

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 27<sup>th</sup> June, 2013

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

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

### PRAYERS

### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order, Hon. Senators! Could we confirm if we have a quorum?

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

**The Speaker** (Hon. Ethuro): Proceed with orders for the day.

### PETITION

#### TARMACKING OF KIBWEZI-KITUI-MWINGI ROAD

**Sen. Musila:** Thank you, Mr. Speaker, Sir. I would like to present this Petition, pursuant to Standing Order No.222(2)(a). Before I do so, would I be in order to inform my colleague Senators that the incoming Senator for Makueni, Kethi Kilonzo, has just been cleared by the Independent Electoral and Boundaries Commission (IEBC)?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order! Order, Senator Musila! You are completely out of order! As a senior citizen and a senior Member of this House, you know how one becomes available to the House. So, hold your horses until then.

**Sen. Musila:** I am much obliged, Mr. Speaker, Sir. But I was just excited because of the problem that TNA was trying to cause to us.

Mr. Speaker, Sir, pursuant to Standing Order No.222(2)(a), I wish to present a Petition on behalf of Mr. Joseph Kalinga of Post Office Box 8, Migwani, Kitui. Mr. Kalinga is a Kenyan citizen and a resident of Kitui County. As hon. Senators are aware, under Article 119 of the Constitution, and I quote:-

“(1) Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Standing Order No.217(1)(b) provides that:-

“A Petition to the Senate shall be presented by a Senator on behalf of a petitioner with the consent of the Speaker.”

I wish to confirm that the Speaker has given his consent on this matter.

Mr. Speaker, Sir, Mr. Kalinga petitioned the Senate, through its Standing Committee on Energy, Roads and Transportation, to inquire into the matter of upgrading and tarmacking of Kibwezi-Kitui-Mwingi Road, Road B7. The petitioner draws the attention of the Senate to the following.

Kibwezi-Kitui-Mwingi Road is 212 kilometres long. The Kibwezi-Kitui section of the road is classified as B7; it is 170 kilometres long; while the Kitui-Mwingi section is class C94; it is 42 kilometres long.

Mr. Speaker, Sir, the petitioner further states that the Kibwezi-Kitui-Mwingi Road is the economic lifeline of the people of Kitui County as well as the people of many other counties, including Garissa, Isiolo and Mombasa. The road facilitates trade, economic development and improvement in the livelihoods and quality of life of the residents of these counties.

The Kibwezi-Kitui-Mwingi Road has been in a deplorable state of repair. This has negatively affected trade, economics and social development in Kitui County and other surrounding counties. It is noteworthy that the Kibwezi-Kitui Road is the only Class B international trunk road that is in such a deplorable state.

Mr. Speaker, Sir, the petitioner further states that the Kibwezi-Kitui-Mwingi Road is central to the success of Vision 2013 whose objective is to transform Kenya into a newly industrialized middle income country, providing a high quality life to all citizens by 2013---

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Which vision is Vision 2013?

**Sen. Musila:** Mr. Speaker, Sir, I beg your pardon. I want to make a correction; it is Vision 2030. If I said 2013, I meant 2030.

Mr. Speaker, Sir, the objective is to transform Kenya into a newly industrialized middle income country, providing a high quality life to all citizens by 2030 in a clean and secure environment.

Mr. Speaker, Sir, the road is also part of a critical international highway which is expected to unlock the economic potential of the southern region of the country as a whole, and also of other African countries by creating a linked network within the continent. For this reason, the Inter-Governmental Authority on Development (IGAD) has, on a number of occasions urged the Government of Kenya to prioritize the tarmacking of the road.

The petitioner further states that over the years, numerous appeals and requests have been made to the national Government by the residents of Kitui County, through different persons and bodies to have the road repaired. Some of these are outlined below.

(a) Pleas by the residents of the county to the appointed and elected leaders, drawing their attention to the dilapidated condition of the road.

(b) Undertakings made on at least three occasions by the immediate former President, hon. Mwai Kibaki, while on official visits to the county to the effect that the road will be tarmacked.

Mr. Speaker, Sir, the petitioner claims that despite these undertakings, the concerned Ministries and departments are yet to take action. In particular, in April, 2010, the immediate former President, while addressing a public rally in Mwingi Town, made a commitment on behalf of the national Government that the road will be upgraded. He directed the then Minister for Finance, who is now the current President, to ensure that the funds were made available for the upgrading of the road. One month later in May of the same year, while addressing a public rally in Kitui Town, the former President made a similar undertaking to the people of Kitui County. In October, 2012, again, the former President while at a public rally in Kitui, made a commitment on the upgrading of the road and, further, directed the then Minister for Roads, hon. Franklin Bett, to ensure that action was taken to upgrade the road. Numerous assurances have been made by Treasury to the elected leaders and residents of the county that budgetary provisions will be made for tarmacking of the road. Despite these assurances, the petitioner states that the Treasury has not made any budgetary allocation, so far.

Mr. Speaker, Sir, in 2011, the petitioner says that the Kenya National Highways Authority (KENHA) signed a Memorandum of Understanding (MoU) with a Chinese construction company for the upgrading of the road. However, finalization and implementation of the MoU does not appear to have been followed through and remains outstanding. Subsequently, the Treasury has also indicated that they were negotiating for the financing of the upgrading of the road and that works on the road will commence once a loan agreement has been signed. To the best of the petitioner's knowledge, no agreement was signed and, therefore, work has not commenced.

Mr. Speaker, Sir, the petitioner further states that during the Tenth Parliament, the Committee on Transport, Public Works and Housing of the National Assembly took up the matter of the upgrading of the road and made inquiries with various Government officials, including making an inspection tour of the road, which was done in August, 2011. The Committee found out that the road was, indeed, in an appalling state and urged the Ministry of Roads to urgently liaise with the Treasury to ensure that the funds were made available for the upgrading of the road. This is yet to happen.

The Petitioner states that despite these efforts, assurances and undertakings made over the years, the Kibwezi-Kitui-Mwingi Road has remained in a state of disrepair and has continued to deteriorate further every year. Needless to say, the economic development and tourism potential of Kitui County is unlikely to be realized while the road remains in this state.

Mr. Speaker, Sir, the petitioner states that the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body. The Petitioner concludes with a prayer to this honorable Senate, through its Standing Committee on Energy, Roads and Transportation, to inquire into the matter of upgrading and tarmacking of the Kitui-Kibwezi-Mwingi Road and establish:-

1. The present state and the condition of the Kibwezi-Kitui-Mwingi Road.

2. The effect of the state of the road on the residents of Kitui County and other affected counties.
3. The economic potential of the road when upgraded on trade and economic development in Kitui County, Kenya and Africa, in general.
4. The plans, if any, of the department responsible for roads concerning the Kibwezi-Kitui-Mwingi Road.
5. The expected dates, if any, of commencement and conclusion of the works.
6. The contractor, if any, assigned or to be assigned the work.
7. The plans, if any, by the national Government to mitigate the continued losses suffered by the residents of Kitui County as a result of the current state of the road.

Further, Mr. Speaker, Sir, the petitioner requests that the Senate Standing Committee on Energy, Roads and Transportation tables a report in the Senate within two months of the date of committal of this Petition to the Committee setting out its findings on the Kitui-Kibwezi-Mwingi Road and recommending appropriate action.

Mr. Speaker, Sir, the Petition which I hereby lay on the Table of this House is signed by the petitioner, Mr. Joseph Kalinga and countersigned by myself.

I thank you, Mr. Speaker, Sir, and lay the Petition on the Table of the House.

*(Sen. Musila laid the Petition on the Table)*

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I stand on Standing Order No.223 to make a brief comment on this Petition.

