

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 31<sup>st</sup> October, 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 consulted with the Clerk-at-the-Table)*

**The Speaker** (Hon. Ethuro): Hon. Senators, I am informed that we have no quorum. So, let the Division Bell be rung.

*(The Division Bell was rung)*

Order, Senators! We now have a quorum. We may now commence our business.

### PETITIONS

#### PLIGHT OF RICE FARMERS AT MWEA IRRIGATION SCHEME

**Sen. Karaba:** Mr. Speaker, Sir, I had presented a petition which came to me through the Mwea Settlement Scheme rice farmers two months ago. I am happy to report that I have seen the Chairman of the Committee on Agriculture, Land and Natural Resources and I am hopeful that the petition is ready to be tabled.

**The Speaker** (Hon. Ethuro): Is the Chairman for the Committee on Agriculture, Land and Natural Resources here?

**Sen. Kivuti:** Mr. Speaker, Sir, we interrogated the issues which were required in the petition for Mwea Irrigation Scheme and I can report that we have been collaborating with Sen. Karaba on several issues which have been emerging since the petition was made, particularly the issue of development of water dams, security and other matters contained in the petition.

The petition had sought clarification from three areas, namely:-

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- (i) Water resources;
- (ii) Rice farming; and,
- (iii) Ownership of land in Mwea Irrigation Scheme.

Mr. Speaker, Sir, we wrote to all the three Ministries concerned with water, land and agriculture. It is our observation that the issues which have been raised in Mwea may not be addressed fully without visiting Mwea Irrigation Scheme because it seems to be more than just the questions put by the farmers.

To this end, we have some written clarification from the Ministry of Lands, but the Chair of our Committee does not think this is adequate enough to address issues raised by farmers. Land ownership alone would not completely solve their problems. I had an occasion to discuss with the petitioner, the Senator for Kirinyaga, and we agreed that we need to visit Mwea Irrigation Scheme so that we can expand these issues. We do not just want to end up with a report from the Ministry tabled and the farmers might not get the results that this House is supposed to give them.

I do not know whether I can only table the papers or if we get directions, we can proceed as requested by the Senator to visit the problem area. I have part of the report here.

**The Speaker** (Hon. Ethuro): Sen. Kivuti, if you had discussed with Sen. Karaba, why would he want to raise the matter? It would appear to me that the natural thing was to look at the agreement you had made and then you would have reported fully after the visit.

**Sen. Kivuti:** Much obliged, Mr. Speaker, Sir. I do not wish to imagine that we have any differences with Sen. Karaba because we actually consulted.

**Sen. Karaba:** Mr. Speaker, Sir, you will agree with me that the Chairman has done something that we do not know here. I was of the opinion that he gives us the highlight of what the Committee has done. Since those highlights might not be enough, I suggested the visit of the Committee to Mwea Settlement Scheme. Therefore, he should tell us when, how soon and the composition of the Committee so that we can appreciate the visit by the team.

Mr. Chairman, thank you very much for that kind observation.

**The Speaker** (Ethuro): Any other Statement to be made?

**An hon. Senator:** Mr. Speaker, Sir---

**The Speaker** (Ethuro): But not on the issue of Mwea because we have disposed it. So, Mr. Chairman, make the visit and give us a full report.

**Sen. Karaba:** On a point of order, Mr. Speaker, Sir. I had requested the Chairperson that he gives us the possible date of the visit to Mwea Irrigation Scheme. Since this issue is now the property of the House, he should be able to tell us what the Committee has done so that when they go to the field they can compare with what they have given to the House. That was my submission.

**The Speaker** (Hon. Ethuro): Sen. Karaba, while I appreciate your submissions, I do not think it is also the good use of the House time to discuss things like when a Committee will visit, especially when both of you agree that you have been consulting. I take it that you will continue with consultations, agree on a date that is convenient to all

the parties. This House will expect a report that is complete and not just a progress report. Everybody should be guided.

Next Order!

**The Clerk-at-the-Table:** Order No. 5; Papers.

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

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

**Sen. Kivuti:** I apologise---

**The Speaker** (Hon. Ethuro): You do not even know what we are talking about?

But your apology is accepted for interrupting us unnecessarily.

Next Order!

## NOTICES OF MOTIONS

### MEASURES TO ASSIST COUNTY GOVERNMENTS DEVELOP CAPACITY IN PRE-PRIMARY EDUCATION

**Sen. Karaba:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, noting that Article 6 (2) of the Constitution recognizes that the National and County governments are distinct and inter-dependent; aware that devolution is an important principle in the new structure of governance; recognizing the fundamental role of education world-wide in fostering economic and social transformation prompting governments to create specialized agencies to among other functions, regulate the training, registration, recruitment and deployment of teachers; aware that the function of pre-primary education is vested in the County Governments pursuant to the Fourth schedule of the Constitution; noting with concern that one of the main obstacles to the efficient and effective operation of County Governments is inadequacy of appropriate capacity; cognizant that Section 15 (2) of the Sixth schedule to the Constitution requires the national government to assist County Governments in building capacity to govern effectively and provide services for which they are responsible; the Senate calls on the National Government to take measures to assist County Governments to develop capacity in the training, recruitment and deployment of teachers for pre-primary education.

### PROVISION OF CHEAP CREDIT TO FARMERS BY AFC

**Sen. Chelule:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that agriculture is the backbone of the Kenyan economy and one of the avenues through which poverty reduction can be achieved; concerned that the Agricultural Finance Corporation (AFC) is charging high interest rates on loans and imposing heavy penalties on loan defaulters; the Senate urges the National Government to provide cheap credit to farmers by reducing the current interest rates charged by the

Corporation from 10 per cent to 3 per cent and abolish the penalties imposed on loan defaulters.

**Sen. Mositet:** On a point of order, Mr. Speaker, Sir. I had given out notice of some two Motions. However, I left them in my office because I did not know whether they had been approved by your office.

**The Speaker** (Hon. Ethuro): Then you can do so, on Tuesday, next week.

**Sen. Mositet:** Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

### STATEMENTS

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

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

**Sen. Murungi:** Mr. Speaker, Sir, before we move to the next Order, I thought the Chairman of the Committee on Agriculture, Land and Natural Resources had a Statement to make.

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

**The Speaker** (Hon. Ethuro): Order, Sen. Kivuti!

Just because you have been mentioned, it is not an invitation to approach the Dispatch Box.

*(Laughter)*

Sen. Murungi, your point of order is unnecessary because I called out next Order which is Statements. Since Sen. Haji had shown such enthusiasm even before the Order was called out, I wanted to give him the first chance. I will soon come to the Chairman of the Committee on Lands if he also indicates an interest to make a Statement.

Sen. Haji, do you want to respond?

**Sen. Haji:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Let us take requests first then you can respond.

Sen. (Prof.) Lesan.

### THE USE AND DISPOSAL OF PLASTIC BAGS LESS THAN 0.6 MILLIMETRES THICK

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, thank you for the opportunity to request for a Statement.

I rise to seek a Statement from the Chairperson of the Standing Committee on Agriculture, Land and Natural Resources. The Statement relates to the use and disposal of plastic bags of less than 0.6 millimetres in thickness.

Mr. Speaker, Sir, close to 150 million plastic bags are used annually in this country. My concern is that one of the by-products of plastics is dioxin. Dioxin is one of the greatest precursors of cancer. There are increasing incidences of cancer in the country at the moment and we are looking at sources and possible causes. This dioxin is a product of the burning of plastics which is a continuous process that goes on at Githurai---

**The Speaker** (Hon. Ethuro): Order, Senator. That was not part of the approved Statement.

There is a tendency by hon. Senators to use the time of Statements to debate. Yours is to put your request, wait for the time of responses then you can interrogate.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I would like, therefore, to ask the Chairman of the Committee to state the internationally recognised standard practice of disposing of plastics. Secondly, I would also like the Chairman to explain, what plan the Ministry of Environment, Water and Natural Resources has on the disposal of dangerous wastes like plastics and heavy metals like mercury. Thirdly, he should state the policy of the national Government on the use of plastics of 0.6 millimetres and below.

**The Speaker** (Hon. Ethuro): Who is the Chair of that Committee?

**Sen. Kivuti:** Mr. Speaker, Sir, we are going to look into the matter. I do not want to envisage how much investigation we need. I agree it is a weighty issue and it is a national concern. My Committee will look into it. Maybe, we can report how far we have gone within the next two weeks.

**The Speaker** (Hon. Ethuro): Senator for Tana River.

#### IRREGULARITIES IN KDF RECRUITMENT IN TANA RIVER COUNTY

**Sen. Bule:** Mr. Speaker, Sir, I rise under Standing Order No.43(2)(c) to seek a Statement from the Chairman of the Standing Committee on National Security and Foreign Relations regarding the irregularities in Tana River County during the recent recruitment by the Kenya Defence Force (KDF). In the Statement, I would like the Chairman to address the following issues:-

First, whether he could state the number of people recruited in Tana River County from the Pokomo, Warde, Orma, Muyaya and Warta clans, respectively.

Secondly, whether he could clarify if Articles 27(4), 47(2) and 232(1) of the Constitution, which require that every citizen of Kenya should be accorded equal opportunity in recruitment into public service, were complied with during the exercise?

Thirdly, whether the Chairman could prevail upon the Government to nullify the exercise and conduct a fresh one with a view to ensuring that the available places are distributed equitably among all the clans of Tana River County.

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

**Sen. Haji:** Mr. Speaker, Sir, we will answer in a week's time.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Statement sought by Sen. Bule is so crucial. Could the Chairperson consider bringing a more comprehensive response so that he touches on all the counties because the problems in Tana River are replicated across the country?

**Sen. Haji:** Mr. Speaker, Sir, if that will be your ruling, I will require not less than two weeks.

**The Speaker** (Hon. Ethuro): For a comprehensive Statement, it is two weeks. For Tana River, it is one week.

What is the mood of the House?

**Hon. Senators:** Two weeks!

**The Speaker** (Hon. Ethuro): Okay. I will allow two weeks to get a comprehensive Statement.

**Sen. Haji:** Mr. Speaker, Sir, as you have rightly observed, my enthusiasm in answering this questions stems from what happened few weeks ago in this House on my Committee.

**The Speaker** (Hon. Ethuro): Sorry, Sen. Haji! What did you say?

**Sen. Haji:** Mr. Speaker, Sir, I have said that my enthusiasm, as you have rightly observed, stems from what happened a few weeks ago in this House on my Committee.

SHOOTING OF PETER WANYONYI WANYAMA  
IN BUNGOMA COUNTY

Mr. Speaker, Sir, this is a Ministerial Statement from the Minister for Interior and Coordination of National Government on the shooting of Mr. Peter Wanyonyi in Bungoma County. This question was asked on 17<sup>th</sup> September, 2013. First, the former Senator for Bungoma County requested for a Statement in regard to the shooting of a prominent lawyer, Mr. Peter Wanyonyi Wanyama. Secondly, the former hon. Senator sought to be informed on the urgent steps being taken to get to the route of this heinous crime and why it took so long for the police to get to the scene and yet the police station is barely a kilometre away. Thirdly, the former Senator sought to know whether this fatal attack is the resurgence of the notorious insecurity incidents in Bungoma County. Fourthly, that no stone would be left unturned until the perpetrators of that heinous crime are dealt with.

