we move towards this new dispensation of a bicameral parliament and also in the creation of new offices that did not exist before, that we address this matter very

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seriously because, otherwise, we will run amok as far as self aggrandisement, praise and such other associated egoistic behavior is concerned.

Mr. Deputy Speaker, Sir, in the United States of America (US) from which we have modeled a bit of what we are doing here in Kenya, it is very clear what titles and emblems there are. In the 50 States, they have their own structures of governance, their own emblems and their own parliaments. What has not happened is that in the US we do not have titles like Your Excellency and so on. While I accept that in this country – because of history – it is important for us to carry the title His Excellency for the President and the Deputy President as proposed by Sen. (Dr.) Khalwale. I believe that the rest of us should carry the names that we are called. I support the Bill in that respect.

Mr. Deputy Speaker, Sir, if we allow people to call themselves whatever they want to call themselves, there is nothing that is going to stop the Members of the County Assemblies from proposing that tomorrow they are called Your Excellency, Your Eminence or whatever other title they may design for themselves. People are blaming Governors for calling themselves Excellencies but indeed there are some jurisdictions globally, Thailand which is a monarchy being one of them where there are such titles as Your Excellency.

Therefore, in order for us to have some sort of sanity and order, it is important for us to legislate what people will call themselves. I also propose that in addition to the proposed Bill by Sen. (Dr.) Khalwale, it is also important for us to bring certain amendments - I propose that we should do so during the Third Reading – that are going to expand even further, what has been proposed by Sen. (Dr.) Khalwale. For example, I see the possibility of the creation of county flags that can be used by the various counties and indeed, if the Members of the County Assemblies or the executive wish to use those flags, then I see no reason why they should not be allowed to use them because it is some sense of pride as far as the formation of counties is concerned.

I also see the possibility of using certain symbols even in vehicles. For example, I have seen people placing number plates on their cars that identify who they are. For example, I have seen Governors' vehicles inscribed with the letters GOV. I also have seen Senators who have bought a complete name in the front as a number plate called Senator I or Senator II or whatever other Senator number that they feel is appropriate for them. I think this is a matter that we should inform the Bill that is before us so that if it is the Members of Parliament--- I remember in the past, there used to be symbol MP on a vehicle and I think it is important for *wananchi* to recognize that the person they elected in their constituency called an MP is there. I also see the necessity for coming up with something for the Senator or the Governor. What I cannot agree is why we create a name that does not exist in law.

Mr. Deputy Speaker, Sir, in the use of the flags, I believe – I will be moving an amendment to this effect – that every Kenyan can actually put a flag inside or outside his house. There is nobody who owns the Kenyan flag more than Kenyans themselves. If you walk around on national days or during an important event for the people of the United

States, you will see flags all over people's houses. They hoist them as a sign of patriotism. I see no reason why a Kenyan who feels patriotic and wants to put up a flag in a certain manner, for example, extending through his window, I see no reason why they should be denied. In fact, further, I see no reason why an individual cannot be able to put a Kenyan flag on his dashboard. If you walk around Nairobi in traffic jams, you will see people have beautiful Kenyan flags on their dash boards. There should be no reason why a Kenyan cannot put a flag inside his vehicle as opposed to the President's which is outside.

I think there are several aspects that we can address in this Bill. In addition to that, is also a matter to do with – I do not know whether this is a matter that Sen. (Dr.) Khalwale had considered – legislating the titles. I think it is also important for us to legislate what goes with the title because when you call yourself a Senator and then you demand to be given four cars to trail you along, I do not know under what law that is happening. I have seen it with my own eyes - it is not just the Governors – Senators go riding with five cars, complete with police sirens on their vehicles and with all manner of names emblazoned on their cars. We must agree that like cleanliness, humility is probably second to godliness. So, the fact that you were chosen by the people, it must be understood in the same manner as it is said.

You were elected by the people and, therefore, your bosses are the people. You cannot be employed by somebody and then you become the boss of that person. It goes without saying that all honour should go to the public. I know that all glory should go to God but, at least, all honour should be given to the public. In bringing the Bill here, it must reflect that spirit; that never should we, the elected leaders, lord it over the people who actually elected us. That is why in your contribution, as I recall, you did say that even in some sleepy towns of this country, you will find a siren sounding very loudly in a town that has got only one street and probably three cars. You will find the traffic police and other associated security personnel standing and pushing everybody away, never mind that there are only old ladies carrying *viondos* to the market. So, I think that this Bill addresses the huge egos that we are showing to the public who actually elected us.

Mr. Deputy Speaker, Sir, therefore, I wanted to propose to Sen. Khalwale that as he moves this Bill, he should also consider the aspects that we are raising on the Floor of the House, so that we do not just talk about what titles and emblems that we can use. In my view, we should also address the issue of not using them. In other words, even if we pass the law here and say that a Senator will be calling himself "Senator" and will have one bodyguard or one vehicle and a Governor who has also the same area of control like a Senator, will call himself "Governor" and have similar facilities, what happens to an individual who defies that and proceeds to do what they are not supposed to do? There is no carrot in law that does not have a stick. So, we must introduce the aspects of the stick.

In other words, if you call yourself "excellency" and you are not the President, Deputy President, wife of the President or Deputy President or whatever other spouse as may be in the future, what happens then? I think that there should be a penalty for the use

of titles and symbols that you are not entitled to. That is why we should open the area of symbols, so that even the mwananchi has got a chance to use certain Kenyan symbols, such as the flag. If it is a county assembly, they have got the county flags, which can be flown by the executives in that county and so on.