Mr. Speaker, Sir, I want to congratulate Mr. Kalinga. I am in total agreement with all the prayers that he has raised. But there is something else which must not be lost to this Senate; the time former President Kibaki was making those pronouncements, the Constitution of Kenya was in force. Under Article 135 of the new Constitution, the decision of a President is supposed to be in writing, signed and with the public seal. I want the Committee to go further and find out who reversed that decision of the President. I believe hon. Kibaki was a stickler for the law; he must have signed this. We hold the Treasury responsible for bypassing the decision of the President.

At the same time, it has also come to the public domain that the current President seems to want to play politics with development. He was quoted live at a funeral of our Senator making a roadside declaration. We would like the Committee also to confirm that the declaration by his Excellency the President that the road will be tarmacked is also in writing. If it is not in writing, this Senate must insist that the President must put it in writing, so that the rule of law must be seen to be the order of doing business in the Republic of Kenya.

Mr. Speaker, Sir, I beg to support this Petition.

*(Applause)*

**The Speaker** (Hon. Ethuro): Since there are no more Senators interested in contributing to the Petition, the Petition will be committed to the relevant Committee. The Committee must realize that it must deal with this Petition, according to the Standing Orders, within 60 days and table the report, indeed, as requested by the petitioner through Sen. Musila.

(Applause)

Next Order.  
Proceed, Sen. Karaba.

## STATEMENTS

### GOVERNMENT EFFORTS TO END TEACHERS' STRIKE

**Sen. Karaba:** Mr. Speaker, Sir, I rise to seek a Statement from the Ministry or Committee concerned with education, science and technology as regards the current state of strike engaging our teachers union in the Republic, and it is as follows.

Mr. Speaker, Sir, in 1997, there was an agreement signed between the Government and teachers. I would like to seek the clarification for the agreement which was signed in 1997 pertaining to the teachers and the then Government. It should be clarified whether that agreement was valid or not. If it was valid, therefore, the strike of the teachers presently should be addressed forthwith. The agreement was signed, but the successive governments have taken no action since 1997 to date. There was the then President Daniel arap Moi; there was also the PNU President, Mwai Kibaki and currently, we have President Uhuru. We need to be told whether the agreement that was arrived at by the then President Moi was not passed over to the next President to forestall the current state of unrest among the teaching fraternity in the Republic.

Mr. Speaker, Sir, it is also important to note that a lot of money might go into the purchase of laptops. According to the budget, they have set aside a sum of Kshs53 billion to buy laptops for pupils joining class one next year. Recruitment of teachers is yet to be done. We need to know who will teach these standard one pupils how to use those computers. So, we need the recruitment of teachers in this area. We need the Government to clear the air, because the air is thick. We need to know exactly what is happening.

What steps is the current Government taking to forestall the present state of the teachers strike? As I was passing through the National Assembly, I found quite a number of teachers trying to get into the National Assembly. I am sure that if they knew where we were, they would also come here. It is just that, maybe, they do not know the direction or the location. I am sure teachers are smart people. One of these days, they will find us here. We need to be careful because this can lead to national strife. We need the Government to issue the statement as regards to this situation.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Chairman of the Committee?

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

Sen. Karaba, you have already discharged your responsibility; you may now resume your seat.

Where is the Chairman, Vice Chairman or any Member of the relevant Committee?

Yes, Sen. Halima?

**Sen. Mohamud:** Thank you, Mr. Speaker, Sir. I apologize for being late. Since my Chairman is not around, we will meet, discuss the issue and we hope to bring the report to this Senate next week on Thursday.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Halima, you may also wish to collaborate with the Labour and Housing Committee since it involves the strike as well.

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

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

**Sen. Karaba:** Mr. Speaker, Sir, this is a very serious matter. We need not wait for it to go up to next Thursday. This is an issue which has been pending for the last 16 years, going by the date 1997. The Government should be able to give us a statement as soon as yesterday. We need it on Tuesday because with the current state of affairs, I am sure, teachers can do anything now.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Senator Halima!

**Sen. Mohamud:** Thank you, Mr. Speaker, Sir. I think---

**The Speaker** (Hon. Ethuro): Order, Sen. Halima! You are not on record, you need to put the microphone on.

**Sen. Mohamud:** Mr. Speaker, Sir, I have done so.

Sen. Karaba is also a member of the Committee. He should make an effort and collaborate with other members of the committee so that we bring a comprehensive report to this House. We, as a Committee, are trying our best. In fact, we have booked an appointment with the Cabinet Secretary. We are willing to table the report before this House as soon as possible.

Thank you, Mr. Speaker, Sir.

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

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

**Sen. Abdirahman:** Mr. Speaker, Sir, we need a response from an authoritative Government source. We need a report from the Chairperson of the Committee. As the tradition is, he will be speaking, having got information from the actual source. This is a matter of national concern. I do not know if my Sister from Wajir County and Sen. Karaba will be able to handle the matter at committee level.

Mr. Speaker, Sir, could you give us some directions on this issue?

**The Speaker** (Hon. Ethuro): Sen. Abdirahman, are you trying to imply that the Chair, the Vice-Chair and the rest of the Committee members cannot do their job to the best of their abilities, including inviting the Cabinet Secretaries? Those are details that

every committee is fully aware of. On a matter of this magnitude, I would expect them to call in the officers responsible and give a proper response to the House.

**Sen. Abdirahman:** Mr. Speaker, Sir, what I meant is that I am sure they will deliberate on this matter as a Committee. However, we need a serious undertaking from either the Chair or the Vice Chair or from a member of the Committee who will be held responsible.

**The Speaker** (Hon. Ethuro): Vice Chair!

**An hon. Senator:** There is an undertaking!

**The Speaker** (Hon. Ethuro): Good!

Proceed, Sen. (Dr.) Khalwale.

TRANSFER OF NATIONAL GOVERNMENT  
FUNCTIONS TO COUNTY GOVERNMENTS

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I have two points of order that I wish to raise. The first one is in respect to a statement I sought last week and the Chair directed that the response should be given today. This is on the issue of transfer of National Government functions to devolved governments. I notice the Chair of the Committee on Devolved Government is around. I do not know what he has to say about this before I move on to the second point of order.

**The Speaker** (Hon. Ethuro): What is your response, Chairman Committee on Devolved Government?

**Sen. Murkomen:** Mr. Speaker, Sir, I have received the request for the Statement. This is a very important question that has been raised by Sen. (Dr.) Khalwale considering the situation we are in, in terms transfer of functions and resources. I have consulted informally with my colleague, Sen. (Dr.) Khalwale. Owing to the seriousness of this issue, I beg that we allow the Cabinet Minister in charge of this docket time to give us a comprehensive answer. I will get back to the House on this matter on Thursday, next week.

**The Speaker** (Hon. Ethuro): Chairman of the Committee on Devolved Government, it is worth noting that transfer of functions is supposed to be from 1<sup>st</sup> July, 2013. Thursday next week will be 4<sup>th</sup>, July, 2013. In light of those conflicting deadlines, do you have anything more useful to add?

**Sen. Murkomen:** Mr. Speaker, Sir, even if the functions are transferred next week, this House will still have the teeth to ensure that the resources are transferred. Whereas His Excellency the President talked about 1<sup>st</sup> July, 2013, nothing in law provides that particular timelines should be provided for. Even if we discover midway that a function has been transferred and there are no resources, it will be unconstitutional as stipulated under Article 187 of the Constitution. Therefore, the House will still have the powers. Even if the Cabinet Secretary by that time give us an answer that says: “Yes, we have transferred the functions and these are the resources” then we can assess the adequacy of the resources transferred, based on the answers they will give us. We will not act in futility.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I stand guided by whatever you have decided. But I would like to encourage the Chairman to look at Article 185 of the Constitution. In addition, he should read Section 15 of the Sixth Schedule. This matter is not just a question of resources; it is a question of the requirements of the law. If he reads these two provisions, he will become familiar with what I am talking about and he will be able to respond appropriately.