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

The late Peter Wanyonyi was ambushed by unknown assailants as he was entering his compound within Sunrise Estate in Bungoma on the night of 17<sup>th</sup> September, 2013 at about 12.30 a.m. He was shot three times and died instantly. In less than 20 minutes, police officers who were on patrol along Bungoma-Malaba Highway, arrived and secured the scene before other police officers joined them. Three spent cartridges of 7.62 special were recovered at the scene when the body was removed to Bungoma Sub-district Hospital Mortuary. A manhunt for the criminals commenced immediately and the Divisional Criminal Investigation Officer (DCIO) commenced preliminary investigations. A murder file Case No.911/472/013 was opened and a special team has been sent from the Criminal Investigation Department (CID) Headquarters, Homicide Section, to join hands with those on the ground to unearth the perpetrators of this heinous crime.

Mr. Speaker, Sir, the fatal attack on the lawyer has no relationship with the insecurity incident which had earlier rocked the county. This was an isolated case of a well planned and executed murder. It is being investigated to bring the culprits to book.

There is total commitment to ensure that the murder is properly investigated and no suspect linked to the murder will be spared.

Mr. Speaker, Sir, in order to enhance security in the county:-

1. Police officers have been reshuffled and the Officer Commanding Police Divisions (OCPDs) posted to all the sub-counties. Beats and patrols have been intensified in most rural and urban areas on a 24-hour basis.

2. The County Security and Intelligence Committee has been engaging the county leadership in meetings and in interactive *barazas* to proactively contain insecurity in the county.

3. Telephone contacts of security officers have been circulated to the members of the public so as to report crime incidents and other security related matters.

Thank you, Mr. Speaker, Sir.

#### CLOSURE OF THE KENYA-SOMALIA BORDER

**Sen. Haji:** Mr. Speaker, Sir, the other Statement was asked by Sen. Hassan Abdirahman Ali on 23<sup>rd</sup> of October, 2013, on the closure of the Kenya-Somali Border.

The Statement from the Cabinet Secretary reads as follows.

Mr. Speaker, Sir, Senator---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. We thought that the Chairperson would pause so as to give us an opportunity to interrogate the first Statement. Or are you recommending that---

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You indicate your interest the moment the Statement is concluded. I looked at you in particular and I did not see any movement. Instead of blaming the Chairperson for not resuming his seat, you should blame yourself for not being attentive and asking for the indulgence of the Chair. That is just the honorable thing to do, Senator.

**Sen. Haji:** Mr. Speaker, Sir, before I started on the second Statement, I paused and turned---

*(Laughter)*

Honestly, I waited for somebody to raise a question, but nobody raised it.

**The Speaker** (Hon. Ethuro): Sen. Haji, you may resume your seat and then we will allow Senators to interrogate the earlier Statement.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, first of all, let me thank the Government for reshuffling the police officers in Bungoma County. But more importantly, the death of this particular advocate has raised a lot of confusion on the ground to the extent that a very big section of the community and the population there believes that this death was political.

Mr. Speaker, Sir, I have two questions. Could the Chairperson give us any indication whether, as of now, there is any evidence linking any politician to the murder of this particular advocate? Two, the Chairperson should tell us whether he is aware that

this advocate, while in court the same week he died, he was threatened by a member of the public on an issue of land? The Magistrate who was in court that day ordered for the immediate arrest of this character. A few days later, this character was released from the cells. Is there any connection between this man, one Stanley, who was released and the death of this advocate?

**The Speaker** (Hon. Ethuro): Let us take some more questions, Chairperson.  
The Senator from Nyamira.

**Sen. Okong'o:** Thank you, Mr. Speaker, Sir, for this opportunity. As I listened to the Chairperson giving his Statement, there was nothing new. If you read the HANSARD of many parliaments on murder cases, it is the same language about cartridges and the type of gun used. If you know the type of gun and cartridges used, should they not tell us where those guns are from? We need to get some clarity on that.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, like all the counties along the border of Kenya and Uganda, Bungoma County enjoys a lot of peace. Communities along that border co-exist peacefully. So, I am surprised that the answer given by the Chairperson is similar to what is usually given by the Ministry. He has not told us whether the culprit has been arrested, dead or alive. These are the only two ways of arresting culprits.

Mr. Speaker, Sir, it defeats logic when we are being told that the investigations are ongoing right in the middle of Kenya---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! How do you arrest a dead body?

*(Laughter)*

Proceed, Senator.

**Sen. (Prof.) Lonyangapuo:** I am sorry, Mr. Speaker, Sir. I meant that the character should be brought in, dead or alive. We need to get more clarity on this issue of Bungoma so that it does not spill over to any other county in the country.

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. The killing in Bungoma is a very big concern. We have raised queries about this and the Government has said it has been investigating. However, it is now over three or four months, since these killings have been going on and no arrests have ever been made. Who is behind all these killings? If someone thinks it is political, why have those people not been brought to book, taken to court and charged?

**Sen. Haji:** Thank you, Mr. Speaker, Sir. As to the question raised by my friend, Sen. (Dr.) Khalwale, I am not aware whether this murder has any political connections. Neither am I aware of this person who threatened the deceased a day before his death. If it is true that there was such a threat, then the witnesses should have reported the matter so that the police may investigate the circumstances surrounding the death of this prominent lawyer.

As to the question raised by Sen. Okong'o, we all know that there are a lot of small arms which have come into this country because of the many unstable countries that we neighbour. Therefore, on the question as to where they come from, there is no



one who can particularly pinpoint where they come from. But it is general knowledge that there are a lot small arms that are in this country.

Mr. Speaker, Sir, as to the question raised by Sen. (Prof.) Lonyangapuo on why no arrest has been made, I think the fact that very senior people from the Homicide Section of the CID have been sent from Nairobi to go and reinforce those in Bungoma shows how serious the government is. We look forward to some tentative results as soon as possible.

Mr. Speaker, Sir, as for Sen. Mukite's question; yes, it is public knowledge that there has been some insecurity in Bungoma County. Of late, the insecurity situation has improved. It is unfortunate that after it has improved, the lawyer was murdered. We hope that as the police continue with their investigations, they will nab those who are behind this.

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

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I would like to add to his Statement.

**The Speaker** (Hon. Ethuro): You want to add to his Statement?

**Sen. (Dr.) Zani:** It is a query.

**The Speaker** (Hon. Ethuro): No; we finished the queries.

**Sen. (Dr.) Zani:** I am following up on his reply.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir, for this opportunity. I decided to rise because the Chairperson mentioned the issue of small arms. The proliferation of small arms is a serious issue. However, the way he mentioned it is as if it is a way of life in this country. We know that people own small arms, but what are we doing about it? It seems to be really part of the problem in terms of security. We are talking about the debate on whether people should own guns or not, but it is as good as done. If everybody gets to a point where people feel---

**The Speaker** (Hon. Ethuro): Order, Senator! What is the issue arising from the answer?

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, the issue arising from the answer is the casual manner in which the serious issue of small arms has been handled.

Should I stop there?

**The Speaker** (Hon. Ethuro): Yes, that will be enough.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Haji, I actually thought that what the Senators were asking was, one, the murder was on the night of 17<sup>th</sup> September and today is 31<sup>st</sup> October, 2013. So, we are really talking about one-and-a-half months. Basically, what you have told us is that investigations have commenced. Surely, in one-and-a-half months, there should be something to give us some tentative progress?

**Sen. Haji:** Thank you very much, Mr. Speaker, Sir. I do not know whether I should start with you. However, because of seniority, I will start with your question.

Mr. Speaker, Sir, these criminals are also very clever and crafty people. They will tend to hide even if it is hiding in a hole, like Saddam Hussein. I am sure one of these days the police will catch up with them.

As for the question raised by my sister, Sen. (Dr.) Zani, I think it was not casual at all. I do not know whether you were expecting for me to cry here, which I cannot do. But what I know – and everybody else knows – is that there are a lot of small arms illegally held by Kenyans. The Government has on many occasions, tried its best to ask people to surrender them. People have surrendered their firearms in some parts of this country. So, what we will continue doing is to impress upon the Cabinet Secretary to give amnesty to people who would wish to surrender their arms.

Thank you, Mr. Speaker, Sir.

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

**Sen. Kivuti:** On a point of order, Mr. Speaker, Sir. I am still concerned about the questions that have been raised by Sen. (Dr.) Zani and the casual way that we treat the small arms issues. We know that we can mop up small arms by giving amnesty. However, there could be hundreds of other arms coming in every day. What is the Government doing to see that the small arms do not come into Kenya, particularly considering that there is a regional body, an inter-governmental body, which the Government does not support?

Chairman, please, tell us what you will do about this.

**The Speaker** (Hon. Ethuro): Actually, there are two bodies. The regional one is known as Regional Centre on Small Arms (RECSA). The other one is the Kenya National Focal Point on Small Arms and (KNFP) Light Weapons. Small arms are light weapons.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. It is not right for the Senator to say that the Government is not serious. The Government is serious. The current Inspector-General of Police was the head of the unit that the Speaker has talked about. Now that he is the Inspector-General of Police, we hope that he will combine his position as well as his knowledge as officer in charge of small arms. Hopefully, we will see some improvement in the situation as soon as possible.

I have two more statements to make.

**The Speaker** (Hon. Ethuro): Please, do so but it is important that the statements expressed by Senators are taken seriously because this issue is about the lives of innocent Kenyans.

**Sen. Haji:** Mr. Speaker, Sir, I have summoned the Cabinet Secretary. He will appear before my committee tomorrow. I will use that opportunity to address the issues.

#### CLOSURE OF THE KENYA-SOMALIA BORDER

The other statement was requested on 23<sup>rd</sup> October, 2013, by Sen. Abdirahman regarding the closure of the Kenya-Somalia border.

The hon. Senator sought to know one, whether the Kenya-Somalia border is closed. If so, an explanation as to why it was closed.

Two, state why stuff like sugar and electronic goods are smuggled through the border in connivance with the representatives of the national Government and the Kenya Revenue Authority (KRA) and whether there exists a serious tax evasion that would have helped improve the lives of Kenyans. Three, he sought to know what steps the

Government is taking to ensure that this illegal practice ceases forthwith so that we create an environment for carrying out genuine business which can thrive and we protect our country's security and integrity.

I would like to state as follows.

Kenya shares a 700 kilometres porous border with Somalia which has been without a stable Government for over two decades. The instability in Somalia has created a conducive environment for insecurity resulting in proliferation of arms and the spread of terrorism in Kenya and the region at large.

To contain the terrorism and tourism threats and other cross-border crimes, including the influx of illicit firearms and light weapons, the Government resolved to close the Kenya-Somalia border in January, 2007.

Unscrupulous traders and businessmen have been smuggling goods such as sugar and electronic products through ungazetted *panya* routes thus, denying the Government taxes.

The Government has directed all agencies manning the Kenya-Somalia border to ensure that there is no smuggling of goods into the country. Respective patrols have been intensified along the border to ensure that the vice is brought to an end.