Mr. Deputy Speaker, Sir, for example, if people want to fly a flag on a national day and the Senators have been invited to attend the national day, then there will be a way of identifying even their vehicles. Perhaps, there would be a symbol “Senator” on their vehicles or they will fly a flag on that particular day. But you cannot be messing around with the entire county and clearing people every other day, especially when you work in those sleepy towns. Therefore, let us look at this thing with a futuristic perspective and ask ourselves what will be happening in the future. Let us also not legislate for or against an individual or position, but do so to create order, decorum and protocol amongst Kenyans.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I also rise to support the Bill.

Mr. Deputy Speaker, Sir, indeed, we have seen our Governors misusing not just our flag, but also the coat of arms. When you look at the cards that we have right now from the county governments, you will find that they have the coat of arms. The Governors have formed their executive teams which have also forgotten what is in the Constitution. As we consider the Bill, we need to look at also the word “Minister” and caution the county governments that we do not have ministers in the county governments.

They need to emulate the Governor of Machakos because when he was introducing his team, he was very clear that they were executive committee members of the county government. It is also confusing members of the public in the county governments. When there is a meeting involving the national Government and the county government, the local mwananchi is left wondering who is the “minister” for health; knowing very well that Kenyans are used to some titles. So, as much as we change them--

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**Sen. Moi:** On a point of information, Mr. Deputy Speaker, Sir.

*(Sen. Elachi resumed her seat)*

**The Deputy Speaker** (Sen. Kembi-Gitura): I assume that withdrawing means that you wish to be informed.

**Sen. Elachi:** Yes, Mr. Deputy Speaker, Sir.

**Sen. Moi:** Mr. Deputy Speaker, Sir, I just want to inform the gracious lady that the word “minister” is derived from Latin and it means “to serve” or “service to the people.”

**Sen. Elachi:** Thank you. I know that, that is what they should be doing, but they are not. In fact, in the “Kenyan English”, we look at “minister” as a very prestigious person.



Mr. Deputy Speaker, Sir, as we look at the Bill, we need to address the issue of the sirens. This is because experienced gangs or thugs will use the sirens to rob banks. People will think that maybe they are escorting a Governor to withdraw his money. This is likely to happen because there is no distinction between the sirens for the ambulances and Governors. We really need to put a provision that if you want to use a siren, then you have to go to the police and request to use it with reasons. We also need to put penalties for flouting everything that we are putting in place.

Mr. Deputy Speaker, Sir, the Governors, in one function that we were in, were very disappointed about the Bill. But we were very categorical and told them that we are not negotiating on this Bill; we have to streamline these issues. But today, I would want to thank the Chairman of the Council of Governors who was very clear and said that it was the Transition Authority which decided that they can be called “excellencies” and were given the vehicles and security. Since the Transition Authority is now going to be dissolved, then I think that we also need to dissolve what the Transition Authority maybe did in good faith, but---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Where have you gotten the information that the Transition Authority will be dissolved? Is that a statement of fact or are you speculating?

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I am not speculating because I think that it has been so much in the newspapers that already Kenyans have---

**The Deputy Speaker** (Sen. Kembi-Gitura): Are you saying that it is something that is finished and we have no role to play?

**Sen. Elachi:** Mr. Deputy Speaker, Sir, we have a role to play. I hope that---

**The Deputy Speaker** (Sen. Kembi-Gitura): Can you, please, correct your statement?

**Sen. Elachi:** Mr. Deputy Speaker, Sir, what I wanted to say is that while we look at what the Transition Authority did without a law, I think that it is important for this House now to put in place a law to guide the Governors.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am interested in your statement that the Transition Authority will be dissolved. I am not going to allow you to skirt around it. I want you to tell me what the position is.

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I withdraw that statement.

Mr. Deputy Speaker, Sir, the other issue is the flag. Indeed, as much as I agree with the Senator for Nyeri that we have a right to fly the Kenyan flag because it also brings that pride that, indeed, we are Kenyans, it is important to also look at the institutions that can fly flags. Now that the Constitution has changed and we have a bi-cameral Parliament and the Cabinet Secretaries are not elected but appointed, I do not think that they need to fly any flags. I also do not think that the Attorney General needs to fly a flag. The key institutions that can fly flags, bring patriotism and Kenyans can understand are the Presidency, Deputy Presidency, the Chief Justice and the two

Speakers. This should be very clear, so that we can respect and have pride in our symbols wherever we go.

Mr. Deputy Speaker, Sir, today, if you ask young children in schools what the meaning of the flag is, they are confused also. For example, my child who is in pre-unit will say that the flag is for the Governors. She may not know that it is a national symbol that unites us, because it has lost that meaning. As much as we used to stand alert and sing the national anthem, today they are confused because the Governors are moving all over with flags on their vehicles. So, it is important also to bring back that pride that we had.

I would request the Mover of the Bill that the amendments should include penalties; that indeed if you are found violating the law, then you have to be penalized. We also have to introduce a serious amendment on the sirens, because that is one thing that we have misused completely. Some Senators are even using them because they feel that since the Governors are using them and nobody is questioning them, then they should also use them. Those are some of the things that we need to address as we support the Bill.

Mr. Deputy Speaker, Sir, we would want to see also the county governments using their respective logos in their correspondences. They should respect the coat of arms.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Well, it appears like there are no more takers on the Floor.

Sen. Khalwale, would you like to reply?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I would like to thank all the 16 Senators who have spoken to this very important issue and specifically, Sen. Wamatangi who seconded the Bill, Sen. Hassan, Sen. Kembi-Gitura, Sen. Wangari, Sen. (Prof.) Kindiki, Sen. Murkomen, Sen. Mong'are, Sen. ole Ndiema, Sen. Nanjira, Sen. Mositet, Sen. Orenge, Sen. Kiraitu, Sen. Lonyangapuo, Sen. Ongoro, Sen. Kagwe and Sen. Elachi.