Mr. Speaker, Sir, I do not know whether I should go on with my second point of order or I wait for your directions.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, you can move on to the second point of order. I am satisfied. The Chairman of the Committee on Devolved Government has a way of dealing with timelines. We expect him to bring the Statement on Thursday, 4<sup>th</sup> July, 2013.

Proceed, Sen. (Dr.) Khalwale.

RULING ON WHETHER THE SENATE SHOULD PROCEED WITH  
THE COUNTY ALLOCATION OF REVENUE BILL

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am rising under Standing Order No.158(5) to seek direction from the Chair on a matter which is fairly urgent.

Mr. Speaker, Sir, you will recall that the Division of Revenue Bill, which was assented to by His Excellency the President came into force on 25<sup>th</sup> June, 2013. This is in accordance with Article 116 of the Constitution of Kenya which provides that such an Act, once assented to, can only come into force after 14 days. According to Standing Order No.158(5), this House is, therefore, required to generate a County Allocation of Revenue Bill within a period of seven days. As I speak, there are five more days to go.

The House will recall that the Division of Revenue Act is a vexing matter to the nation, this House, the Governors and all the County Governments, having, as a House, contested the constitutionality of that process. In fact, as the Senate well knows, this matter is currently very active at the Supreme Court. This, therefore, raises the critical question of whether this Senate can proceed within the remaining five days with the process of initiating, considering and debating the County Allocation of Revenue Bill.

Mr. Speaker, Sir, I am requesting the Chair to give a clear direction on whether we can proceed. If it is in the opinion of the Chair that we proceed, let us do so when, again, the Chair has made it abundantly clear on the meaning of that proceeding. In my judgment, if we proceed, the challenge is: Do we proceed with the National Assembly version of Kshs210 billion of the revenue which is being shared or do we proceed with the version the Senate which recommended an allocation of Kshs258 billion?

Mr. Speaker, Sir, needless to remind you, this House, up to now, has not vacated its resolution. The resolution of the Senate is still as it was, that of an allocation of Kshs258 billion. This is the resolution that the National Assembly contradicted. Is it possible for the Senate to proceed against itself? Will we go on with the provision of Kshs210 billion and yet our resolution was Kshs258 billion? We shall effectively be proceeding against ourselves. If we choose to proceed with the version of the National



Assembly of Kshs210 billion, where does that leave the Senate before the Supreme Court? Shall we not become complicit in it?

Mr. Speaker, Sir, there is even a greater issue of *sub judice*. When we shall be debating the County Allocation of Revenue Bill, we will, obviously, walk into the area of *sub judice*. If we shall be doing so using the version of the National Assembly then, as they say in law, we cannot, therefore, be able to approach the Supreme Court with clean hands.

Mr. Speaker, Sir, the other aspect of it is, if we do not proceed at all--- If we do not do so, the immediate consequence is that county governments will be starved of cash. Immediately, politics will come into play. Kenyans will ask: "Who do we blame?" They might say: "As a result of the refusal by the Senate to work on the County Allocation of Revenue Bill, the county governments have been starved of cash." It is for this reason that I am asking you, once again, to clarify to all and sundry that the Senate cannot – if we choose not to proceed – be to blame. All Kenyans must know.

Mr. Speaker, Sir, of course, going by some of the commentaries in the public domain, there are some who might want to be persuaded that we accept to move on with the Kshs210 billion for starters. If we do this, then, the Chair must further clarify that it is not the issue of the amount of money alone that we are pursuing. We are also pursuing the even greater issue of the process that was used to arrive at Kshs210 billion. As you make that clarification, we should ask ourselves: Even if we are proceeding with the Kshs210 billion for starters, again, if the Government will choose to bring any top up, that top up, in a supplementary process would also be subjected to division of revenue. Therefore, which process will we be using? Will this House, again, allow the flawed process in the event of a top up?

Mr. Speaker, Sir, because I have been very long, and I have thought about this matter overnight, I want to appeal to you, finally, that this matter is so massive it borders on the possibility of making the Senate irrelevant. Therefore, a lot of Kenyans think you are under a spotlight. The matter is beamed directly on you. They will all be watching and listening to you in the meaning of Article 73 of the Constitution which speaks on the chapter on Leadership and Integrity. Kenyans will be waiting to see whether your exercise of the public trust that has been conferred on you will be consistent with the purposes and objects of this Constitution. As it applies to you, it also applies to the Executive. They will watch to see whether whatever you will do will bring honour to the nation and dignity to the office of the Speaker of the Senate. They will want to see whether your decision promotes public confidence in the integrity of your office and whether you are being guided by Article 73(2)(b) of the Constitution on objectivity and impartiality in decision making and ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices.

Mr. Speaker, Sir, I emphasise this because I believe the chief legal adviser of the President is also reading this Constitution. Since I am not a lawyer, I have to make it very clear that law is not read by lawyers alone. Even laymen like us read it. We would like the Chair to make it clear. Is the President reading this Constitution? Is the chief legal adviser of the Government advising the President? If he is, is he doing so in accordance with Article 73 of the Constitution?

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Hon. Senators, let me take one or two other views. Sen. Murkomen!

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. First, I would like to congratulate and appreciate Sen. (Dr.) Khalwale for that elaborate request. I want to inform him that all Kenyans can read the Constitution. What we need to debate on is whether they understand the document.

There has been a lot of debate since we went to court as a House. The public has engaged in varied discussions as to the implications of our action. I would urge that as the Chair gives directions, it must be very clear--- There have been sentiments directed at dividing this House either in between tribes or party lines. This House is strongly united. We took our position based on good decorum and manners. We should ensure that we follow institutional support and be respectful in this debate. We must demonstrate that respect also to the county governments when we debate the County Allocation of Revenue Bill. That is why your directive is very important to guide this House on how to move forward.

Mr. Speaker, Sir, I want to assure hon. Senators that, as the Chair of the Committee on Devolved Government, and as a member of this House, this House is fully united on this matter, for the sake of the survival of the institution of the Senate. Suppose today a Kenyan woke up and said that: "The institution of the Presidency is useless and the President should not even do this or that." Somebody then goes ahead and directs the President, or the Deputy President. Do you think they will just sit down and just say: "Yes, you elected us using more than Kshs30 billion, therefore, let us do nothing." It is that question that bothers this House, that we are not just one appendage of an institution. So, even in the allocation of revenue I do not want to see a situation where, ultimately, we will be told that as a result of dealing with the County Allocation of Revenue Bill, we have abrogated our responsibility; that in the rules of equity, our hands are now dirty and we cannot approach the Supreme Court anymore. It is important that you, as the leader of this House, consult our lawyers who are already handling this matter, so that when you give your ruling, it will be comprehensive enough and one which will guide this House accordingly. We have decided, as the first Senate under the new Constitution that we do not want to go the way of the first Senate. Therefore, we must have very good guidance.

Mr. Speaker, Sir, if there is something I want to be remembered for, it is not a re-election in 2017. I do not want to be remembered as a Senator who, was in the House, for many years. I want to be remembered as the Senator who, for whatever time was in this House, was responsible enough, protected the Constitution and the institution of the Senate. It is not the number of years that one serves in a particular office, but the quality, and the ability to deliver the services that are required of one that is important. Therefore, Article 73 of the Constitution, as was referred to by my colleague, is very important.