The Government will consider reopening the border since there is now a stable government in Somalia. In the meantime, those found smuggling such goods will be dealt with according to the law.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, I would like to thank Sen. Haji for giving a timely response. They had said that they would give the statement on Thursday and they did. However, I want to inform the House that the Ministry has, very cleverly, evaded to say that members of the national Government and those of the county governments are doing this in connivance, as I said, with what they are now terming as unscrupulous businessmen.

I am also glad that the mixed signals we were getting in relation to the border being closed have now been clarified and the border is closed. That is what we have learnt. I want to tell Mr. Chairman that the unscrupulous businessmen are not using *panya* routes. They are using gazetted customs border posts, including that of Elwak and Liboi. The border is technically closed. However, the fact of the matter is that people are moving, goods are moving in and this is in agreement with representatives of the national Government.

I would like to ask, kindly, instead of saying that it is closed, that you open it. After all, nothing is being restricted. It is easier to maintain control flow of arms, goods and people when the border is open. It is easier that way.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I want to agree with Sen. Abdirahman that it is not possible to close a border for that long. This allows some people to do business while others are suffering. Since the border was closed officially, we have had numerous attacks by terrorists. The most recent happened two weeks ago.

With regard to security, how is the closure meant to ensure that no criminals or terrorists come into the country? What exactly is being done to ensure that criminals do not get in through the border to terrorise the people of Mandera and other parts of the country?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Chairman has told us, explicitly, that the Kenya-Somalia border is officially closed. We know that the security situation in Somalia, right now, is being controlled by the Kenya Defence Forces (KDF) and the African Union (AU) Forces.

However, we are also privy to the most recent occurrence at Westgate here in Nairobi where KDF officers were seen carrying goods from the supermarket in plastic bags. Can he reassure us that the small firearms are not carried into the country in small bags by KDF forces from Somalia?

**Sen. (Prof.) Lonyangapuo:** On a point of order. With regard to the answer given by the Chairman of the relevant Committee, for the past 20 years, we have had problems at the Kenya-Somalia border. Every Kenyan knows this. We are also told that the border is about 700 in length from the Indian Ocean. What would it cost us if we decided to be very bold and strategic and invested heavily by putting up a security wall?

I hear that there are countries like Israel, Palestine that have these walls. Technology and innovation can be borrowed. We should talk about it here because our people in Garissa and the neighbouring counties, once in a while, suffer due to the indiscipline in the neighbouring country.

I want to know whether the Chairperson can give a convincing answer on how we can deal with the Kenya-Somalia border, including using barriers. How they will do it; that is something for them to think about.

**Sen. Hassan:** Mr. Speaker, Sir, I want to know, since you have closed our borders for that time, whether it is measureable, through research, how many incidences of insecurity have been reduced. Has the passage of small arms reduced? You have to demonstrate that there was the passage of small arms and incidences of insecurity arising due to the fact that the border had been closed and then you show the reduction of the small arms.

Secondly, in the current context, it is inevitable to have borders closed. That is a fact. The fact that we have good neighbours and bad neighbours is something that this country will have to contend with. Kenya has an international obligation to keep its borders open, particularly for people who are trying to flee from situations of conflict. That is an international obligation that Kenya has. Keeping borders closed means that you have put people between a rock and a hard place. By that mere fact, would it not be prudent for us to boost our international commitments and bolster our border security rather than putting people who are in situations of distress into further jeopardy?

We will continue to have these problems whether we like it or not. We, as a country, must be prepared to see how we will evaluate our strategies to be most effective in terms of our security and our neighbourliness.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I will answer the questions by hon. Abdirahman and the Sen. Billow.

*(Loud consultations)*

Mr. Speaker, Sir, the consultations are very high.

**The Speaker** (Hon. Ethuro): Hon. Senators, please, consult in low tones.

**Sen. Haji:** Mr. Speaker, Sir, the Cabinet Secretary admitted that sugar and electronic goods are finding their way into the country. I find it difficult not to agree to the fact that we, as a country, are losing a lot of revenue because of the *panya* routes being used by smugglers. There are porous borders and that is true. We have no roads there. There is only one major road. I think the Government should consider reviewing whether it is necessary to continue closing the border. This, I will communicate.

Mr. Speaker, Sir, with regard to insecurity as raised by Sen. Billow, as you may know, where my brother comes from and Somalia, it is just a stone throw away. So, if these people can find their way up to Nairobi, you can imagine how easy it is for them to find their way across that border and mingle with the local community. This matter will be addressed properly when the Government effects the *Nyumba Kumi* programme. The public should also help the Government in identifying people who are entering the country illegally. I think this issue should be resolved when that programme kicks off. I believe this issue will be resolved.

With regard to the issue raised by Sen. (Dr.) Machage, I am really sorry that when KDF have sacrificed their lives and so many soldiers have been maimed or killed while fighting in Somalia, he can allege that they are bringing small arms into the country. That is very unreasonable and unkind. I do not believe they are bringing small arms into the country.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. We are talking of a very grave situation of insecurity in this country. The head of the KDF has, indeed, agreed that some of his officers stole at the Westgate Mall and that two of them are being court marshalled. What I am talking of is not unreasonable. It is a reality that KDF officers have been known to steal and they could be carrying arms from Somalia to this country.

**Sen. Haji:** Mr. Speaker, Sir, I stand to say that Sen. (Dr.) Machage is totally wrong. If he has any information to the effect that the KDF officers are bringing arms into the country, he should go and report it to the police so that they can be investigated and action taken. This has nothing to do with the looting of water at the Westgate Mall.

**The Speaker** (Hon. Ethuro): Order! I think let me help. Sen. Haji, when a Senator requests for further information, unless he has used some words that are not parliamentary, that is the only way you can respond in terms of saying it may not be admissible. But for them just to get that confirmation from you whether something happened, could happen or might happen or has happened, I do not think that is unreasonable. It is up to you to tell them that it has not happened and then they can challenge you or they will take your word at face value. The reason we have Parliament is to allow people a bit of freedom of speech and to be able to interrogate matters.

**Sen. Haji:** Mr. Speaker, Sir, it is always very difficult to do otherwise. I am obliged by what you have said, but I think occasionally people should ask questions instead of making such serious allegations like the one he made. He should realize that those soldiers are people and they have feelings.

**Sen. Muthama:** Bw. Spika, labda Sen. Haji hakumuelewa Sen. (Dr.) Machage kwa sababu amerudia tu yale maneno yaliyozungumzwa na Mkuu wa Majeshi kwamba ni kweli na ni dhahiri kwamba wanajeshi walipatikana kwa makosa ya kuiba. Wawili

wamefutwa kazi na mmoja amefungiwa katika jela yao na wanaendelea kuchunguza zaidi. Kwa hivyo, hili ni jambo ambalo limekubalika kwamba lilitokea.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, granted that the Chairman is not a member of the Executive in the Jubilee Coalition Government, who has told him that our soldiers who are known to be thieves have not been practicing the same trade---

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! Just because a few parliamentarians may be caught or taken to court because they stole does not make all of us thieves. So, I think a blanket condemnation like our soldiers are known to be thieves is too unkind. You can talk of "some".

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I stand corrected. What I meant is that granted that the Chairman is not a member of the Executive and granted that it is common knowledge, admitted by the Chief of General Staff, Gen. Karangi, that some of our officers are actually thieves, is he in order to attempt to reassure the country and to mislead the House that our soldiers are not stealing arms from Somalia and bringing them into the country?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. If some soldiers within the KDF may have stolen something from the Westgate Mall as it had been alleged and admitted by their boss, that does not apply to arms, particularly when we are discussing matters of sovereignty of this country in relation to other countries. We must rise above our political differences and speak for the pride of the nation.

**Sen. Haji:** Mr. Speaker, Sir, in the first place, I am not aware of those allegations that are being made by Sen. (Dr.) Khalwale. Secondly, I am quite aware that I am not in the Executive. However, I am here courtesy of the Jubilee Coalition Government.

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. I am so surprised with what my chairman is saying because I am a Member of that Committee. I am the one who actually proposed him to be the Chairman of that Committee and when he was being attacked here I defended him. So, do not give a blanket praise to the Jubilee Coalition Government. I am also here and CORD should get some credit for voting you. Otherwise, next time you know what I will do.

**Sen. Haji:** Mr. Speaker, Sir, I want to admit that Sen. Orenge is one of my best friends and there has never been any time when we have crossed each other's path. I do not think we will do so now.

If I come back to the answer I am supposed to give, Sen. (Prof.) Lonyangapuo suggested that we should build a wall, but is it possible or viable? You cannot compare us with Israel and the Arab countries that have borders of about 50 kilometres in length. I also do not think that walls can stop all vices that happen in the country because even Berlin had a wall and the people used to cross over. But I will take that point and discuss it with the Cabinet Secretary.

The question raised by Sen. Hassan is very valid. I do not think there has been any research done to find out the rate of the decline or increase of crime since the border was closed. Maybe there is need to do that, but I want to assure him that the border is not closed to refugees. They are allowed to cross into Kenya every day. We used to receive about 1,000 of them on a daily basis into the Dadaab Refugee Camp.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, with your indulgence, all I wanted was the Chairman of this Committee to assure this House that the KDF officers are not involved in trafficking of small firearms from Somalia to Kenya. You repeated the same to him, but he has totally refused to assure this House. I do not know what information we will go with. Please, can he do it?

**Sen. Haji:** Mr. Speaker, Sir, you can only assure somebody of something you are aware of. I am not aware of KDF soldiers bringing arms here. So, I have nothing to assure you of.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order all of you! First, Sen. (Dr.) Machage, you do not have to request for a Statement from the Chairman with such a shrill voice. The Chairman has been very supportive of most of the clarifications sought and, particularly, the way you walked back, the body language was very worrisome. Second, I think the Chairman has responded to it to the best of his knowledge, so let us leave the matter that way. Let us not speculate; let us deal with facts. I also want to believe that when soldiers go to another country, they carry their own guns and so they do not need to bring others. So, that should be very clear.

Hon. Senators, we deferred two Motions and one Bill yesterday to today and for purposes of ensuring that you have sufficient numbers for voting. Now we have those numbers and we really do not want to squander that opportunity. So, I will stop the Statements for now, so that we go to the voting because this is the business affecting counties. But before I do so, I want to do a communication.

### COMMUNICATION FROM THE CHAIR

#### SCHEDULED PUBLIC HEARINGS BY THE SENATE ON APPEALS TO TRANSFER FUNCTIONS FROM THE NATIONAL GOVERNMENT TO COUNTY GOVERNMENTS

**The Speaker** (Hon. Ethuro): As you may be aware, a significant number of county governments, totaling 28, have sent appeals to the Senate through the Speaker requesting for the transfer of functions from the national Government to the county governments pursuant to Section 23 (7) of the Transition to Devolved Government Act 2013. The Speaker referred the requests to the relevant Committee of the Senate, which is the Sessional Committee on Devolved Government to deliberate on the matter and advise the Senate accordingly. Consequently, the Sessional Committee, noting the magnitude of the task and significance to the question of devolution in the country sought the support and participation of the Liaison Committee of the Senate comprising the Chairpersons of all committees in order to comprehensively and expeditiously dispose of the applications within the stipulated timelines.