Mr. Deputy Speaker, Sir, as I respond to what they have spoken to, I want to remind the House about two incidences.

Mr. Deputy Speaker, Sir, in the early 1960s, the then President, Mzee Kenyatta, found that the national flag was being abused. He made a statement to the effect that the national flag is not a piece of cloth which can even be found hanging in a toilet. This statement is in the national archives. He said those words to show how serious the national flag is.

Secondly, Mr. Deputy Speaker, Sir, when the former Minister for Agriculture, Dr. Sally Kosgei, was threatened with sacking for whatever reasons during those difficult days of the Grand Coalition Government, she then told the country that the flag can be taken away by the then Prime Minister because, to her, the flag signifies nothing other than abuse of laws that allowed her to get through the traffic jam very quickly. This offended the whole country on two fronts; one, that even a Minister like herself could not

have respect for the national flag. Two, without members of the public knowing, Ministers were using the flag to break traffic rules by going through the traffic jam very quickly.

I want to assure Members that I will work with them to quickly introduce the proposed amendments. I am glad that this Bill has already gone through the Committee. So, it will move very quickly because the input of the Committee was put on board before we went for publishing.

Mr. Deputy Speaker, Sir, Sen. Wamatangi raised an issue which I must consider at the Committee Stage, namely that when we shall be putting the order of precedence, we must make sure that elected officials take precedence over appointed officers. Since the same House supports those thoughts of Sen. Wamatangi, therefore, it means that in the pecking order which we had put, the Cabinet Secretaries will come after Governors, Senators and Members of the National Assembly in the order of precedence because they are appointed.

The same Senator suggested that County Assembly Speakers should also be recognized. So, in this law, where we overlooked them, whereas we call the Speakers of the two Houses “Right Honourable,” Sen. Wamatangi suggested that we call the Speakers of County Assemblies “Honourable Speakers”. I heard this being supported by many Senators. So, this is an amendment that we can bring on board.

Mr. Deputy Speaker, Sir, another thing that stood out is your contribution. You suggested three important points which we must carry in the amendments. You said titles should signify honour and not power. Those strong words mean that when we drop the words “His Excellency” from the titles of Governors, we will be reminding them that the title of “Governor” that we have given them is signifying the honour of the office of the Governor and that it is not supposed to signify the power of the Governor. Sen. Mong’are supported you by adding the following: that even the Governors of Queen Elizabeth and King George were never called “His Excellency.” They were just referred to as “Governors.”

Mr. Deputy Speaker, Sir, you also said that the number of escort vehicles that Governors use reminds voters of opulence in those counties. You said that the people’s representatives must not use abusive opulence. Therefore, there is need for us to cut down on the escort vehicles.

**Sen. Wamatangi:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, would you like to be informed?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. I would like my brother to inform me. After all, he is the one who seconded me.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, although I have another more substantive point of information that I would like to raise as Sen. (Dr.) Khalwale is answering or replying to the Motion, I also want to inform my good friend and colleague, Sen. (Dr.) Khalwale, that also in the suggestions which I had made, it is important that as

we drop this misuse of the titles, especially that title of “His Excellency,” that we also include the title for the Deputy Governors, because if we do not then include it, then they could be the next “Your Excellencies.” So, that should also be considered, Sen. (Dr.) Khalwale, in that---

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

**Sen. Wamatangi:** So that we do not have a gaping loophole that can be exploited.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is fine, but you can also bring it during the Committee of the Whole.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. The information is well taken because, after all, if we have allowed the Deputy President to be called “His Excellency,” then similarly, we can refer to the Deputy Governor as “Governor;” and when you are qualifying it in the presence of the Governor himself, you say “The Deputy Governor of Kakamega County,” for example.

Mr. Deputy Speaker, Sir, you also raised an important thing that has captured my imagination; namely that dropping of these titles will forever remind us that counties were intended to be units for creation of wealth, and not for creation of power. I could not agree more.

Mr. Deputy Speaker, Sir, Sen. (Prof.) Kindiki suggested that we must deliberately use this opportunity to create a paradigm shift whereby we move away from the desire to worship titles and privilege. We should create commitment to service to the people of Kenya. He also pointed out that there is a serious thing taking place in the counties, where members of the county executive are currently carrying business cards referring to themselves as “Ministers.” Members of the County Assembly (MCAs) are not Ministers; we will see how to bring it in so that we give MCAs their deserved title.

Mr. Deputy Speaker, Sir, Sen. Ongoro, in her contribution, captured my imagination when she talked about the exercise of power and said that there are two types of people in the exercise of power. She said that there are those who are missionaries and those who are mercenaries. She went on to say that the missionaries are the ones we are trying to create in this law. But the mercenaries are those ones who go into office and immediately they are caught up by what Lord Acton said; that, “power corrupts, and absolute power corrupts absolutely.” So, we are very committed to these amendments using those strong words.

In fact, Mr. Deputy Speaker, Sir, it should not be lost to the faithful; the Muslims and Christians who are in this House and the lower House and to the general public that during the debate, hon. Kiraitu and hon. Murkomen became very biblical. They said things that the public should one day listen to as we change these titles because they might be thinking that we are being satanic. Hon. Kiraitu said that “those who extol themselves will be humbled, and those who humbled themselves will be extolled.”

Mr. Deputy Speaker, Sir, hon. Murkomen said that “let whomsoever wants to be great be like a child.”

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**The Deputy Speaker** (Sen. Kembi-Gitura): I think you need to add that he was quoting from the Gospel of Mark.