Mr. Speaker, Sir, we want to approach this matter soberly and deal with it accordingly. We urge the Chair to give us direction. I support the request that has been sought because it is important to this House.

**The Speaker** (Hon. Ethuro): Thank you, hon. Senators. I will make the ruling on Tuesday, next week. In the meantime, I wish to draw the attention of the Senate to Standing Order No.158(5). It says:-

“Not later than seven days following the enactment of the Annual Division of Revenue Bill, the Chairperson of the Committee on Finance, Commerce and Economic Affairs shall introduce a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217 of the Constitution.”

In addition, Standing Order No.158(6) says:-

“The County Allocation of Revenue Bill shall be accompanied by a memorandum setting out-

- (a) an explanation of revenue allocation as proposed by the Bill;
- (b) an evaluation of the Bill in relation to the criteria mentioned in Article 203 (1) of the Constitution; and
- (c) a summary of any significant deviation from the Commission on Revenue Allocation’s recommendations with an explanation for each such deviation.”

So, you will appreciate the requirements for such a Bill. We have to do our part according to the law. We will do so.

Sen. (Dr.) Khalwale, we will touch on the issues that you have raised at length. Of course, we will not want to bring the country to a standstill. So will look at what is possible within the law and give the necessary ruling.

On the last bit of Article 73 of the Constitution, I almost thought you were attacking the Chair.

*(Laughter)*

I know you are not allowed by the Standing Orders to “attack” your Speaker unless you bring a substantive Motion. But in terms of the issues you are raising that each State officer and organ is under duty to promote certain national values, you are much in order. We will look at all those issues. Already the Chair of the Committee on Devolved Government has given a bit of his views on this matter. We also expect input from the Chairman of the Committee on Finance, Commerce and Economic Affairs and then we will give you a way forward on Tuesday.

Thank you.

Yes, the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 2<sup>ND</sup> JULY, 2013

**Sen. Mositet:** Mr. Speaker, Sir, on behalf of the Senate Majority Leader and pursuant to the provisions of Standing Order No.43(2), I beg to present the Senate business for the coming week:-

(i) Tuesday, 2<sup>nd</sup> July, 2013 - The Rules and Business Committee will meet on Tuesday 2<sup>nd</sup> July, 2013 at 12.00 noon to schedule business of the Senate for the week commencing Tuesday, 2<sup>nd</sup> July, 2013.

The Senate will continue with business that will not be concluded in today's Order Paper. In addition, the County Allocation of Revenue Bill, 2013 will be introduced in the Senate by way of First Reading. The Senate will also commence debate on a Motion by Sen. (Dr.) Wilfred Machage on Alcohol and Drug Abuse.

(ii) On Wednesday 3<sup>rd</sup> July, 2013;

(a) Morning sitting – The Senate will continue with business not concluded on Tuesday 2<sup>nd</sup> July, 2013 and consider any other business scheduled by the Rules and Business Committee. The Senate will also consider its calendar for the year 2013.

(b) Afternoon sitting – The Senate will continue with the business not concluded on Tuesday and Wednesday morning and consider any other business scheduled by the Rules and Business Committee.

(iii) On Thursday, 4<sup>th</sup> July, 2013, the Senate will continue with the business not concluded on Wednesday afternoon and consider any other business scheduled by the Rules and Business Committee.

I hereby lay the Statement on the Table which I have signed on behalf of the Senate Majority Leader.

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

**The Speaker** (Hon. Ethuro): Next Order!

**MOTION**

AGREEMENT BETWEEN NATIONAL AND COUNTY GOVERNMENTS  
ON INFRASTRUCTURE DEVELOPMENT AND EQUIPPING  
OF EDUCATIONAL INSTITUTIONS

THAT, recognizing that the respective functions and powers of national and county governments are provided for in Article 186 and the Fourth Schedule of the Constitution, and that under paragraphs 15, 16 and 17 of Part 1 of the Fourth Schedule, education policy, including promotion of sports, is a function of the national government; further recognizing that Article 187 of the Constitution provides for the transfer of functions and powers from one level of government to the other, particularly if the function or power can be more effectively performed by the receiving government; aware that Part III of the Intergovernmental

Relations Act, 2012 requires that agreements on transfer of functions be in writing and Part III of the Transition to Devolved Government Act, 2012 recognizes the role of the Transition Authority in the transfer of functions; the Senate urges the national Government to enter into agreement with county governments with a view to transferring resources, functions and powers relating to development of infrastructure and equipping of institutions of learning, at primary and secondary levels, to county governments.

*(Sen. (Prof.) Kindiki, on behalf of Sen. Murkomen on 25.6.2013)*

*(Resumption of Debate interrupted on 25.6.2013)*

**The Speaker** (Hon. Ethuro): Who was on the Floor? Any other Senator wishing to contribute? The Motion has 50 minutes to conclude.

Sen. Wako.

**Sen. Wako:** Mr. Speaker, Sir, thank you for giving me this opportunity to contribute to this very important Motion. First of all, I want to thank the Mover of the Motion who is also the Chairman of the Sessional Committee on Devolution for having brought this Motion. I thank him because, as you know, we are now undertaking internal processes of identifying the type of amendments to the Constitution which will be subjected to a referendum. We have begun getting views on this. Some have proposed a number of changes in the functions set out in the Fourth Schedule between the national Government and the county governments. One of the proposals that we are constantly receiving is the issue of education. As you know on matters that touch on the county, that is, the people of the counties want their governments to deal with agriculture, access to health, education and infrastructure. In fact, education is a top priority. If you carry out a survey throughout Kenya, you will find that people are very much interested in issues relating to education. As concerns other functions like agriculture, health and infrastructure, one can almost say, there is some concurrent jurisdiction on all those issues regarding what the national Government can do and what the county governments can do. When it comes to education, the functions have completely been given to the national Government, including primary schools. This is a matter of great concern and people are saying that we should carry out some amendments.

Mr. Speaker, Sir, I am glad that Sen. Murkomen has brought this Motion because when it comes to issues of functions, it is not really necessary to carry out a constitutional amendment to change the functions between the national Government and the county governments. The Constitution has provided mechanisms under Article 187 where this can be transferred from one level to another. This Motion is about the transfer of functions which has been set out in the Motion from the national Government to the county governments.

I support the Motion because it meets the criteria being set out under Article 187(1)(a) where it says “a function or power would be more effectively performed at a particular level of government”

I think we all agree that when it comes to matters of primary schools and secondary schools, these are functions which history has shown, are best performed at the county level. People at the county can have a bigger say in the running of education in their areas. Of course, they cannot be involved in the running of education unless there is infrastructure. This Motion is about the transfer of that. Together with the transfer of functions, enough money has also to be transferred.

Mr. Speaker, Sir, the only rider I would want to add to this, and I have talked to the Mover of the Motion, is that for some of us who went to national schools, and I believe very strongly that national secondary schools must continue in this country, a school where people from all ethnic groups can go, mingle together, grow up together and unite as Kenya. I am not boasting, but at Alliance High School, that is where I learnt to be detribalized. My best friends are not even Luhyas, but Kikuyus, Kalenjins, Maasais and Giriama. I have good friends in good positions because of Alliance High School. I think as a Kenyan and as an African. Therefore, those national schools like Alliance High, Mang'u High School, Kangaru High School, Maseno High School and so on, must be encouraged. We must continue to have national schools. Otherwise, you may find somebody who went to a nursery school in Nang'oma, my village, then secondary school in Nang'oma village, then university, one goes to Busia. This person does not know anything about even the neighbouring county of Siaya and so on. We really have to encourage national schools.