In that regard, the Sessional Committee on Devolved Government, in conjunction with the Liaison Committee has prepared a schedule of hearings of Senators led by

Members of the Liaison Committee where possible, that they will visit nine regions to have audience with the county governments on this matter. The Committee has prepared some guidelines for use in assessing the capacity of counties to undertake devolved functions applied for transfer. This exercise had been rescheduled for today, 31<sup>st</sup> October, 2013 and 1<sup>st</sup> November, 2013, but was postponed, in order to give it two weeks' notice and planning, to Wednesday, 13<sup>th</sup> November, 2013, Thursday, 14<sup>th</sup> November, 2013 and Friday, 15<sup>th</sup> November, 2013, as per the proposed schedule herewith, bringing together counties clustered as regions. The schedule will be circulated for your information.

The office of the clerk will write to the county governments informing them of the composition of the Senate teams, including the Secretariat visiting each region, the proposed dates and the time for the visits.

Hon. Senators, it is, therefore, proposed by the Rules and Business Committee that the House adjourns on Tuesday, 12<sup>th</sup> November, 2013, on a Motion of Adjournment to be brought. Tuesday will be a sitting day for purposes of ensuring that the following two days, Wednesday 13<sup>th</sup> November, 2013 and Thursday, 14<sup>th</sup> November, 2013 will be put to good use for this particular significant national exercise.

This Communication is, therefore, to inform you of this function and to encourage your participation and support. This is a core business of the Senate.

I thank you.

*(Applause)*

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

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

**Sen. Kagwe:** Mr. Speaker, Sir, I just want some clarification. As I recall, in the sitting of the Liaison Committee, we had actually postponed this to next week, Tuesday. I heard you talk of 13<sup>th</sup> November, 2013, whereas, as a matter of fact, we had organised for next Wednesday. Indeed, I have gone ahead to prepare for the same.

**The Speaker** (Hon. Ethuro): It is two weeks because of the requirements of the notice. So this will be for Wednesday 13<sup>th</sup> November, 2013, Thursday, 14<sup>th</sup> November, 2013 and Friday, 15<sup>th</sup> November, 2013.

Let us now move on to the next order.

## MOTIONS

**The Speaker** (Hon. Ethuro): Order, Senators, I will really appreciate if we dispose of voting on the Motions listed on the Order Paper.

Hon. Senators, for the subsequent Motions listed under Orders No.8, 9 and 10, I will order that the Division Bell is rung once for all the three and then we will take the vote. So, let the Division Bell be rung. Could we have the names of the Tellers?

*(The Division Bell was rung)*

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



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

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the Division Bell has been rung. I order that the doors be closed so that we can go to Division. As has been directed by the Speaker, the Division Bell has been rung once, but voting will be on the three Motions.

Under Standing Order No.69, these Motions affect counties.

*(Loud consultations)*

Order, hon. Senators! Let us have some order so that we can do business together. Before I put the question, the Teller for the “Ayes” is Sen. Ben Njoroge and for the “Noes” the Teller is Sen. Mutula Kilonzo Jnr.

I will now proceed to put the question for the Motion listed under Order No.8.

ADOPTION OF REPORT OF DEVOLUTION/LEGAL  
AFFAIRS COMMITTEES ON JOINT COUNTY VISITS  
TO MOMBASA AND KILIFI

THAT, the Senate adopts the report of the Sessional Committee on Devolved Government and Standing Committee on Legal Affairs and Human Rights on the joint county visits to Mombasa and Kilifi counties laid on the Table of the House on Thursday, 10th October, 2013.

*(Sen. Sang on 16.10.2013)*

*(Resumption of debate interrupted on 22.10.2013)*

**DIVISION**

**ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof. ) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County;

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Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet; Kajiado County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Njoroge

**NOES:** Nil

**Teller of the Noes:** Sen. Mutula Kilonzo Jnr.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the results are in for that particular voting and they are as follows:-

**AYES:** 33

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 33 votes to nil)*

ADOPTION OF REPORT ON VISIT TO LEVEL FIVE HOSPITALS  
IN UASIN GISHU, ELGEYO MARAKWET AND NANDI COUNTIES

THAT, the Senate adopts the Report of the Standing Committee on Health, Labour and Social Welfare on the visits to levels 4 and 5 hospitals in Uasin Gishu, Elgeyo Marakwet and Nandi counties laid on the Table of the Senate on Tuesday, 15th October, 2013.

*(Sen. (Dr.) Kuti on 17.10.2013)*

*(Resumption of debate interrupted on 22.10. 2013)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, Order No.9 is also for voting. The same procedure will be followed under Standing Order No.69. It affects the counties and shall go to Division. The Tellers will remain the same.

**DIVISION**

**ROLL CALL VOTING**

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County;

Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof. ) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Njoroge

**NOES:** Nil

**Teller of the Noes:** Sen. Mutula Kilonzo Jnr.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the results are in for Order No.9 and they are as follows:-

**AYES:** 33

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 33 votes to nil)*

Next Order!

## **BILL**

### *Second Reading*

#### THE COUNTY GOVERNMENTS PUBLIC FINANCE MANAGEMENT TRANSITION (AMENDMENT) BILL, 2013

*(Sen. Bill on 29.10.2013)*

*(Resumption of Debate interrupted on 29.10.2013)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, again, the same procedure will be followed, under Standing Order No.69.

## **DIVISION**

### **ROLL CALL VOTING**

*(Question put and the Senate proceeded)*

*to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof. ) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Njoroge

**NOES:** Nil

**Teller of the Noes:** Sen. Mutula Kilonzo Jnr.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the results are in for Order No.10 and they are as follows:-

**AYES:** 33

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 33 votes to nil)*

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Members! Before we proceed to the next Order, I believe that the direction was that we are not finished on the Statements. We were voting to take advantage of the numbers in the House. So, we are going to go back to the Statements just in case there are any Statements which are still pending. We will finalize with them and then we will proceed to the next Order.

*(Loud consultations)*

Order, hon. Senators! I know that hon. Senators are withdrawing from the Chamber. If you are withdrawing, please, do so quietly, so that we can proceed with the Business.

Yes, Sen. Murkomen.

*(Resumption of Statements)*

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## STATEMENTS

REVIEW OF SALARIES AND ALLOWANCES OF  
MCAs BY THE SRC

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, on Tuesday, the Sessional Committee on Devolved Government was asked a Question by Sen. Kiraitu concerning the impending strike by the Members of the County Assemblies (MCAs). I promised to give an answer today because hon. Senators said that it was an issue of national importance. We, as a Committee, had a meeting this morning with the Salaries and Remuneration Commission (SRC) and with the leadership of county assemblies through the County Assemblies Speaker's Forum.

Mr. Deputy Speaker, Sir, after lengthy deliberations---

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Members! The issue about MCAs has been concerning all of us, as Senators, for quite some time. I think the Statement being made is of paramount importance to all of us. I want request you, kindly, to give the Chairperson of the Committee a chance to deliver the Statement.

Thank you.

**Sen. Murkomen:** Thank you, Mr. Deputy Speaker, Sir. We had lengthy deliberations with the County Assemblies Speaker's Forum and the SRC from 9.00 a.m. up to 2.00 p.m. After that, there were three resolutions. First, that the SRC is required to submit a report to the Senate. This report was the basis that was used by the SRC to set the salaries before the March elections. It is to be submitted to the Senate through the Speaker by 9.00 a.m. on Monday. The relevance of that is that---

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that Monday, next week?

**Sen. Murkomen:** Yes, Mr. Deputy Speaker, Sir. That is on the 4<sup>th</sup> of November, 2013. The relevance of that is that the SRC was pegging the increase of salaries on review and re-evaluation of the work of MCAs. For that re-evaluation to be done, the MCAs are entitled to understand or to have knowledge of what was the evaluation in the first place. Therefore, that report was necessary both as a constitutional requirement on access to information, but also under the requirements of Article 230 of the Constitution that requires the SRC to perform its task transparently and in a manner that will be accountable to the public.

Secondly, the county assembly leadership will have a meeting on the 5<sup>th</sup> of November, 2013, which is on Tuesday, to determine the use of that evaluation report and whether or not they will participate in the evaluation process. That is a very sticky issue because the SRC thinks that they are ready to carry out the evaluation, but the county assemblies had made a decision through their Governing Council, which brings together 141 members, that they have to be sure whether or not they will participate in the evaluation once they see the report. So, they will have a meeting on Tuesday. They have

invited the Committee to that meeting. Through that meeting, they will now announce two decisions; one, whether they will participate in the evaluation or not; and, two, the way forward in so far as the strike in their county assemblies is concerned.

The third is that the SRC has committed itself to do the re-evaluation within two weeks from next week. They are ready and prepared to do this as long as MCAs will play along. They will then write their report and subject it to validation within another two weeks so that by Monday, 2<sup>nd</sup> of December, 2013, they will give a report of the new remuneration or salaries for the MCAs.

Mr. Deputy Speaker, Sir, it was not a very easy negotiation. I benefitted from the experience and expertise of all the Members present, including the Attorney-General Emeritus. It was important that together, we go through that process and every Member contributed – the Majority Whip, the able Senator for Mombasa and the able Senator for Trans Nzoia; it was important that we all, together, ventilate on these issues so that we get a solution.

Mr. Deputy Speaker, Sir, this is the way forward. This is the roadmap. I know the nation is waiting, but this is the direction we are taking. Hopefully, MCAs are going to make a good decision, in the interest of the nation.

Mr. Deputy Speaker, Sir, from the deliberations, we were told that county assembly business has been hampered, particularly when it comes to legislation and oversight. Although the question of representation to some extent in terms of visiting the people on the ground is ongoing, but the MCAs are demoralized; they are immobilized and they are just sitting there. The people are also wondering how they will get their representatives to perform the task they elected them to perform if we do not solve this problem. I believe that there is good faith on both sides: that is, both from the SRC and the MCAs. We will urge them to continue talking because it was important that there is dialogue between these leaders.

Thank you, Mr. Deputy Speaker, Sir.

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

Thank you very much, Chairperson, Sen. Murkomen, for that very important Statement. As I said, it is something that all of us, as Senators, are very keen about and we want to see an end to it. I am happy to hear that you were able to have discussions with them. Of course, I am sure we want to know what your satisfaction level was on the issue of evaluation of elected Members.

But having said that, I think it is important that I open the Floor for ventilation by Senators for about 30 minutes or less; for Senators to state what their views are on that very important Statement as has been made by Sen. Murkomen. This is because all of us know that the oversight role that the county assemblies are supposed to exercise on county governments does not seem to be happening at the moment due to that existing impasse.

I will allow a few minutes for ventilation, if Senators are interested.

Yes, Sen. Mutahi Kagwe?

**Sen. Kagwe:** Thank you very much, Mr. Deputy Speaker, Sir. I want to congratulate the team that actually tackled this matter this morning. But I also wish to express some reservations.

Mr. Deputy Speaker, Sir, the SRC has been heard in the past to say things that they did not finally execute. Without implying improper motives on their part, I do not know whether their commitment today amounted to a commitment to the Senate. Consequently, is this something that can be followed up and made sure that it happens? There is a tendency in this country to mistake the MCAs with councilors. I think the mentality of most of our people, including the SRC, is that councilors are MCAs. There is a very big difference. Their roles are different and their terms are also different. The geographic areas they represent are different. Therefore, they should actually be remunerated like Members of Parliament, which they really are; they are Members of Parliament of the County Assemblies.