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I committed myself to science so early in school that I never read the Bible. So, you will forgive me.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is the Bible that I was quoting from.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir, for the reminder.

Mr. Deputy Speaker, Sir, those are the things that stood out. But let me bring out an issue which has been brought up this afternoon by two speakers; namely, Sen. Elachi and Sen. Kagwe. You have spoken to the issue of punishment; yes, it is provided for. I had hoped that we would use this debate to assess the appropriate punishment, because here we have simply suggested that if you breach this law, then you are liable to a fine not exceeding Kshs100,000 or a term in jail not exceeding one year.

Maybe what we need in the Third Stage is to decide whether this punishment is too harsh or too lenient. If it is too lenient, then there is room for us to step it up. I will tell you of a personal chat I had with one of my former colleagues in the Tenth Parliament, who is currently a Governor near here in Nairobi. He told me: "What is Kshs100,000? This flag is so important that I will fly it for myself and my people. If it is Kshs100,000 that you want, I will give it to you every time I am stopped and arrested."

*(Laughter)*

Maybe we need to enhance this punishment a little bit and also remind the Governors that in paying this fine, they will not pay it from the public coffers of the county governments. They will be paying it from their own private pockets.

**Sen. Murkomen:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, do you want to be informed?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, the Governors will also need to be reminded that they can be impeached under provisions of Chapter Six of the Constitution. If you read Chapter Six of the Constitution and the County Government Act, 2012, a Governor can be found guilty of a criminal offence.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. That is why I always love it that in this House I have an opportunity to rub shoulders with lawyers. They always bring me back to the factual aspects of law. How I wish I would also be having an opportunity to be bringing them up to speed on issues of medicine, especially in human relations.

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Therefore, Mr. Deputy Speaker, Sir, in conclusion and as I thank the Members, I would like to make the following points. We have two options, either for you to propose personal amendments which require that you file them with the Office of the Clerk because some of us are new in this House. At an appropriate time, you can then move those amendments on the Floor. I will then be asked by the Office of the Clerk to comment on whether I have any problem with that proposed amendment. That is one way. The other one, which is easier, is for you to work with me so that your amendment becomes my amendment. In that case, you do not have to notify the Clerk that you will be moving that amendment on the Floor as we go on. We shall go very fast. The option is yours.

Mr. Deputy Speaker, Sir, so that the country, which is listening, can be very clear on what the House has generally come to terms with, is that the following people are entitled to a flag. These are the President, the Deputy President and Speaker of either House. The Cabinet Secretaries and the Attorney-General should not fly the flag because earlier on, they used to fly them in order to be distinguished from the rest of the Members of Parliament with whom they were attending Parliament. So, now, because they are not Members of Parliament; they are just clerks of the Executive; they should stay that way in public functions because they are there to be seen and not to be heard.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! I think it is fair to use fair terms. I do not think it is reasonable or fair to call Cabinet Secretaries who were vetted by Parliament and appointed by the President, “clerks” because they are not clerks. In my opinion, the record is always very important. This is going to the HANSARD.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, there are Cabinet Secretaries who feel threatened by Members of Parliament. Therefore, they cannot appear in public to precede Members of Parliament who vetted them. Similarly, at the county functions, Members of the County Executive should not precede Members of the County Assemblies (MCAs) because it is MCAs who vetted them to become servants of the people in their particular counties.

Again, coming from this plenary, it has now become clear that the preferred order of precedence would be:

1. President;
2. Deputy President;
3. Speaker of either House of Parliament; and,
4. The Chief Justice.

The reason we had to swop the Chief Justice and the Speakers of the two Houses of Parliament is because the Chief Justice is vetted by the Houses of Parliament. However, the Speaker is the Head of the Houses of Parliament and is elective. Number four would be the Chief Justice. He would be followed by a Senator, Governor, Member of the National Assembly and Cabinet Secretaries and, hot on the heels, the Attorney-General,

Controller of Budget and the Speaker of the County Assembly; finally, a Member of the County Assembly.

On the issue of titles, the commonsense of this House seems to suggest that the President should be referred to as His or Her Excellency as the case may be and similarly, the Deputy President should be referred to as His or Her Excellency as the case may be.

The Speaker of a House of Parliament should be called the Right Hon. Speaker. This, therefore, means that even you, as Deputy Speaker, are identified in the same manner as the Speaker. We will also be referring to you as the Right Hon. Deputy Speaker.

**The Deputy Speaker** (Sen. Kembi-Gitura): Does that also go with the flag? How do you separate that? That is on a light touch.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, we will find harmony in this. The reason the Deputy President is allowed to fly the flag is because of the nature of the Constitution. The Constitution does not contemplate a situation where, God forbid, in the absence of the President, the Deputy President would be subjected to an election. He automatically becomes the President. Therefore, as the Americans say; “he is a heartbeat away from the presidency.” So, you need not deny him what he would get through a heartbeat. God forbid. However, in the unlikely absence or total removal of the Speaker, we would have to vote before the Deputy Speaker becomes our Speaker. That is something under the Constitution.

In all humility, hon. Senators have led by example. They are saying that they want to be referred to as Senators plainly. Governors, please, take this from us. Just accept to be called Governors. Members of the National Assemblies will remain hon. Members of the Assembly.

I have been approached by Members of the National Assembly and, mark you; this Bill will go for concurrence to the National Assembly. They are thinking that in our proposal, the Bill reduces very many honourable public officers to the ground. They are saying that they would like to remain honourable Members of Parliament. However, instead of referring to MCAs as honourable Members of the County Assemblies, we simply should go the American way and call them Assembly Men and Assembly Women. I will be proposing this amendment so that there is harmony in the bicameral structure of this House.