Therefore, as we do this, we should have in mind that national secondary schools must be preserved and the best institution that can oversee the development of those national schools is not the county government, but the national Government. The county government will be under pressure to ensure that its own people are educated. Let me tell you, if you have a national school in a particular county, that school will be under pressure to ensure that its own students from its own county go to that national school because it provides quality education.

I can see the Senator for Kiambu is very busy talking to another Senator there; he does not know even at that time, Alliance High School was under pressure to have an extra classrooms to cater for people from around the school. These are the types of pressures that I am talking about. So, if we just enormously transfer all the secondary schools to county governments, then within a very short time, they will cease to be national schools because of the pressure of the locals.

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

**The Speaker** (Hon. Ethuro): What is it, Senator for Kiambu?

**Sen. Njoroge:** On a point of order, Mr. Speaker, Sir. I am just wondering whether the hon. Senator is in order to state and suggest to this House that as the Senator for Kiambu County where Alliance High School is situated, that I do not support what he is saying about the pressures in the national schools and what needs to be done to correct the situation. I want to state categorically that I understand and appreciate all that he is saying. It is important that all corrective measures should be taken to make sure that schools are adequately facilitated. It is not in order for the hon. Senator to suggest that I am aloof to that reality.

**The Speaker** (Hon. Ethuro): Order, Senator! That was not the issue. I thought the issue is whether you are going to reduce Alliance High School from a national to a county school.

**Sen. Wako:** Mr. Speaker, Sir, actually I do not know whether that is guilty conscience because I did not even state that the Senator is of that view. In fact, I respect the Senator. What I stated is a historical fact. I know that in the 1990s, there was some pressure, but we resisted. There was some pressure that we should create an extra classroom at Alliance High School to cater for local people from around that school. I am glad that he is not party to that pressure. So, we shall work together on that one.

Mr. Speaker, Sir, this Motion is 100 per cent okay as it goes. However, Article 187 says when the Motion is carried, the national Government will have to enter into an agreement with the county governments on how it should be done. I am now respectively suggesting that in that agreement that will be entered into, care must be taken and special positions must be done over the issue of national schools to be preserved. As it is now, the Motion, without any amendments, is okay. I believe that the respective people and institutions, particularly the national Government cannot take the initiative in this regard and enter into agreement with all the county governments as far as this Motion is concerned.

With those few remarks, I support.

**Sen. Khaniri:** Mr. Speaker, Sir, I want to thank you for the opportunity to make my remarks on this particular Motion. Let me, at the very beginning, state that I fully support this Motion. I want to thank my colleague, Sen. Murkomen for coming up with it.

I also want to state that about two or three weeks ago, I filed a similar Motion and I was hoping that it will see the light of day. The only difference is that my Motion was directed to the department of education wanting the department to let development of infrastructure and provision of equipment be devolved to the county government and retain the Teachers Service Commission (TSC) and the Kenya National Examination Council (KNEC).

Mr. Speaker, Sir, I think the import of this Motion is the same and we will achieve the same results. Should this Motion be passed, then there will be no need for my Motion to come to the Floor because the results of the two Motions would be the same.

For me to file the Motion I filed, I did a lot of consultations with stakeholders in the education sector to see the pros and cons of having these functions devolved to the county governments. I was also driven and inspired by the long experience I have in the development of infrastructure in schools, particularly through *harambee* and, subsequently, the CDF that was established.

Mr. Speaker, Sir, in my tenure as a Member of Parliament for Hamisi Constituency, in collaboration with the community, we put up very many classrooms. We also built and equipped very many laboratories and classrooms. If I try to compare the number of classrooms that we built using the CDF and *harambees* as opposed to what the national Government did in Hamisi Constituency during my tenure, I will tell you for sure that there is no comparison.

The CDF has done so much in the short period that it has existed and yet it is only 2.5 per cent of the national Budget. The point I am trying to make is that although the

Ministry retains so much money for infrastructural development of our primary and secondary schools, we do not see this money trickling down to secondary schools. We started seeing a bit of this money during the introduction of the Free Primary Education (FPE) where each and every pupil was allocated some little amount, I think Kshs900 per year. The Kshs900 was multiplied by the number of pupils in a school and sent to the school for infrastructural development.

I want to state clearly that it was a mistake in the first place, to put the responsibility of developing infrastructure and equipping primary and secondary schools under the national Government. This is an anomaly that must be corrected very fast before we go far.

Mr. Speaker, Sir, different parts of the country have different needs. If we place this responsibility under the national Government, then it will come up with “one size fits all” kind of approach and yet we know that different areas have different requirements. The requirements in Vihiga County are not the requirements of Kwale County. Therefore, it is only through the local leadership and the county governments that we can establish what suits us, develop what suits us and provide what suits us. It is only through the local leadership that we can prioritise and know which schools, for example, need what assistance.

A good example is what happened under the Infrastructure Development Fund that was in the Ministry of Education, Science and Technology a couple of years ago. I saw the Ministry giving support to some of my schools that I thought were very well established at the expense of schools that were coming up and had nothing. Therefore, if this Fund is transferred to the county governments, then the local leadership will identify what schools should be assisted and at what stage.

Secondly, two years ago, we all saw what happened in the Ministry of Education, Science and Technology, where millions of shillings that were meant for infrastructure development were misappropriated. Of course, we saw a few heads roll. A few officers were interdicted, sacked and charged. Therefore, if we want to avoid all these, I think it is important that we devolve this function so that these monies are sent to the counties and allocated to the schools that need them.

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

*[The Temporary Speaker (Sen. Ongoro) took the Chair]*

Madam Temporary Speaker, I listened to my brother, Sen. Amos Wako talking about national schools. I beg to differ with him. In any case, if he wanted to apply that, he should have moved an amendment to this Motion to say that national schools should remain with the national Government. I want to say that national schools cannot stop being national schools simply because they are being funded by the county governments. Of course, they will remain national schools. They will admit students nationally but when it comes to development, their monies should be channeled through the counties where the national schools are located. Therefore, I would like to differ with him and insist that we pass this Motion the way it has been brought by Sen. Murkomen.



We are encouraging that the Teachers Service Commission (TSC) remains with the national Government because we know that county governments are not very well established at this stage to start handling recruitment and payment of teachers. Maybe in future we will come up with an amendment to devolve the TSC to the county governments.

This is a very important Motion. I want to urge my colleagues to fully support it and pass it quickly so that the Implementation Committee moves fast to ensure that we start the process of devolving the development of infrastructure in our primary and secondary schools.

I fully support the Motion.

**Sen. Mugo:** Thank you Madam Temporary Speaker. Let me say from the onset that I oppose this Motion. I do not want to thank the Mover because we should ventilate on these issues. As a country, we need to be very careful as to what we devolve.

Education is a national function. Why do I say so? I say that because education must be standardised. You cannot set examinations for the whole country unless education is standardised and the facilities are the same. I happen to have served in the Ministry of Education, Science and Technology as an Assistant Minister in charge of basic education and there are certain areas I visited where the capacity to handle such functions did not exist. I know there are also some areas where even some national institutions lower the marks for entry. I am talking about schools like Alliance and such other schools like Mang'u and Maseno. They lower because of marginalization. Why do they lower the cut off marks? This is because unless they do that, there will be no children from those areas entering national schools.

I believe by devolving education, we will have a more serious problem than we have today. What we should do is to try to bring education at par in all areas. There are some areas where we transfer teachers and before they complete a year, they want to move. You have to work very hard to keep them there. If this becomes a county function, I do not know how the counties will move teachers from areas where they are available to where they are not so that children get the same level of education.