Mr. Deputy Speaker, Sir, the only clarification that Sen. Murkomen should give is whether it is a fact; did the SRC commit itself to the extent that they will do what they said they are going to do? This is because they have been known to say things that they did not do.

**The Deputy Speaker** (Sen. Kembi-Gitura): We will give the chance to four Senators and then Sen. Murkomen will give his response.

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I too want to thank the Chairman of the Sessional Committee on this issue. However, I would like to raise a point of clarification here. There are two issues here. Is this an evaluation of persons holding the job or an evaluation of the job itself? If this is about job evaluation, I think this can be done without necessarily calling Members of County Assemblies (MCAS) and interrogating them.

It took such a long time to carry out that activity. Job evaluation should have been done without reference to this. It should have been done all the time. I hope that this will be done speedily so that it is resolved.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, let me pose a question to you because you have raised the issue. Considering that the job of an MCA is set out in the Constitution, are you of the view that there should not be any other evaluation? Is that the position you are taking?

**Sen. Lesan:** Mr. Deputy Speaker, Sir, it has become apparent that for the evaluation to be done, we will be interviewing individuals who are holding positions.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am asking you because you made a very good distinction on whether this is just a job evaluation or whether the evaluation is on the job doer.

**Sen. (Prof.) Lesan:** That is what I wanted a clarification on. If this is about job evaluation, we do not need to interview the persons. We can do the evaluation and give them an opportunity to comment on what has been evaluated.

**Sen. Billow:** Mr. Deputy Speaker, Sir, I would like to seek two clarifications on this matter. The work of an MCA is set out, clearly, in the Constitution. This is just about the same role and mandate that this House and the National Assembly have which is to oversight, represent and legislate.

First, I want the Chairperson of the Committee to clarify – they did an initial evaluation and they now want to carry out another one – since the county assembly rules are still the same ones, how does re-evaluation arise? The mandate, roles and duties are

all set out clearly in the Public Finance Management (PFMA) Act and in the Constitution. What is necessitating the re-evaluation?

The second issue is that the job of an MCA is the same as that of Members of Parliament and the Senate. I would like the Chairman of the Committee to give the Senate the parameters they are using in job evaluation. It is difficult for me to imagine that the job evaluation of an MCA will be done.

These are people who work at night and represent people anywhere, anytime. The representation is done in churches, people's homes and many other myriad of activities that do not fit into their job descriptions. You should evaluate a job that has got job description and where you can measure job involvement. I do not understand this.

I would really appreciate if the Committee shared the parameters or tools that will be used by Salaries and Remuneration Commission (SRC) to carry out job evaluation. The same parameters may be applied tomorrow to this House. It will be difficult for us to understand how it was done.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I would like to thank the Committee, especially the Chairperson. I want to remind him that the reason he summoned the Commission before Senate was to ascertain whether what they were doing was legal. They told us that they want to carry out job evaluation when we know that the job of an MCA is simply to represent the people who voted for him or her, to legislate and to carry out oversight. How did they satisfy you with regard to the issue of job evaluation of people whose job description is there in black and white?

Finally, did you remind the Chairperson, Ms. Sarah Serem, that according to Article 230(5) (b) of the Constitution of Kenya - I will quote - in performing its functions; the Commissions should take the following principles into account?

(b) "the need to ensure that public services are able to and retain the skills required to execute functions;"

Did you remind her that some of our county assemblies have people who are highly skilled, notably the County Assembly of Kisii which has four Advocates of the High Court? If we want to retain these skills, as it is provided for in the Constitution, how did she satisfy you that a salary of Kshs79,000 can retain someone?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, first, this issue bedevils everybody in this country. Elective positions are set out in the Constitution. We have the MCAs, Members of Parliament, Governors, Senators, the Deputy President and the President.

When the Constitution was passed, it defined all the elective positions. It spelt out in black and white the role of each elected leader. Job evaluations for MCAs are now taking place when they are supposed to represent people. They are elected leaders just like us and others.

Truly, I do not know and foresee where the Chairperson of the SRC is heading with her Commission. It would be important for her to tell us what should be done. If not, let us get to the bottom of the issue and allow the package that MCAs as proposed be given to them.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Deputy Speaker, Sir. I thank you for the opportunity to contribute to this Motion and statement.



A number of Senators who monitor what is going on in the counties are, indeed, perturbed by the kind of business taking place there. The people who are putting the foundation stone for the MCAs have started with problems. We have not had other MCAs before in this country.

I concur with Sen. (Prof.) Lesan who said that we want to know what SRC is evaluating. Are they evaluating the individual who was absent when they set up the standards and rates for salaries or are they evaluating the job of the MCA? We did not see them initially walking around. We need to seek the parameters that have been used. Senators are supposed to be playing the oversight roles for counties and the county governments. They should speak to it and contribute so that we do not have problems and start fighting.

The MCAs oversight what takes place on the ground. These people should be earning a lot of money. Governors and the county executives are over sighted by the MCAs. The SRC should come out boldly and look at the work that is being done around the country.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, will you take all these questions or you want to truncate them?

**Sen. G. G. Kariuki:** Mr. Deputy Speaker, Sir, I do not know what hon. Murkomen, the Chairperson of the Committee, will spend time telling this House. The biggest issue here and we know very well, is that if we decide to evaluate the work of representatives of counties we will face a lot of challenges. Again, my biggest issue here is that we are here to protect the county governments.

The MCAs form the county assembly governments. The salaries of Senators and those of Members of the National Assembly were equalized by the same Commission. Perhaps, they are waiting to do the same evaluation to know what Senators do. If we allow this situation to continue, Sen. Murkomen will not defend himself in that Commission because his services will be at stake.

Time has come when the Chairperson of this committee should withdraw from that exercise. It is uncalled for and we do not need to entertain it.

**Sen. Sang:** Mr. Deputy Speaker, Sir, I would like to add my voice in asking whether this is a job evaluation or an evaluation on the job doer. What are the parameters? The Chairperson has given an indication that the SRC seems to have taken the position that unless they carry out a job evaluation, they will not review the salaries.

The question I want to ask the Committee is: If the MCAs do not agree with the parameters, where does that leave us with regard to this issue? More importantly, in terms of looking at the parameters, will they consider the circumstances that the MCAs are operating? In this country, we have counties, some in hardship areas while others are in somehow comfortable areas. Are they looking at the specific challenges that the MCAs are going through? Do we expect a situation where we will have different salaries for various MCAs? We need these clarifications before we engage in job evaluations and end the crisis.

**Sen. Orengo:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity. I think there are two constitutional issues here which I think the Chairman, Sen. Murkomen, should consider; that in an open democratic government, the first principle is

that you must have an elected Government. We are glad that the Governors are elected and the Members of the County Assembly are also elected. The other more fundamental principle which I think should be called into question is that there should be no taxation without representation. The Government is taxing citizens on an everyday basis at the national and the county levels. So, the fact that there is a Government running at the county level without representation is a major constitutional question because then representation is full time representation and it has been said here quite clearly that the job of Senators, the Members of the County Assembly and the Member of the National Assembly has no time span; you can be called to work at any time.

The other thing which casts doubt on the work which the Salaries and Remuneration Commission (SRC) is doing is that some of the evaluation they have done themselves---. I cannot understand why members of the Judicial Service Commission should be getting allowances of Kshs80, 000 without taxation and the Chairman of the Devolved Government Committee of the Senate can sit from 9.00 a.m., to 2.00 p.m., and get Kshs5, 000 based on the kind of evaluation they are talking about. So, already, we have a big problem with the Salaries and Remuneration Commission.

Finally, just to repeat that you know that in the previous Constitution, the qualifications of Senators, Members of the County Assemblies and others were well spelt out in the Constitution. But when now it came to the Senators, Members of the National Assembly and the Members of the County Assembly, the educational qualifications were removed. I heard from what they have been doing and their general view was that these MCAs – as Sen. Kagwe said - are basically councillors, which they are not. But even if they were councillors, the most important point is about the mandate as many of the Senators have said. It is not just a mandate which is found---

**Sen. Kagwe:** On a point of order, Mr. Deputy Speaker, Sir. For the benefit of the HANSARD, I just want to say that Sen. Orengo in clarifying what I said, that Sen. Kagwe said they are councillors. The correct version is that Sen. Kagwe said that they are not councillors.

**Sen. Orengo:** Mr. Deputy Speaker, Sir, you know there is something I share with Sen. Kagwe depending on what he did yesterday, probably his memory may be affected and I quite understand. I said exactly what you are saying.

I think this is a very serious issue because if it remains unresolved, the effectiveness and functioning of the devolved system of Government remains into question and it is being adversely affected.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Zani, do you want to contribute to the debate? I saw you standing and I thought you wanted to contribute. Could you make this brief because we are exceeding the 30 minutes that I had allocated?

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, I just wanted to clarify that a job analysis really starts with, first of all, the job description and then the actual job evaluation that comes as a result. The reason being, first, to understand what the job is meant to be and then you get the right person to match the job. I think through an elective process, it was impossible to know in advance who was going to be elected to be an MCA. Therefore, the specific qualifications that should have been needed as such so that you have specific job specifications to match a particular job was not there because theirs

was through an elective process. So, it becomes very difficult for people who have been elected through an elective process to really have to go through a job evaluation process for a job that is constant. It will not vary across the specific qualifications that they have.

**Sen. Chelule:** Mr. Deputy Speaker, Sir, I direct my question to the Chairman who probably is here on behalf of the Chairperson of the Salaries and Remuneration Commission (SRC). What I know is that at the county government, we have the county assembly and the executive officers. In this case, the role of a Member of the County Assembly (MCA) is stipulated in the Constitution and their three key roles are representation, oversight and legislation.

I do not think the MCAs are reporting to any other person apart from the voters and they were fully vetted before being elected. To me, that was an evaluation. Suppose an evaluation is done today and some are seen to be better than others, does that mean that they are going to be paid differently? I think the Chairperson of the SRC has a problem and she needs to understand the structures of this country.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I think what we should advise the Chairman of the Committee on Devolved Government is that he should take cognisance of the office of the Governor and the “CMA” and find out who has been evaluated by who.

**The Deputy Speaker (Sen. Kembi-Gitura):** Who is “CMA”?

**Sen. Karaba:** Mr. Speaker, Sir, I meant the MCA. Sorry for that mix up. I would like to advise the Chairman that there are people at the county level who get money without having worked for it. What we are trying to suggest is that the MCAs were elected and they spent a lot of money during the elections. So, the proposal by the Chairperson of the SRC to come up with another evaluation process is neither here nor there because people have already been evaluated. What we should be doing now is a job appraisal. You will find that the secretary of the governor could be earning more in terms of the other benefits than the MCAs and yet they do not work as hard as the MCAs. So, this is something that the Chairperson should consider and pay the MCAs a higher salary.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I think it is important for the Chairperson of the Committee on Devolved Government to get certain facts correctly from the Chairperson of the SRC. We have about 2, 000 MCAs in this country and so when she is talking about job re-evaluation, she should clarify whether she has in her mind a process where she will meet all these people. That notwithstanding, two days ago, she made some very interesting comments immediately after meeting the panel that was negotiating with her. She said that if you prepare a meal for people to come and eat and they refuse to turn up to eat, then it means they are not hungry. This meant that she owned up to the fact that she had already prepared a meal for them. What meal was that? I would want the Chairman of this Committee to find out whether she is taking the MCAs for a ride. She already has a pre-conceived mind in the form of a meal that she is prepared to serve them.