Finally, but not least, I would like Members to guide me. Should I alter the punishment? Should we have Kshs100,000 or one year imprisonment term or both? That is something we will talk about during other levels of engagement so that we have something that can pass very quickly.

With those very many remarks, I take this opportunity to thank you for the way you have guided us from the time we started.

It is now my time and privilege to move.

**The Deputy Speaker** (Sen. Kembi-Gitura): Dr. Khalwale, without seeming to interrupt you, one contributor spoke about the Speaker of the County Assembly. I know

that all this will come during the Third Reading. However, since you have taken us through the whole system, you did not mention the Speaker of the County Assemblies whom I heard you mention at the beginning of your contributions.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, thank you so much for reminding me. I know that Speakers of County Assemblies are also watching these proceedings. It is also true that the common sense of this House dictates that the Speakers of the County Assemblies, whereas they will not be called the Right Hon, will be called Honourable Speakers of the County Assemblies. They will be allowed to carry that title.

With those many remarks, it is my honour and privilege to move that the National Flags, Emblems and Names (Amendment) Bill, Bill No.2 of 2013, be read a Second Time.

Before I sit down, I would like to draw your attention to Standing Order No.51(3). I request that you adjourn the voting on this very important Bill to another day that you will choose.

I beg to move.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale.

As you know, this is a Bill and does not behoove me to rule whether it is a county matter. That is addressed under Standing Order No.69. On the request of Sen. (Dr.) Khalwale who has moved the Bill, I order that the putting of the Question be deferred to Wednesday, 20<sup>th</sup> November, 2013 in the afternoon.

*(Putting of the Question on the Bill deferred)*

Next Order!

We moved from Order No.7 and came to Order No.8. I told you that the House Rules and Business Committee (RBC) had indicated that we would only handle two matters today. That is the Dr. Khalwale Bill that has come to a conclusion and Order No.12. We will by-pass Order Nos.9, 10 and 11 and proceed straight to Order No.12, the Motion that will be moved by the Senate Majority Leader.

## MOTION

### ADJOURNMENT OF SENATE TO FACILITATE PUBLIC HEARINGS ON TRANSFER OF FUNCTIONS TO COUNTY GOVERNMENTS

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, as the Chairman of the Committee on Devolved Governments, I beg to move:-

THAT, pursuant to Standing Order Nos. 28(4), 31(1) and 50(b), and notwithstanding the provisions of Standing Order No.30, following the application for transfer of devolved functions by County Governments

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and the need for Senators to participate in County hearings on the matter, the Senate do now adjourn until Tuesday, 19th November, 2013.

Last week, the Speaker made a Communication to the House which was important. He said that pursuant to petitions received from leaders of the county governments; this House should adjourn so as to give an opportunity to Senators to participate in this exercise.

The Constitution, Schedule 6 Paragraph 15, provides that Parliament will create a legislation that is meant to provide for a framework for phased out transfer of functions for a period of not more than three years. There has been debate for a long time on whether we should follow these provisions and whether the transfer of functions should take three years or more. Will this be called the phased out of functions or a “big bang” where functions are devolved at once to the counties? It is the duty of the Senate to make a decision in terms of listening to the appeals of the county governments on whether we should have phased out transfer of functions and over what period of time.

The Constitution provides that it is the legislation that should be contemplated. If you read Article 615 of the Schedule, you will see that Parliament shall provide legislation on phased transfer of functions. This is not a choice on whether we will transfer functions in phases. This is whether the phase will take one month, two months, and eight months, one year or three years, as contemplated by the Constitution.

In the first instance, therefore, one of the critical decisions that this House will have to make, after listening to the leaders of counties will be to come back, through the Committee that I Chair, and make a decision on whether we should allow the appeals that will come from the counties; whether we will abide by the Constitution; and, whether we will have a phased out transfer of functions. There has to be a certain period where certain functions have to be transferred for a period of time.

The contemplated legislation in Schedule Six must also provide criteria to be made before functions are devolved. Schedule Six of the Constitution provides that the legislation that is contemplated should be made by Parliament and permit for asymmetrical devolution, whereby all counties should not have similar functions being devolved at the same time. Every county, depending on their capacity and ability to manage certain functions, is allowed to take certain functions at a particular time.

The same Schedule 6(15) provides that there must be a framework under the legislation that will allow the Constitution Implementation Commission (CIC) to provide monitoring and evaluation of devolution in Kenya. This legislation, contemplated in Schedule Six, was enacted by Parliament in 2012 and it is the Transition to Devolved Government Act. This Act provides the criterion that must be met by counties. The Act creates the Transition Authority (TA) and gives it the power to determine whether certain functions should be devolved to certain counties. That decision is made. If one is unhappy, under Section 23(6) of the Act, the opportunity comes in for an appeal through the Senate. That is why we received appeals from the county governments that the County Government shall appeal to Senate against any decision that comes from the TA.

Mr. Deputy Speaker, Sir, when the Senate received those appeals, they were transmitted to the Sessional Committee on Devolved Government. The Sessional Committee believes that this is a very integral process very dear to every Senator. Therefore, it is important that we give an opportunity to as many citizens of counties as possible to participate. That is why the Committee, sitting together with the Liaison Committee, determined that the hearings for transfer of functions must be done on a regional basis. We have groups that are going to be in Kisumu, Kakamega, Eldoret, Nakuru, Nairobi, Garissa, Mombasa and Malindi. The idea is to ensure that we have participation across the country and that three to four counties are supposed to come together to make representation to the various committees.