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. While I appreciate the concerns of my colleague, Sen. Mugo, is it in order for her to debate on issues that are outside the Motion? The Motion only talks about infrastructure and equipment. It does not talk about hiring of teachers, quality assurance and the role of the TSC among other issues. It is constricted to buildings and equipment.

**Sen. Mugo:** Thank you Senator.

Madam Temporary Speaker, I believe it will be very difficult to divide those functions; functions of infrastructure, the need for schools to give quality education and the functions of hiring. All those go together. It is the planning that matters. Unless the planning is done centrally, I do not see how you will deliver the functions.

Personally, I hesitate to support the Motion. In the Tenth Parliament I had an opportunity to be invited to the Harvard School of Business of Government among other people who had been invited from all over the world for a course of two weeks in governance. The Professor who was teaching us told us that devolving education had

been tried in Brazil but they were now going back to where they were because it did not work.

Madam Temporary Speaker, when I attended a meeting on health matters during the World Health Organization (WHO) Assembly in Geneva, the same thing was cautioned by the Global Fund. I believe it was by one of our donors. They cautioned us about devolving education and they quoted Brazil because somehow, there is a very strong connection between education and health.

I urge you Senators, my colleagues, especially those who are representing certain counties to rethink whether this is the time to devolve education in whichever form. Education matters should not have any interruptions. Devolving issues of education also came up at the Bomas of Kenya and a majority of the delegates decided that we would rather devolve health but leave education intact.

We have a Parliamentary Service Commission (PSC) meeting which I will be attending, coming up in five minutes but I am glad that I got an opportunity to air my feelings on this. I would have liked to go further than this. However, I would like to urge you, hon. Senators to consider all areas before you devolve any part of education.

**Sen. Kanainza:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I stand to support the Motion by Sen. Kipchumba.

Madam Temporary Speaker, first, education is key. Primary and secondary education is very basic for the growth of a child. Devolving this function will enable us improve education and as a result there will be good performance in our schools. I say this because every school in every county wishes to be at the top. That means that we are encouraging competition within the various counties. Also, every county will want to be the best in the country, because we are just devolving the functions but not the main things like examination, policies and curriculum.

Madam Temporary Speaker, the other reason I support this Motion is that; it is at this level that education will be managed closely by the county governments. As a result, we shall have good results and encourage competition. Job creation will also be a priority because we have many unemployed graduates outside there. When this function is devolved, the counties will give the first consideration to residents of those specific counties. This will also encourage proper infrastructure in the counties and promote education for all. Every student will have access to education. The procurement bureaucracy which has to come from the grassroots level to the national level will be reduced. The basic requirements, for example, chalk, desks, pens and books will be sourced faster. This will be because of easier procurement procedures.

I beg to support.

**Sen. Karaba:** Thank you very much, Madam Temporary Speaker, for giving me this chance again to contribute to the Motion on education and devolution to the counties.

Madam Temporary Speaker, much as I would appreciate supporting the Motion, there are some grey areas that we need to look into. Some of these areas - I hope the Mover will agree with me - include the way we will handle the devolved secondary and primary education. This is because some counties cannot even manage to run primary and nursery schools. If we were to devolve education to the county level, we would risk putting particularly the employment of teachers into jeopardy. I say this because before

the teachers were employed by the Teachers' Service Commission (TSC) in 1960, it was up to the then local councils to recruit and develop some of the educational institutions. This process was a mess in very many counties. So, we are likely to regret when it comes to who will be responsible, particularly for the recruitment of teachers.

How will these functions be devolved to the counties and yet some of the developments so far, are not at par in all counties? Some counties like Nairobi are at very advanced stages. So, if we were to compare them with other counties which are yet to devolve, the moment they start with education, there will be a lot of inequalities in the education facilities which will be provided in those counties. Therefore, I would advocate that before we discuss issues on education, we should have a stakeholders' meeting where we can psyche the counties which will be involved, instead of it coming from us because it will appear like we are the people imposing the devolution on them and yet we are going to provide the oversight role in the counties.

Madam Temporary Speaker, I am a bit hesitant to debate this Motion because I know what it means, particularly for some areas which have not even taken off academically. There are places where there are no schools. There are nomadic communities where students keep moving from one place to another because there are no permanent classrooms. I wonder what will happen when it comes to the implementation of the laptops project. This is because the laptops will be carried by the same students from one place to another as they look after livestock. Since enough classrooms are not available in some of these areas, we are going to create more hardship because some of the students, who otherwise would have moved out to go and learn in other schools in well endowed counties, would be disadvantaged. They will remain in those counties and not further their education.

This has happened and that is the reason the quota system was introduced. This was an experiment after a very long debate where the Government found it fit to have students in some disadvantaged areas move to those areas which are advantaged. As a result of that, there was a lot of student integration all over the country. This is what created what we can call patriotism. People would move from, say, Mandera in North Eastern to Machakos. Others would move to Shimo La Tewa. That was during the time when we had national schools. Since the scrapping of the quota system, we now have a lot of problems because most students cannot even understand what Kenya is all about. Students are now confined and condemned in some environments and, therefore, not getting a chance to compare where they are living with other environments.

Madam Temporary Speaker, to me, education is a very important and significant service to be devolved. If we are to devolve it, we should involve the minds of the students and parents. I am sure that students will find it very difficult to interact, integrate and even form what we call a nation. Tribalism is even going to be rampant. We will have students living in their areas and speaking their mother tongue. They will be going to universities in their areas and will not know what happens in other parts of the country. Kenya is a nation and if it is going to remain the same, we need to take care of education more than any other sector. This is because it is only through lack of education that we have corruption setting in, particularly in the minds of young boys and girls. If education is not properly handled, it can lead to a lot of disparities in development in the counties.

Madam Temporary Speaker, I am hesitant to support this Motion. I would advise that we first of all find out how some counties in Kenya can afford to get education standards maintained at the same level with, for example, Nairobi County, Nyeri County or Bungoma County. Some areas will continue to remain behind just because of inequalities in the education sector.

So, education should be a service which should be spread all over the country, and it is us, the Senators, who can provide this kind of vision. It is, therefore, important not to think about devolving education at that level. However, we can leave the pre-nursery level the way it is because the various counties can provide the teachers.

Madam Temporary Speaker, given the way the Motion is drafted, I am even not sure whether some of the counties will be able to employ the Early Childhood Education (ECD) teachers. This is because most of the development might be geared towards other areas and not education. If we are to think about Kenya being like the Asian Tigers, it is important that we focus more on education than other areas of development.

With those remarks, I would only support the Motion with very serious amendments.

**Sen. (Prof.) Lesan:** Thank you very much, Madam Temporary Speaker. First and foremost, I want to state very clearly here that I fully support this Motion.

Madam Temporary Speaker, first, I support the Motion because of the way it was drafted. I want to thank Sen. Murkomen for the way he drafted this Motion, because he was very careful to make sure that he did not include the TSC, examinations and quality assurance. This is because these are institutions that we should try as much as possible not to devolve in this system of education.

Madam Temporary Speaker, as far as the other aspects which have been stated are concerned, I would want to say that Article 187 which allows for transfer of functions and also the Transition to Devolved Government Act, state the provisions under which this can be done; how we can transfer functions. I think that these two Acts and a constitutional requirement, anticipates that it might actually be desirable in the future to transfer some functions from the central Government to the county governments, and this is anticipated. It has actually stated that agreements could be reached between the national Government and individual county governments. So, those county governments which have had the experience of running education will apply and enter into an agreement. The agreement would be satisfactory and meet the criteria that have been stated in order to be able to deliver in education.