Thank you.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, we debated this matter one whole afternoon but I think we can repeat some of the things that we said. Just to bring the Chairman to speed one more time, is to remind him of what Sen. (Dr.) Khalwale has

referred to but looking at it from a different angle. He has said that Article 230 sets up the Salaries and Remuneration Commission and at (5) it says;-

- (a) “In performing its functions, the Commission shall take the following principles to account; the need to ensure the total Public Compensation Bill is fiscally sustainable“

This is what convinces me that I do not think that elective offices were intended to be evaluated or even to be the subject matter of this Commission. This is a different issue. I do not think it is an evaluation issue.

- (b) “The need to ensure that public services are able to attract and retain the skills required to execute their functions”.

I do not think that the elective offices are the ones being described here. When you talk of skills required for the job, then you are not referring to an elective job because an elective job is already provided for and skill is not one of them. In fact, there is another section that deals with the qualifications of the assemblers. The only other empowering section is;

- (c) “The need to recognize productivity and performance”.

I do not know how she could ever recognize and apply any principle that deals with productivity and performance of an elective office and then transparency and fairness. So, when you look at the section that empowers her to do her job, there is really nothing that talks about evaluating anything. So, where does she get this word called “evaluation?” You can only derive some function from the law that creates you or from a regulation that creates you. But really, you cannot create your own parameter and impose it on Kenyans and say that I am evaluating you. When we ask you where you got these powers to evaluate us, you cannot show us.

Mr. Deputy Speaker, Sir, the Committee should check whether the Commission is competent to do its job. They should find out whether the Chairperson and the whole Commission have the capacity to even do their job. If somebody does not appreciate the law that creates that office, then he or she does not have the capacity at all. If somebody does not have the capacity, then we have to deal with it that way and say that we have put a person in office who does not understand her job and a commission in place which does not understand its job. Consequently, we must remove it and replace it with somebody who understands the job and the law that creates you.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, I think some investigations need to be done by the Committee because we really need to know whether the Chairperson is ignorant or purely arrogant. By the time I heard her statement about three days ago, she really personalized the matter of the Members of the County Assemblies (MCAs). She was referring to *ugali* being on the table and actually the person who was prepared to have the *ugali* never meant to have it. This is too personal. We need to find out whether she is ignorant because, then we could be dealing with the wrong person.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, you will deal with all those issues. As you do you, I would like you to take into account the provisions of Article 193 of the Constitution, which clearly states the qualifications of a Member of the County Assembly. I also would like to know whether this is an evaluation or a re-evaluation and whether the qualifications have anything to do with what the salary is going to be for the MCAs.

I would like you also to take into account the provisions of Article 185 on the legislative authority of county assemblies and Article 185(3) on the oversight role of the county assemblies.

**Sen. Murkomen:** Clearly, Mr. Deputy Speaker, Sir, this shows your interest in this matter.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): I am a Senator representing a county. You must always remember I have an interest.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I am saying this on behalf of the people of Murang'a County, to let them know that you are also seriously---

**The Deputy Speaker** (Sen. Kembi-Gitura): I am very engaged in the matter, you can be sure about that.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, usually I do not sit on this side.

**The Deputy Speaker** (Sen. Kembi-Gitura): I hope you do not take too long.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I will take about five minutes or so.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is good.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, usually, I speak from this other side. But I am standing here because as I speak, and this is not my responsibility, it is yours, more than five county assembly speakers are sitting in the galleries. I want to face them.

As they appeared before us, they did a very good job. One of them, Hon. Kamket from Baringo County, told us that a young calf or animal of any kind will require colostrum. The manner in which we are dealing with county assemblies, we are actually denying them colostrum. Of course, he was saying this because he is a pastor. By and by, the immune system of the county governments, the ability to grow will be hampered. I agree with them.

Mr. Deputy Speaker, Sir, but here is a process that looks a little bit convoluted. This is partly because the county assembly leadership had already sat down with the Salaries and Remuneration Commission (SRC) to agree on re-evaluation. The term they are using is "re-evaluation". But on, perhaps, further inquiry of the constitutional law or advice, the county assembly leadership might have changed their mind on whether or not they want to be involved in evaluation. But what is more critical is the fact that the SRC told us that our salaries, including us, Senators, Governors and the President included, were based on evaluation. What they want to do now is re-evaluation. The constitutional authority to do that is neither here nor there. But to them, they refer to the Salaries and Remuneration Commission Act, Section 13 which talks about powers of the Commission. This Section says:-

"(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution and this Act, and without prejudice to the generality of the foregoing, the Commission shall have powers to-

(a) Gather by any means appropriate, any information it considers relevant, including requisition of reports, records, documents or any information from any source, including government authorities;

(b) interview any individual, group or members of organizations or institutions and, at the Commission's discretion, conduct such interviews;

(c) hold inquiries for the purposes of performing its functions under this Act;

(d) take any measures it considers necessary to ensure that in the harmonization of salaries and remuneration, equity and fairness is achieved in the public sector."

(2) In the performance of its functions, the Commission—

(a) may inform itself in such manner as it thinks fit;

(b) may receive written or oral statements from any person, governmental or non-governmental agency; and

(c) shall not be bound by the strict rules of evidence."

Basically, the argument here is that they have the power to review if they have to set, review salaries, interview people and consult them. Even when the county assembly leadership engaged them, they did it in good faith, not for purposes of using the words "re-evaluation" or "evaluation", but to have a basis of ensuring that their salaries are reviewed and taken up. In essence, I do not know---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I hope we will not have too many points of order because I would really love to finish this issue as early as possible. Is it a matter you can do a rejoinder on or it is a serious point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, it is very serious.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then let us hear you.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, thank you for allowing me. The Committee on Devolved Government wants to support the SRC in their claim that they want to review salaries. Is the Chairman in order, when we know for a fact that PricewaterhouseCoopers, the firm that did the evaluation, the report they submitted to this Committee to be the measure to be used to decide on salaries of public officers was submitted on 11<sup>th</sup> March, 2013? This was a whole 10 days after Sarah Serem had already gazetted the salaries. Is he in order, instead of asking her to explain where she got figures from? The figures that were supported by PricewaterhouseCoopers---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. You know I take your points of order very seriously. But this is in fairness to Sen. Murkomen. He has not even put forward his case. Could you allow us to let him state his position then if you will be able to, if need be, interrogate whatever response he gives further? I think that will be fair.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, in fact, that is my fourth point.

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not know.

*(Laughter)*

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, we have agreed in this House that committees just act on behalf of the House. They can only give answers to the extent that they asked. I cannot answer beyond what the Committee was told.

When we asked that question of evaluation, their argument was "review" based on the provisions of the Act in so far as reviewing the salaries is concerned. What are the

parameters of the evaluation? We were told that they met with the county assembly speakers and they were given the parameters and they have a copy of the same. But why was it necessary that we have this report on Monday? Because it is the report which is called the “Evaluation Report” to enable county assemblies make a decision on Tuesday, just like we answered, whether or not they will go through the re-evaluation process.

In the draft report that was shown to the Committee – a report which we did not admit because it was not signed, it was shown to us and given to the county assembly speakers, there was a discrepancy that the report that was the basis of setting the salary was dated 11<sup>th</sup> March, 2013, which came out about ten days after their salaries had been gazetted. But as a Committee, we will not take action on that until we get the report on Monday. That is why that report must come to the Senate in the formal manner to enable us say: “This is the property of the House.” This will also enable us to question the validity and authenticity of that document. Sen. (Dr.) Khalwale, that is what I was getting at.

How do you re-evaluate a job, constitutionally? The Committee has not had time. There is a bigger constitutional question which goes beyond this Committee. This is the question of whether or not a constitutional office is evaluated, re-evaluated or reviewed. How do you go about reviewing? What are the parameters? What is necessary, whatever the terminology used is, we need to improve the salaries of Members of County Assemblies (MCAs) from the Kshs79,000 to a higher figure that is necessary to enable them run functions of their offices. It will be sad to give ammunition as a House to the SRC, to hide behind the argument that you cannot evaluate the work of an elected leader to refuse to increase the salary.

We must give them a mechanism, whether they call it review, evaluation or re-evaluation; whatever they need to do to ensure that those services are improved must be given. The manner in which Senators are arguing here is just going to the terminologies of: Can you evaluate a job? But there must be a mechanism, call it whatever name, that will improve that salary from Kshs79,000 to a more reasonable figure. To be fair to the SRC, that mechanism must be transparent and fair, like the Constitution talks about. They must be able to sit down and come up with clear parameters of moving that salary from Kshs79,000 to a reasonable figure that can be argued out.

Already, the SRC told us that they visited 14 counties and as a result of the visit, they have learnt that what they used to think about the work of county assemblies is not what they now know. Therefore, when they go to that re-evaluation process, they are willing to improve the salary to be commensurate with the issues. Reading Article 96 of the Constitution and looking at the bullets that say a Senator does about four things, any auditor from PricewaterhouseCoopers or some lawyer who did not read the Constitution, sitting there reading the four bullets will think that the Senate is a House of elders, that it is a place where you pay us the same as the Lower House.

When time comes, we will have to go through, whatever mechanism, to improve the salaries and allowances of Senators. Sen. Hasssan will tell you, we have just come from a visit in the USA and we were told that a Senator earns the same salary as a Congressman. However, the office of the Senator is also given US dollars 3.4 million per year to run affairs of the office a Senator, so that you do not have to worry about your

salary because the office is running, you are able to visit, for example, Ikolomani, Elgeyo-Markwet or wherever you want to go. Your salary is just left for you and your family. Therefore, that mechanism that will improve that salary must be followed, to ensure that work is done.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order? I hope it is a quick one.

**Sen. Sang:** Mr. Deputy Speaker, Sir, am I in order to suggest that the Committee suggests to the SRC that what they need is not really evaluation, but a needs assessment?

**The Deputy Speaker** (Sen. Kembi-Gitura): That sounds, to me, like semantics more than anything else. Whatever you call it.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, that is why I said call it whatever name, but bring everything up to speed in terms of ensuring that people are given what is necessary to achieve---

**An. hon. Senator:** Maybe Sen. Sang was not listening!

*(Laughter)*

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, Sen. Sang is my friend. I do not even expect him to interject me on points of order.