The Committee on Devolved Government has established, first of all, that the TA has provided functional alliances and competencies of the various counties. Based on this document which has been distributed to the various groups, the TA made a determination as to whether they were going to allow a particular function to go to the county or not. Therefore, this is a very important reference document because if the members of the county executive or the Governors are making representations to the committees, it is challenging this document which was used by the TA to make decisions as to whether or not they would allow certain functions to counties. There are various challenges, of course, because the counties were not treated differently; they were treated uniformly. Therefore, one would have to critically analyze the appeals, whether they will have to be granted separately or uniformly. That is an exercise that we will do after getting representations from the county executive.

Mr. Deputy Speaker, Sir, the Sessional Committee on Devolved Government has proposed questions to the various teams that will be used for appeal. They are very important questions, including assessing the capacity of the counties, managerial and technical expertise within the county and issues to do with supporting legislation. If you go to some of the counties, unfortunately because of the strike and other incapacities, they have not been able to put in place legislation at the local level that can assist in management of a particular function. Therefore, it is important to assess that and to listen to what the county governments have to say about the legal framework at the local level.

It is also to do with the infrastructure that will ensure that citizens are able to participate in governance at the local level and among the various institutions and then whether or not this function can be transferred in phases or at once. This exercise is important and it is the ultimate objective of every Senator and this House to ensure that functions and services are not interrupted in the process of transfer of functions to the counties. It is important to also ensure that we do not just transfer functions at the expense of service delivery to the people and neither should we hold functions at the national level at the expense of service delivery at the local level.

Already, there are a lot of complaints from the health sector as to whether or not the county governments are able to manage staff at the county level and whether this will enhance health standards or not. These are things that when we go to the ground, we

should be able to inquire and listen to. It is time for the Senators to engage in exchanging ideas with the county executive, particularly about investments.

Mr. Deputy Speaker, Sir, I want to go on record that the example that we are reading and watching from Machakos County is a good example. We should think about having mega investments for every county. We should borrow from this kind of example so that we do not just think about revenue allocation from the national Government, but the revenue we are raising from the local level. I was told that Machakos County is building an office whose cost is over Kshs100 million, but very little amount is being spent from the national Government allocation. They are able to mobilize investors and well wishers to donate to the construction of the building. In fact, their only cost is the labour services.

We need the counties to be a little bit innovative in the manner in which they are going to spend their resources. They should prioritize the things that they will spend on and focus on issues that will deliver to the people at the local level. This House is a representation of the whole country, but a Governor only represents one county. It baffles me sometimes when you see a Governor of one particular area busy every weekend issuing statements in various counties without telling the Members of the County Assembly (MCAs) whether they went there for benchmarking or to collect information that is necessary to build their county.

If you see a Senator from this House going to Busia, there is a reason because he is representing Busia at the same time. However, for a Governor, the idea was to have a manager or a Chief Executive Officer (CEO) who is based in the county thinking about the county in terms of investment and development; how to generate money, but not thinking about how to go and issue the next statement. Since this House is taking care of all the counties, if Sen. (Dr.) Khalwale comes to Elgeyo Marakwet County to encourage the Governor, it is within his representation as a Senator from this House. But for our Governors, we want them to focus on management at the local level, attracting investors and people from outside to come and invest in our counties so that we can move on.

Mr. Deputy Speaker, Sir, we will not hesitate to transfer a function if it is in the interest of this House to ensure that that service is delivered at the local level. After this exercise, this House will have been strengthened and every county will feel the impact of this House. I must hasten to say that not all counties appealed. So, you realize in some areas you may not have appeal documents of the counties, but as long as they come there and make representation as to why they did not appeal, there is no problem because it is part of the reason we want to listen to them.

With all those remarks, I beg to Move and ask my learned friend, Sen. Mutula Kilonzo Jnr., to second.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I rise to second this Motion and support my colleague in what he has said. This Motion has come at the right moment. If there was a time the Senate ought to demonstrate that we are in charge of county governments and the assemblies under Article 96, this would be the time because the

Governors and their governments would come to the Senate to represent to us, as Senators, the reason as to why we should defend them in so far as the transfer of functions is concerned. Although it appears that this is late, it is an opportunity for us, as the Senate, to also give some sort of marks to the counties in what they have done so far.

Mr. Deputy Speaker, Sir, from what I have listened to in some of the Committees, I am convinced that in some cases, the TA acted without having the necessary information about the capacity of these counties to carry out some of these functions. I support Sen. Murkomen when he talks about the health functions. We need to forestall what appears to be an industrial strike by the health sector because we need to give them the confidence that our counties can manage the health sector. If we cannot manage the health sector, there is no point in building the cities and the nice looking buildings when our people cannot get good medical care.

It is also my view that in assessing the capacity of these counties, we will be able as Senate to check and move to the other functions which are delaying devolution in terms of transfer of assets. We need to hear from the Governors why the assets cannot be transferred and whether they have done a complete audit. In a place like Makueni, I am told that it appears some assets cannot be found. For us, as Senate, this is an opportunity we must use to find out whether these assets are available.

Mr. Deputy Speaker, Sir, you are also aware, from the information that has come to us, as the Senate, that there is this nice English term known as “unbundling of functions”. If you unbundle these functions, they will be much more than they are. This is something that we need to investigate. We will be going through the unbundling of these functions so that we, as the Senate, can speak to this nation with one voice and say that we are convinced that we have made progress in devolution. Therefore, we need to unbundle these functions. There have been disputes in Nandi and Makueni counties.

For example, with regard to the management of forests, we have been quarrelling with the Kenya Forest Service (KFS) as to why they are logging forests as if Jesus is coming tomorrow. When we go to them, they tell us that this function does not belong to the county governments yet we are told that we have capacity to build hospitals. However, we are told that we do not have capacity to take care of our trees. To me, this does not make any logical sense.