Madam Temporary Speaker, I want to draw from the experience of my County, Bomet County, which I can say confidently that it is ready to enter into an agreement with the central Government in order to devolve education to the counties. This is from the experience of 2.5 per cent of the national funds which were given to the constituencies through the Constituencies Development Fund (CDF). I can state here that five years of devolved funds has made tremendous difference in the provision of education infrastructure in Bomet County, than it has ever been during the 50 years of Independence. Therefore, I think that it is time to support this Motion in order to create this infrastructure so that we can actually devolve and move some functions to the county. I have no fears at all that if we move some functions in the education sector to the

counties, it will make a significant contribution to the accessibility to education in the counties.

Madam Temporary Speaker, as I said, there is anticipation in the Acts which are provided, that things will be moved from one place to another. In Bomet County we are also ready to enter into an agreement with the central Government in order to move some functions from the county to the central Government.

The Government has devolved health functions to the counties. That is fine but we are not comfortable at the county level to carry out the function of immunization. My county government of Bomet is not capable of carrying out the function of immunization. I am sure you know that immunization requires very high standards and very specialized equipment. There is the potential risk of introducing diseases to the communities via immunization. The counties are not able to do this yet at the moment this function has already been transferred to them. I think it is in order for us to enter into an agreement with the Government so that we can transfer that function from the county to the national Government as provided in the Constitution. So, if we feel confident enough to run education infrastructure, then I think this is the right time and the right Motion that puts into gear this kind of activity that is going to be helpful.

Therefore, I want to say that this is a Motion that I support very strongly. This is a Motion that is forward-looking and which will bring practical gain on the ground. It gives the way forward as to how education will be handled in future.

With those few remarks, I beg to support this Motion strongly.

**Sen. Njoroge:** Madam Temporary Speaker, thank you for the opportunity to contribute to this Motion. Let me say from the outset that in view of some of the contributions made by my colleagues and especially comments and contributions made by Sen. Karaba, him being an educationist, certainly his views are important and should be taken seriously. I also want to set clarity on some of the issues as I understand them. The main motive behind this Motion is not essentially to transfer some of the functions as has been misunderstood.

I support this Motion because it is clear in my mind from practical experience, that indeed, what the Mover of this Motion is seeking is to transfer infrastructure and equipment. I cannot remember how many times in my political life, I have attended *harambees* to build classrooms in schools. I cannot remember the number of times I have participated in *harambees* in schools to buy laboratory equipment.

Madam Temporary Speaker, you may also remember that just recently, we had so many schools introducing something they were calling “Building Fund”. That Building Fund which was being asked from parents was intended to help the school develop its infrastructure. It has also been on national television that our young people are learning under trees and those who are not lucky to learn under trees learn in classrooms which are built with *mabati* and other makeshift structures. What I believe the Mover of this Motion is seeking is to have those functions which are best understood by the local communities, which are best dealt with at the county level and devoid of the other national functions like examinations. If this is addressed at the national level, then issues of infrastructure and equipment should be addressed at the county level.

You may all have noticed that almost every secondary school now requires a school bus to transport students during educational tours. This is part of equipment. There is absolutely no harm in devolving that kind of function whereby it can be dealt with at that level. Those are the kind of issues the Mover of this Motion is seeking to address. I also believe that if those functions and facilities are devolved, they are going to address the issues that are currently bedeviling our education system.

Therefore, I would propose that if that clarity is fully sought, then the Mover of the Motion could seek to further clarify this issue so that we are able to pass this Motion with one mind. Probably, we could move an amendment to bring in more clarity. As it is, it is not clear.

With those few remarks, I beg to support.

**Sen. Sijeny:** Madam Temporary Speaker, thank you for giving me the chance to contribute to this Motion. I wish to fully support the Motion on the basis that it is timely. This is the time devolution is taking shape in our country and it is part of the implementation of the new Constitution which we fought so hard to pass.

I disagree with my colleagues who do not support the Motion. I do not see it as a threat to the standards of education as alleged. In my humble view, it will help the locals within the county to eradicate poverty because they will be able to participate and provide the necessary equipment or whatever may be needed locally instead of waiting for resources to come from the national Government.

Madam Temporary Speaker, I also know that the Senate is there to oversee the smooth running of the education system within the county. We will be able to vet and ensure that nothing goes wrong or nothing is abused. By the end of the day, it will be a win-win situation for everybody. Perhaps Senators need to take a tour of the country. There are actually some counties where schools look so pathetic and if everything is devolved especially the infrastructure or the buying of equipment, then the county governments will ensure that all those schools within their regions are well equipped as those where perhaps, devolution occurred a long time ago, may be, due to the nearness or accessibility to the central Government or the headquarters of the country.

Without saying much, I just wish to fully support the Motion.

**The Temporary Speaker** (Sen. Ongoro): Since we do not have any more contributors, can we ask the Mover to reply?

**Sen. Murkomen:** Madam Temporary Speaker, I would like to thank you for giving me this chance to reply and to also thank my colleagues who have eloquently contributed to the Motion. I think if there is something very dear and very heavy in my heart, it is the question of education. This is because I know education is an equalizer and it gives us equal chances. Some of us would not have been here had it not been for the opportunity we got to go to school. It is through education that we were able to know many people, travel everywhere and even get an opportunity to become Members of this House. It is important that we clarify certain things from the outset.

First, this Motion is seeking to only transfer the function of infrastructure and equipping of primary and secondary schools to the county level. If you look at Schedule Four, there are more other functions that are going on at the national level, for example, the functions of quality assurance and hiring of teachers which cannot be transferred

because it is under a constitutional commission; the Teachers Service Commission (TSC). These include, curriculum review, policy making and issues related to admissions, among others. These are functions that will remain at the national level but if you go back today, you will realize that my primary school which I went to was only built through two things: *harambees* and Constituencies Development Fund (CDF).

Sen. Karaba will appreciate and has confirmed to me that the largest percentage of CDF when he was a Member of the National Assembly was basically going to building schools or medical institutions. What we are now saying is that because the local people have the capacity to decide which school they want to put money into and how they want to build it, it is better that the resources be given to them for purposes of building infrastructure. When we talk about infrastructure, we mean classrooms, laboratories, houses for teachers, dining halls, toilets, among others. We are not saying that we devolve any other function but infrastructure. Equipment means that if you build a dormitory, then you should buy the beds. The national Government cannot come to buy beds at the local level. If you build a laboratory, you buy the laboratory equipment. If you build a hall then you must buy the desks. If you build a classroom then you must buy desks for the students. If you build a library then you must also buy textbooks.

How many of us go for school open days where the teachers ask parents to go with text books. This happens because schools do not have books. If we take this function to the local level, we would have the opportunity to equip those schools. I was not there but Sen. Obure and Sen. Kittony must have been there in the 1960s when education was a function of county councils. This went on until 1967 when devolution collapsed. At that time, the schools were well equipped and the teachers who were hired did not necessarily come from the locality because the community cared about results more than getting a person from their tribe to come and teach in the school. At that time, everything was at a local level except policy making. We are saying that we need to transfer building of infrastructure and equipping of infrastructure at the local level.

Madam Temporary Speaker, currently there are few schools which are being run by the City Council of Nairobi. There is even a department of education in the council. When you transfer functions to the council of Nairobi, you cannot tell them that Schedule Four says that the function is a function of the national Government and so schools should be surrendered to the national Government. It would not add any value that the city primary schools can now be transferred to the national Government. So, you cannot tell the Cabinet Secretary to start equipping the schools because we passed a new Constitution. The only reasonable thing is to use Article 187 to transfer the functions. This applies to Nakuru, Eldoret, Mombasa and other urban centres. So, areas that did not have authority to run schools were the rural areas but the urban councils are already running schools and there is no point in telling them to surrender the schools because we now have a new Constitution. In any case, devolution was to ensure that people have the opportunity to deal with their own development at a local level.