Suppose the MCAs do not agree to the issue of evaluation? This will be unfortunate, but let us cross that bridge when we get there. Our Committee is acting as both a listener and an arbitrator to ensure that we resolve this problem. I believe the county assemblies will act in the best interests of the nation. Once they look at that report, they will be able to assist each other as to the way forward. I do not think we need to preempt that. But should they not go through this, then this House will come back with another report, whether or not the county assemblies have---

**The Deputy Speaker** (Sen. Kembi-Gitura): Let me get you right. Did I hear you say, because I think that is an important position you are taking, I do not think it is good to say we will cross the bridge when we get to it, if we can preempt it. That is a very important issue. Do you want us to wait or did I understand one of the members to seek the position whether you are going to see the parameters of re-evaluation before they are put to the MCAs?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, as a matter of fact, it depends on whether they will, first, accept to go through evaluation.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is true but I am asking: Is the Chairman of the Commission not supposed to send the parameters of what kind of evaluation she has in mind? Who is going to approve that formula or is it her decision?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, it is their independent decision. The only thing that we had requested is that, as a Committee, it will be necessary that we have a copy. The leadership of the county assemblies were given a copy of whatever form they are going to use for re-evaluation. I think that my colleagues also will make additional---

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



**The Deputy Speaker** (Sen. Kembi-Gitura): Do you want to be informed?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I am willing to be informed.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, the main question that was raised by every speaker here was with regard to the evaluation of a person, who was elected and given a mandate to do work as stipulated in the Constitution. Therefore, instead of the Chairman actually making a long explanation, he should just dwell on what is being evaluated, what is expected to come out of that and whether or not it is acceptable.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you want to be informed again?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, since he is a Member of the Committee, I will give each Committee Member one minute.

**The Deputy Speaker** (Sen. Kembi-Gitura): No! It is not your choice. It is a matter of whether or not they want to say something and I will allow it.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, on the issue of whether it is the job or individual who is going to be evaluated, the clarification that we got was that it is not the individual who is going to be evaluated, but the responsibility of that office or position.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, first of all, the Senator for Machakos did not inform me. He had a question and so, he was out of order in my own judgement.

Mr. Deputy Speaker, Sir, I think that the constitutional question of whether you can evaluate an elected leader is not yet concluded at the moment. I do not think that even Ms. Sarah Serem can do that. I think that it is important for us, as a House, to look for other mechanisms for ventilating that issue of whether you can evaluate. But there must be a mechanism for now, whatever you call it, that will guide the resources of the Members of the County Assemblies or whatever they earn, from Kshs79,000 to go forward. They may give it whatever name---

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! I am not going to allow you to have an interjection.

**Sen. Wamatangi:** On a point of order, Mr. Deputy Speaker, Sir. You heard the Chairman of the Committee on Devolved Government telling the House that Sarah Serem told the Committee that she has visited 14 counties and already knows that the job of a Member of the County Assembly (MCA) is not what she thought earlier in the evaluation. She already has a new re-evaluation. Would we then be supporting her position; that she wants to re-evaluate what she already knows from 14 counties? What difference does she expect to get from the rest of the other counties if she already has 14?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I think that what the Senate needs to appreciate is that the Committee reports only facts that were presented in the Committee, which most of us do not even agree with. You do not have to agree with a report. First, let us look at this report on Monday when it is presented to the Committee. Let the Committee even question the veracity of this report in terms of the 10 days or 11 days difference. Let also the county leadership – because this is a report that we wanted to give to the House in the interim – meet on Tuesday and also look at the same report and give

whatever discussion and decision that is going forward. But we must also realize that we are dealing with a Commission that is independent and whose officers are held responsible for their malpractices. If there is any malpractice, they carry the cross themselves.

Mr. Deputy Speaker, Sir, our responsibility, as a House, is two-way. The first is to find out whether they acted constitutionally and secondly, to ensure that the people that we are protecting are protected in terms of getting the resources and the people of that county are getting services from the county assemblies. We are in-between, solving the individual problems of the MCAs and also those of the counties themselves to be able to run.

So, we must be pragmatic; that the Salaries and Remuneration Commission (SRC) and the county assembly leadership coming together again after the Tuesday decision should lead us not to this debate of semantics, but to a process where the MCAs will get better remuneration and the counties will start operating. That is the greatest responsibility of the House. I know that there is the bigger question which is not just how the MCAs are going to benefit. The bigger question is: How does that affect all elected leaders, including the President? We can pursue that question, but we must also pursue a process that brings---

Mr. Deputy Speaker, Sir, as Senators, we have a salary that we can survive on, but the MCAs have nothing to survive on. So, it must be moved first to a place where we can say: It has a basis. From there, it can be reviewed slowly. But as we speak, Kshs79,000 is not enough for anyone to use it even as a basis. I will be happy if it moves to something that had been suggested earlier, which was Kshs200,000 or Kshs275,000. When it reaches there, now the question of reviewing and debating, the way we debate semantics here, can start. So, pragmatism must come in, in terms of finding the solution for the MCAs and unlocking the problem in the county assemblies.

Mr. Deputy Speaker, Sir, I think that Sen. Omar wanted to inform me and I accept.

**The Deputy Speaker** (Sen. Kembi-Gitura): I did not hear him at all. Sen. Murkomen, there is one thing that I want to make clear. When I am presiding over the House, I am doing it. I am not going to allow you to purport to run the House when I am sitting here. So, if you want to have an intersession with Sen. Omar, you should not do it in the House. I did not see him stand or say that he wants to make information and so, it is not on.

So, can you, please, proceed?

**Sen. Murkomen:** I am sorry, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, regarding whether or not we found out if the SRC have a capacity to do their job, we did not reach there. I think that some indicators that will show whether they have a capacity to do their job and the ability to carry and solve this problem going forward will come out when we get their report on Monday. This will give us the confidence that these are men and women who have the capacity to continue doing their job. But we were reminded by Members of the Committee that we must also, as a House – because we have always conducted ourselves with dignity as the Upper House – respect certain institutions, even when we do not agree with their membership. If there is

a problem with the membership of certain institutions, we must also follow the legal procedures of questioning their capacity and abilities. I have no reasons now to start casting aspersions as to whether or not they have capacity until we look at that report.

Mr. Deputy Speaker, Sir, regarding the unique challenges of different areas, I think that this can only occur if we were to allow a situation where allowances also will be pegged on whether certain areas are arid, semi-arid and so forth. That could be part of the suggestions that we can give to the SRC, when they are dealing with reviews of salaries. To some extent, I have always argued that the county assembly in the county government should be given a small leeway when they want to make an additional contribution to the welfare of the county assemblies, so that the counties that are doing well can find a way of also adding something to their salaries. That is my personal view. Those are some of the views that we can always present to Commissions in the future.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you wish to be informed by Sen. Kajwang?

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

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, by saying that there should be some leeway in determining how to remunerate, even on allowances, look at Nairobi, for example, the cost of living in Nairobi is higher than in Homa Bay. Sometimes travelling in Kakamega, as was suggested by the Senator for Kakamega, from certain ends is further than Nairobi. Sometimes the cost of using *matatus* in Nairobi is higher than that of using *piki pikis* in Busia. So, some of these things need to be looked at when you are talking to the Commissioners.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I think that, that is a very valid point. It does not have to even come through the Committee. Any Member can write and inform the Commission, but as a Committee, we will take it in and ensure that we include it in our report.

Mr. Deputy Speaker, Sir, there is this question bothering us about the constitutionality of the evaluation or re-evaluation process. I am not inciting anybody, but it would be interesting if someone had gone to court to block any evaluation or re-evaluation of a constitutional office, because that is the only institution that can give us final interpretation of whether or not you can evaluate such an office. Should it reach that stage, I think that it would be interesting, even to the Supreme Court; as an advisory opinion whether or not you can evaluate a job of an elected officer. That would be a good direction. We can debate about it as lawyers and have different views and even the Commission can come with its own views. But maybe the concrete position as to whether or not you can evaluate an elected office could be through an advisory opinion in the Supreme Court.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Senator. I think that, that ends the issue. We shall now await a report from your Committee. When do we hope to get it, realizing that the whole country is waiting on this issue?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, this is an ongoing requisition and after Tuesday, we should be able, again, perhaps to report to the House on the progress made. That progress made can be reported on Thursday next week.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much. We shall wait for that.

**Sen. Hassan:** On a point of order, Mr. Deputy Speaker, Sir. The order is very simple. When the Commission was presenting its report, I happened to sit in that Committee. I think that there is an emotional argument that Ms. Sarah Serem continues to make about the sustainability of the wage bill. She actually did indicate to the Committee that the wage bill at this point in time in Kenya constitutes Kshs630 billion, which compares to about 13 per cent of the Gross Domestic Product (GDP).

Mr. Deputy Speaker, I just wanted to seek the guidance of the Chair. We did actually interrogate the structure of this wage bill, in the sense that a perception has been created that we, the political class, continue to expand the wage bill, to the detriment of taxpayers. It would be important if the Committee Chairman could advise in terms of this structure, how much of this wage bill constitutes the wage bill accruing, out of the 700,000 members of the public service. To the political class that only includes three categories, that is, the National Assembly, the Senate, the county assemblies and governors - that said and done, I do know from the mathematics that people have done before that it is hardly five per cent of this wage bill. I think that much in the same way that the Chair of the SRC starts with this emotional point, it is important to demolish this argument, particularly in the face of Kenya; that it is not true that it is the political class that expands the wage bill for this country.

Mr. Deputy Speaker, Sir, as the final order to the Chair---

**The Deputy Speaker** (Sen. Kembi-Gitura): That is not a point of order. I am just allowing you to make your point because of the gravity of the issue. But in truth, you are not making a point of order. You are contributing to a debate and I do not know whether you expect that the Chairman of the Committee will make a reply to you. But I will give you an extra minute.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, what would be fundamental is to ensure that we, first and foremost, show the structure of this wage bill, so that the Kenyan public is not misled. We had 200 local authorities in this country and have demolished almost 150 of them. So, it is not true that it is the political class that is adding to the wage bill just merely because we have two Houses of Parliament at this point in time. So, therefore, what was very cardinal and fundamental is to demolish the emotional argument that is constantly made that it is the political class and particularly the Members of the County Assembly (MCAs) who are continuing to contribute to the increment of the wage bill, yet we know just before the last election, councilors in the predecessor councils were earning in excess of the Kshs79,000 so to speak.

So, Mr. Deputy Speaker, Sir, the Sarah Serem-led Commission must answer the Chair; who is increasing the wage bill, because it is not true to emotionally and countlessly tell us that it is the political class. There are more commissioners in this country than there are Senators – 117 of them, with only 67 Senators; in fact, there are 40 more commissioners than there are Senators in the Republic of Kenya – and each of them

takes a salary which is higher and enjoy a facility which is higher than that of the Members of the Senate.

Therefore, Mr. Deputy Speaker, Sir, that is what I simply wanted to say in terms of my intervention so that we start with that critical point to demolish that argument and then make the other salient points about our earnings to MCAs and the elected political class.

**The Deputy Speaker** (Sen. Kembi-Gitura): But you agree it was not a point of order; is that right?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, definitely, wisdom prevails.

*(Laughter)*

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

I think that brings that issue to a close. Obviously, the Chairperson of the Committee appreciates the gravity with which Members take that issue. It has been discussed nationally and, therefore, we hope that your Committee is going to help bring an end to the impasse that exists in the country at the moment so that the MCAs can go back to what they were elected to do.

So thank you very much indeed.

Next Order.

*(Sen. (Prof.) Lonyangapuo stood up in his place)*

Is it still on Statements, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** Yes.

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

BUSINESS FOR THE WEEK COMMENCING  
5<sup>TH</sup> NOVEMBER, 2013

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, sir, on behalf of the Senate Majority Leader, I present a Statement on the business of the Senate for the Week Commencing 5<sup>th</sup> November, 2013.