This is a tremendous opportunity for us to look into those assets, particularly in Makueni County where I am glad that we have been given 13.6 per cent as our forest cover and we want to protect our water towers. This is one of those issues that we must deal with firmly. Otherwise, this asset called forest or water will disappear when all of us are concentrating on putting up nice buildings and purchasing nice cars and not concentrating on the future.

There have also been reported disputes between Governors and Senators, Governors and the TA, *et cetera*. There has also been a move to disband the TA. This is the time for the Senate to demonstrate that under that Act, the only method of dealing with some of these issues is through Section 23 of the Act. In my view, there is a

complete framework for the Senate to get involved as a prefect of the counties. If there are disputes among counties, the Senate can intervene to resolve them.

Mr. Deputy Speaker, Sir, ultimately, when we come to the Senate and make a final decision as to whether or not we need to transfer further functions to our counties, I dare say that we will have made a decision that we will have to take ultimate responsibility as Senators to this country because we will then be tasked to ensure that those functions are performed. This will give us an additional responsibility to follow up our Governors and say that we are responsible for making sure that you get these functions to the counties and, therefore, there is no reason the counties cannot perform.

I support this Motion because we have reached that stage where we cannot just sit back. It is in the public domain that only 23 counties have balanced budgets while the rest do not have. So, we must do an assessment and move to a position where we can check whether or not we have crossed the “Ts” and put dots on the “Is”. In my submission, this is something we must do expeditiously. If for anything, we must finish this and give this country a nice Christmas present by telling them that the Constitution that they voted for so overwhelmingly has finally come to pass and, sooner rather than later, every county will be proud to have their own city. This is because the Senate has made a decision that it is time to devolve these functions from the national Government to the county Government.

With those few remarks, I beg to support.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise to support this Motion. From the very outset, I would like to announce to the people of Kakamega County, Busia County, Vihiga County and Bungoma County that their sessions will not be there from tomorrow, because we have been unable to raise quorum. Sen. Wako is bereaved. Sen. Khaniri is out of the country on senatorial business. So, whereas this will go on across the whole country, in our area this will not be there until Monday 26<sup>th</sup>.

Mr. Deputy Speaker, Sir, I had an opportunity yesterday to tour Mombasa County. My daughter is sitting for Kenya Certificate of Primary Education (KCPE) examinations today. So, I was there yesterday to do rehearsal with her, so that she is not worried. Mombasa County is one of my other counties, but I will not tell you why. I had a lot of hope for Mombasa County. However, when I went there, I found that nothing has changed. In fact, what the Governor could have started with and impressed all of us, was to address the issue of raw garbage in Bombolulu. Do you know what the Governor has done? He has erected along the highway a metallic fence and put billboards. If you are a tourist, as you drive to the five star hotels in the North Coast, you will be reading the billboards and not see the garbage. But I was shocked to see the garbage. I saw that the children, cows, chicken and pigs were still there. It is so pathetic. I am hoping that the Committee that will go to the Coast will find time, under “Any Other Business” (AOB),

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to ask the Governor to tell them where they are now, as they ask for this and that function.

Mr. Deputy Speaker, Sir, it is important that I remind my colleagues here the experience that I had in the last Parliament about this. The National Assembly which was doubling up as the Senate, happened in the last year to have done more about devolution than the Senate which is a stand-alone House today, has done in the last ten months. That is the truth. The person to blame is not the Senators. Where is the Kenya Law Reform Commission? Where is the Constitution Implementation Commission (CIC), the Office of the Attorney General and the Cabinet Secretary in charge of Constitutional matters? They are supposed to be bringing here Bills concerning counties, so that we debate and consider them for us to give effect to the Constitution of Kenya.

My dear colleagues, time is moving. The Constitution is very specific in the Fifth Schedule. These days we are stuck in the Fourth Schedule. But if you go to the Fifth Schedule, the Constitution has put clear timelines. Somebody is waiting again for us to remain with two or three months before those timelines expire, before making us to start working up to the middle of the night, for us to make shoddy decisions. This is the time.

Mr. Deputy Speaker, Sir, I want to give special tribute to Martha Karua. When she was Minister for Justice and Constitutional Affairs, she not only did a lot towards what I am talking about, but also gave us the most difficult thing; that is, the roadmap to the Constitution making. The people that Martha Karua was using when she was Minister, those that Mutula Kilonzo was using when he was Minister and Eugene Wamalwa used when he was Minister, are still there. I know of an eminent lawyer and friend called Joash Dache who authored most of the devolution Bills which we passed and are working. Today Joash Dache is still the Chief Executive Officer of the Kenya Law Reform Commission. Why are they sleeping on the job? Why are they not bringing Bills? Ladies and gentlemen, let us not sleep on this one, but do what they are failing to do. We should bring those Bills ourselves.

Mr. Deputy Speaker, Sir, let me give you an example.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Your time is up!

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I beg to support.

**Sen. Elachi:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support this Motion. I also support the sentiments expressed by the Senator for Kakamega County. Indeed, the Constitution in the Fifth Schedule has clear timelines.

Mr. Deputy Speaker, Sir, we know very well that the Governors, through the Council of Governors, have been requesting for some functions to be transferred to county levels. In this House, we have always reminded the Governors that the Constitution is very clear in terms of how to unbundle the functions. Each county is supposed to request for these functions. Today if you ask whether the TA has been able to receive some of the requests, you might find they have not received any. However, the TA has, indeed, decentralized most of those functions. Therefore, within the law, they

might have challenges in terms of telling Kenyans what they have devolved and within this period. .