There are concerns about national schools. If you go to Chebara Secondary School which is now a national school in West Pokot County, you will find that this one was built by the church and the local community. Kapsowar Girls in Elgeyo Marakwet County was also built by former President Moi's personal donations and the community

through fundraisings. St. Patrick's Iten was built, purely, by the Irish Catholics. Now, it is referred to as a national school. No money was set aside by the national Government to build any classrooms. In a fact, I schooled there and the infrastructure you will find there today is what existed since its inception in 1961. That is what is being used up to now. It was not built by the national Government but by the church.

This also applies to Sing'ore Girls' and many other schools including Alliance. Alliance was not built based on money from the national Government. It was built by funds from the church.

So, basically, devolving this function will give an opportunity for county governments to identify their priorities. They will identify where classrooms are lacking. What is the point of anyone writing a letter to the national Government to say that *upepo ulikuja na ukabeba mabati ya madarasa, Mtukufu Rais, tunataka pesa za kuweka mabati?*

**Sen. Kittony:** On a point of order, Madam Temporary Speaker. Is it in order for Sen. Murkomen to use two languages while making his presentation?

**The Temporary Speaker** (Sen. Ongoro): Senator, you are out of order. If you started debating in English, you must continue fully in English.

Correct that.

**Sen. Murkomen:** Madam Temporary Speaker, for the illustration to be understood very well and for Kenyans to see what I am trying to say; since they are used to the "*Mtukufu Rais*" argument---

**The Temporary Speaker** (Sen. Ongoro): In spite of that, we have to respect our Standing Orders.

**Sen. Murkomen:** I appreciate that, Madam Temporary Speaker. I will rephrase it in English. We are used to a delegation system where the President would pass by your village. If you had a problem, for example, if a roof of a school had been destroyed by wind, you only had to present your problems to the national Government. I do not think that this attitude of waiting for the national Government to solve small problems at the local level is something that the Senate would like to retain. We, therefore, would like to encourage transfer of functions.

I like what Sen. Karaba raised, that some counties have no capacity. If you read Part III Sections 24 to 28 of the Transition to County Government Act, you will see this very clearly. Article 24 says if you transfer the functions, then you must also transfer the powers and assist the competence of the institution that will receive those functions.

Section 26 says that there must be agreements on transfer and delegation of powers, functions and competencies and this must be based on written agreements. That is why this Motion is requesting the national Government and the county governments to enter into agreements to transfer the functions to the counties. The agreement should look at the functions and the reasons for transfer. For example, if you are talking about the Nairobi County, you can say that already, the education function was being run by the City Council of Nairobi and, therefore, since the Nairobi County Government took over from the Nairobi City Council, it is only fair that the function continues to be run. That could be one of the reasons.

Madam Temporary Speaker, you can also look at the resource framework for the delivery of the functions. You can also look at the capacity of the county to deliver the



function and the mechanisms for capacity building. All these issues will be taken care of. If we are convinced by Kirinyaga County which is represented by Sen. Karaba, for example, that it has no capacity to build schools, then there is no problem. The county should not sign the agreement and Elgeyo Marakwet County, which I know for sure, has the capacity to build schools, should take over their function and stop relying on the national Government.

*(Laughter)*

We are saying that we want to rely on ourselves and not on the national Government.

**Sen. Karaba:** On a point of information, Madam Temporary Speaker.

**Sen. Murkomen:** It is okay, Madam Temporary Speaker.

**Sen. Karaba:** Madam Temporary Speaker, I would like to inform my friend, Sen. Murkomen, that there is CDF which provides emergency funds in case a roof is blown off by wind. We also have the Equalisation Fund which is from the national kitty. This Fund can be given to the counties which cannot raise funds to improve their schools infrastructure.

**Sen. Murkomen:** Madam Temporary Speaker, in other words, Sen. Karaba is admitting that contrary to his initial views, Kirinyaga County is capable of taking over this function, if transferred to them. He is saying that already the CDF is being used to build those institutions and that the Equalisation Fund was targeted for that reason. We know very well that the Equalisation Fund will not go to all counties but to some.

Clear resources for building classrooms and laboratories and for equipping them should be given to counties so that they prioritise what to build and we stop situations like what we used to have in our days. During our days, while we were in class, we could see animals like donkeys grazing and this would cause distraction. In fact, we need to have the capacity.

Madam Temporary Speaker, counties like Turkana and other areas where there are pastoralist communities should make a decision on what kind of infrastructure they want to build. If they know that they will be moving from one area to another, probably they may want to build makeshift classrooms and retain some of their money. Those priorities are not known by the national Government. They are known by the entities at the local level and that is important.

It is also important to realise that under Article 187 of the Constitution, the national Government retains the residual power. If a county is unable to abide by the agreement or is unable to give or deliver the function as provided initially in the agreement, then the national Government retains the power to recall the function and take it over at the national level.

If there is something that is dear to many Kenyans and county governments, it is providing solutions when it comes to education and equipping educational institutions; primary and secondary schools. In any case, the Constitution already gives tertiary institutions to county governments. It also gives them the Early Childhood Education (ECD) institutions. Do you want to tell me that it is easier to build ECD classrooms and

to equip them than to build Class Eight classrooms? It is easier to be given a function of Class Eight than to be a function of the ECD. Anyone who is a teacher will know that formation of a child from the ECD level; the three nursery classes traditionally used by many schools in this country is very difficult to deal with than equipping Class Eight classrooms or even Form Four classrooms because in this case, you are operating with a student who already understands.

If a delicate function of taking care of children at a tender age; formative stage, was given to the county governments, what is so difficult in dealing with classes which are advanced at that level? What would be so difficult if they were given tertiary institutions; very important institutions which are used for training people who have completed Form Four and Class Eight? It is important that this infrastructure is delegated to the counties.

Madam Temporary Speaker, one of the serious policy positions that we are not clear about - it is not even clear to the Ministry of Education, Science and Technology - is what we should do to schools in Nairobi. If this Motion is not passed and a clear direction given by the national Government, there will be a crisis in terms of how you handle the schools in Nairobi, Nakuru, Mombasa, Eldoret and Kisumu which were already being run by local authorities. That will mean that automatically, the county governments will let the institutions go and we will not have clear direction.

This Motion is critical in initiating a policy discussion to transfer the functions to county governments and, therefore, legitimize the already existing position which is correct. We will all appreciate that under Schedule Four, even a very important function that is already allocated---

Sen. (Prof.) Lesan cited a very important function of immunization. I agree and support him and even encourage him to come up with a Motion that will encourage county governments to transfer the function of immunization to the national level. If you are immunizing people, this should not remain at the boundaries of your county. We should deal with this at the national level. There are certain health functions that have been transferred but which could have been handled better at the national level. That is one of them.

These kinds of Motions will assist the national Government, the Ministry of Devolution and Planning and respective Ministries to come up with clear policy positions that will give them clear direction.

With all those statements and issues, I beg to reply and request that you designate a particular day, as we have always done, for voting so that all of us will be around to vote for this Motion.

I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senator, your request is in order. I make specific reference, for the avoidance of doubt, to Standing Order No.51 (2) which states:-

“(1) “At the conclusion of debate, the Speaker shall put the Question.

3. Despite paragraph (2), the Speaker may, on the request of a Senator defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

Since you have done that procedurally, I direct that we put the Question on Wednesday next week at 3.00 pm. Hon. Senators, is that okay with you?

**Hon. Senators:** Yes.

*(Putting of the question on the Motion was deferred)*

### **ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday, 2<sup>nd</sup> July, 2013 at 2.30 pm.

The Senate rose at 4.35 p.m.