Mr. Deputy Speaker, Sir, when you look at, especially the counties that had large numbers of county councils, you will find that they are facing difficult challenges in different sectors. They are facing challenges in terms of staffing and recruitment. Counties in North Eastern, for example, are doing well because they follow and respect the law. Therefore, as we go out there, as the Senate, we need to understand what they have done since they took office. One of the things that they have been fighting to be devolved is the function of roads. They want to oversee construction of roads. They want to share machinery, including the excavators, with the national Government. Each Governor wants a grader for his county.

Mr. Deputy Speaker, Sir, you will be very shocked to see most of the county governments did have the capacity to prepare good budgets. Theirs was prepared in the same line as the Constituencies Development Fund (CDF) budgets. Right now, they are accusing the Controller of Budget of not releasing money to them. So, as we visit them, it will be important to know which counties did well in preparation of their budgets. Last week, Governors came out very strongly accusing the Controller of Budget as not being truthful. They were actually fighting for their rights. So, during these visits, we will know who is telling the truth. We want to inform the Governors that we are not going there to interrogate them and their executive teams, but to help each other.

Under provisions of Article 96 (1), we exist in order to safeguard the interests of the counties. We want to listen to their challenges. We also want to know what they have so far achieved, so that when we come back to this House, we will have done justice to our role and given a clear report. So, as we make progress, we need to help the Governors to utilize their second tranche of allocated funds more prudently. They will be able now to know that county “a” is at this level and county “b” is at that level. Indeed, we will also advise the national Government, particularly the Ministry of Devolution and Planning, on the counties that need capacity and expertise.

Mr. Deputy Speaker, Sir, as I support this Motion, I urge county governments to welcome us in their jurisdiction because we are friends. We are there to help each other to develop our counties. The little fights and bickering that we have witnessed between the national Government and county governments can be resolved once and for all.

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

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I rise to support this Motion.

Mr. Deputy Speaker, Sir, as my fellow colleagues were contributing here in support of this Motion, I was remembering and replaying in my mind the scenes of Uhuru Park in 2010, on the day when the Constitution was promulgated. The mood was just simply alive and explosive. The whole country was expectant and every Kenyan was so excited. Finally, there was hope. In one way or the other, we were able to get a new Constitution. All this excitement and the expectations that the Kenyans had on that day,

as they watched the Constitution being signed and promulgated, was because of the promises of devolution.

I wonder if today we called back the same people to Uhuru Park and did the same ceremony, whether they would be as ecstatic as they were on that day, given what we have done within the few months with this Constitution. I think and believe that this is the right time to apply the thermometer to the national temperature and ask ourselves: Do the Kenyan people feel us anymore after entrusting us with the leadership of this country? Are we able to drive this new vehicle of national goodwill to a destiny expected by our people?

Mr. Deputy Speaker, Sir, I have been involved in a quite a number of county visits across this nation. If you visit one Governor in this area, they say: "Oh, we have been reduced to payroll masters. We have no money to do any development for our people." If you go to the other one, there is a different complaint: "We are completely unable to even pay the staff that we have." If you go to the other one, the complaint is the same: "We are unable to build even one road." If we did an overall assessment, probably, more than 90 per cent of all our Governors will either not be positive or optimistic about the future or even happy to be sitting where they are sitting.

It is time to address the issues and ask ourselves; where have we departed from the course? This is a great opportunity for us to do so. We have clustered counties in various regions so that we can receive the delegations and address them on the issues of transfer of functions. This is actually the bedrock of devolution. As we meet and receive those delegations, I want to hasten to add, especially on our part as Senate, that we need to be fully prepared with all the appeals that each county has made differently such that we are able to address them and deal with them to their satisfaction.

Mr. Deputy Speaker, Sir, it is also important that we caution the county delegations, as they prepare to come to meet us beginning tomorrow morning--- I will be sitting here in Kenyatta International Conference Centre (KICC) with my team of Senators, waiting for delegations from five counties, including my own Kiambu County. We will expect, for example, to deal with the Controller of Budget who the other day told us that less than half of the counties have complied and are going to be receiving their budgets for this particular season. From what we heard from the meetings we had with TA, the people themselves at the counties level and even what we heard while debating the Bill by Sen. (Dr.) Khalwale in the Second Reading, there are issues that distract the Governors and county governments from performing.

We want them to concentrate on issues of development so that we can develop this country together. We do not want them to concentrate on issues that will not help their counties. If that is the gauge that we will be using to determine whether we are still on course, then we must re-look and re-read our book on which way to drive devolution.

Mr. Deputy Speaker, Sir, this House is the one which has been entrusted by this Constitution to ensure that, not only the spirit of devolution remains alive, but it is



realized. We, as a House, will do everything that we have to do to make sure that all the pertinent issues that are unaddressed are addressed for devolution to work.

Mr. Deputy Speaker, Sir, as my colleagues who have spoken here earlier have said, we have real biting issues which cannot be wished away, for example, the health and education issues. Those can never be wished away. We must address them first hand.

Mr. Deputy Speaker, Sir, I support this Motion. I also want to request and appeal to my colleagues to make sure that they come with reports. Let us come with comprehensive reports that will assist us to realize our dream of devolution.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. It appears nobody else is taking the Floor and the Mover is not here to reply. He does not have to reply.

Before I put the Question, let me state that under Standing Order No.69, this is not a Motion affecting counties. It may mention the word “county” as it does, indeed, because that is what we are going to do as a Motion of Adjournment, but it has nothing to do with counties. So, I will put the Question and each of you here has a vote.

*(Question put and agreed to)*

### ADJOURNMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! We have now come to the end of the proceedings for today having approved the Motion for Adjournment. Therefore, the House stands adjourned until Tuesday, 19<sup>th</sup> November, 2013, at 2.30 p.m.

The Senate rose at 4.52 p.m.