Pursuant to the provisions of Standing Order No.43(2), this is to present the Senate Business for the coming week. On Tuesday, 5<sup>th</sup> November, 2013, the Rules and Business Committee will meet at 12.00 o'clock to schedule business for the Senate for the week commencing 5<sup>th</sup> November, 2013. The Senate will also consider a Motion by Sen. Daniel Karaba urging the national Government to assist county governments to develop capacity of primary school teachers. In addition, the Wildlife (Conservation and Management) Amendment Bill, 2013, will be introduced in the Senate by way of First Reading.

On Wednesday, 6<sup>th</sup> November, 2013, during the morning sitting, the Senate will continue with business not concluded on Tuesday, 5<sup>th</sup> November, 2013, and consider a Motion by Sen. Liza Chelule urging the national Government to provide cheap credit to

farmers by reducing interest rates charged by the Agricultural Finance Corporation (AFC). In the 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. The Senate will also consider a Motion by the Senate Majority Leader to concur with the National Assembly on the appointment of Members to the Pan African Parliament.

The Senate will further undertake division on the Motion by Sen. Zipporah Kittony urging the national Government to initiate and formulate water harvesting policies to guide water harvesting programmes in all the 47 counties. On Thursday, 7<sup>th</sup> November, 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. The Senate will also consider a Motion by Sen. Peter Mositet urging the national Government to take immediate steps to develop effective waste management regulations.

Mr. Deputy Speaker, Sir, I hereby lay the Statement on the Table. It is signed by Sen. Kithure Kindiki, the Senate Majority Leader.

*(Sen. (Prof.) Lonyangapuo laid the document on the Table)*

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

I want to assume, Sen. (Prof.) Lonyangapuo, that, that is subject to the communication that was made by the Speaker earlier in the afternoon; that there might be a Motion of Adjournment on Tuesday evening?

**Sen. (Dr.) Khalwale:** It is the other week, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is the other week? Then that is okay. Thank you very much.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I want to thank the Senate Majority Leader for outlining the business of the week but, at the same time, wish to rise on Standing Order No. 123, which provides that once a Bill has been published, then after a period not exceeding 14 days, that Bill should come before the House for the First Reading. I, therefore, would like the Senate Majority Leader to explain why a Bill which was published on 25<sup>th</sup> July, 2013, concerning the seat of county governments has not been brought to the House for First Reading?

Mr. Deputy Speaker, Sir, I would also like the Senate Majority Leader to explain why the Bill on National flag, emblems and titles, which has already gone through the First Reading in this House, continues to be denied an opportunity to go through the Second Reading.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Senate Majority Leader?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I take note of what the honorable Senator has said and I promise that the Rules and Business Committee will

meet on Tuesday, 5th November, 2013, at 12.00 o'clock to schedule the business. I want to undertake that, that is one of the businesses that we will look at.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF COUNTY ASSEMBLY SPEAKERS

**The Deputy Speaker** (Sen. Kembi-Gitura): I think Sen. (Dr.) Khalwale is satisfied with that.

Order, Senators! Before we proceed on business and as we are having debate on the MCAs and their remuneration, Sen. Murkomen did indicate that there were Speakers of the county assemblies that were in the gallery. I think it is important, according to our tradition that we should recognize their presence and thank them for having come to be with us. The tradition, as I am sure it is with the county assemblies, is that once your name is called out, you stand up and the Members will recognize your presence.

We have five Speakers in our gallery who have followed the debate that we had earlier on. They are; hon. Kochei Aubert, Speaker of Marakwet County Assembly; hon. Kamket, Speaker of Baringo County Assembly; hon. Susan Kihika, Speaker of Nakuru County Assembly; hon. Abdi, Speaker of Mandera County Assembly and, finally but not the least, hon. Koriu, the Speaker of Bomet County Assembly.

*(Applause)*

Thank you very much for visiting us and I hope that our debate has helped to enrich your thinking about the work of the Senate and that we are working together as we pursue the provisions of Article 96 to protect the interests of the counties and the county governments.

Thank you very much.

Next Order!

### MOTION

#### DEVELOPMENT OF FRUIT PRESERVATION AND STORAGE POLICY

THAT, aware that Kenya benefits immensely from the global and local fruit market; cognizant that fruits are an important component for better health; noting that fruit production is seasonal in nature and that fruits are highly perishable leading to wastage and losses during the high seasons; concerned that the government has not come up with adequate measures of curbing the losses as a means of protecting fruit growers; further concerned that Kenya imports fruits during low seasons; the Senate urges the National Government to develop a policy on fruit preservation and storage through modern refrigeration and to provide incentives to

investors to set up fruit processing plants in order to ensure ready demand for fruits which would cushion farmers against losses.

*(Senator Muthama on 30.10.2013)*

*(Resumption of Debate interrupted on 30.10.2013)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, I think you had eight minutes left. Please, finish your eight minutes.

**Sen. Karaba:** Thank you Mr. Deputy Speaker, Sir for giving me this chance, once again, to support the Motion that was tabled by my friend, Sen. Muthama, from Machakos. One reason why Sen. Muthama came up with this Motion is because there was a factory in Mua Hills called Kenya Orchards.

I know it very well because I was a teacher there. I know it because I used to take students there to visit. The students would see how the industries would contribute to the development of a district, that time, known as Machakos. That time, it was clear that the factory was doing very well. It had created a lot of jobs for the youth. It was also a motivating factor to the farmers of Mua Hills, all the way to Iveti Hills and even as far Tala. Farmers were very active and busy trying to plant fruits. That was an economic activity.

The Kenya Orchards Limited is no longer there and the fruits from Mua Hills are not there anymore. The farms have also been neglected. This has also affected other farms in the countryside. We used to have very good oranges grown in the then Central Province. We also had very good bananas from Kisii. However, the Government seems to have ceased employing extension officers. These are people who would go round and advise farmers on how to grow certain crops and encourage them to do market survey so as to get enough money for production. This is not happening today.

The spirit of the Motion is to ask the Government to come out and assist farmers in the production and marketing of products so that they enjoy the fruits of their labour and also contribute enough revenue to the country. In the absence of the extension officers, farmers are concerned that the Government is not doing much. This is not only in the food industry. We also had agricultural activities being liberalised in many departments. This was done during the dark days when not many farmers knew about liberalization. With liberation, we have very many farmers regretting why we undertook that kind of policy. We liberalised the production of the main crops like rice in Mwea. The industry was liberalised. The fruit industry was also liberalized, and very many areas including education.

In Kenya, at times, we do things without carrying out enough research and people end up regretting later. The losses cannot be assessed in monetary terms but they are destructive. I am, therefore, calling upon the Minister for Agriculture, Livestock and Fisheries to revitalise and to make sure that this becomes a key Ministry in this country. Agriculture is done to ensure food security and it is important to our economy. It also contributes to our economy. We need to have people employed in value addition.



You will realise that in the fruit market, we are getting colored water in the name of juices being sold in supermarkets. These juices are either made from India or here in Nairobi. You do not get anything natural. However, if you went to India, you would find natural juices there. You would find people in the streets squeezing juice from sugar cane. The sugar cane is natural and the juice is sold at a very high price. If you go to Istanbul, you will find people squeezing juice from grapes and other fruits. It is important to encourage people to grow fruits and even to pay revenue to the Government. It is important to encourage growing of fruits and the crops. Areas which are suitable for arable farming should be used to grow crops. That is the only way we can sustain ourselves and even maintain our food security.

At times, you will wonder how China, a country with 1.3 billion people, can afford to feed its population whereas a country like Kenya which has 42 million people cannot feed her people. The population of Kenya can just be compared to that of a small town in China. We need to be serious. When we visit some of these places, we need to come back and implement those ideas so that we increase some good farming methods. We need to make sure that our country, Kenya, is self sufficient when it comes to food. When a country is food sufficient, then there is no day that the population can be affected by hunger that is caused by drought. We should try to encourage the Government, through the Ministry of Agriculture, to introduce and reintroduce what was lost so that we grow crops.

I, at times, get shocked when I find women in Kirinyaga trying to sell their fruits on the roadside. There are very many fruits in Kirinyaga like strawberries. However, there is nothing like a cooperative to save the situation.

**Sen. Kagwe:** Thank you very much, Mr. Speaker. I rise to support this Motion by, my brother, Sen. Muthama. In doing so, I want us to appreciate that Agriculture, under the Constitution, in the Fourth Schedule has been devolved to the county governments. Consequently, a lot of work that needs to be done as far as incentives are concerned, is in the county government's arena.

Having said that, as far as county governments are concerned, there is need for the national Government to undertake the creation of incentives at the national level in terms of policy. It is one thing to have an investor visiting Machakos, Kitui and Nyeri and quite another to have the Government sell the products in London or New York. Therefore, I want to support this Motion and say that value addition in agriculture which is what this Motion is calling for is the trick by which we will create jobs for our people and good earnings for our farmers in the countryside.

Mr. Deputy Speaker, Sir, in terms of job creation, what Sen. Muthama is proposing has a very good example in Thika in a company called Kenya Cannery. If you look at the number of people who work at the Kenya Cannery and its products, then you can see the impact as far as employment is concerned. It goes even further. If you look at the health aspect of our people and you think about how many people are drinking funny juices in the name of water that is simply coloured, then you will appreciate that if we had proper fruit factories that produce proper juice, then it impacts on the health of our people as well.

Before we start fruit factories, we must also invest in the market. The worst thing that we can do is to start fruit factories that will eventually close down because of lack of a market. In order for us to sustain and ensure that the demand for these fruits will always be there, we seriously need to consider working on the basis of Private Public Partnerships (PPPs) particularly with end buyers in Europe Africa and elsewhere.

For instance, if Walmart in the United States was working in partnership with a fruit factory in Kenya, they would take everything we have to their own markets. Therefore, if we are able to invest in backwards integration as it is called in business and have the end buyers also be our partners in these businesses, then you will find that it is very possible for us to sustain on a long term basis the markets for our fruits and the prices of our fruits and our jobs.

Mr. Deputy Speaker, Sir, the kind of incentives that we are talking about and the reason why I said that they are also going to involve the county governments is because the incentives may include things like land which has been devolved to the county governments. I remember years back when organizations were offered land in order to build their factories. We must realize that no factory is going to be build here by first purchasing land when in other countries they are being given free land so that they can build the factories. So, we must be a bit more creative.

There are also the tax regimes which we must use to attract fruit factories and say that because of the impact they are going to have, for a while, they are not going to be taxed. Depending on which county you go to, that incentive can be more or less. If you are in Nairobi, then you may not need a lot of incentive. If you are in Machakos or Nyeri, maybe you need a bit more incentives.

Mr. Speaker, Sir, even as we think about the capacity for production, at the end of the day, nobody is going to put up a factory where the production of the fruits is not guaranteed. You might put up a factory and you need ten tonnes of fruit which you can get today and then the next day you start getting two tonnes. So, in order for us to ensure that there is capacity in terms of production, we must also think about agricultural subsidies to the farmers so that even in times of low demand, they can still continue producing.

Finally, I also want to urge our brothers and sisters who are governors in the counties not to call for investors and then when they come to our counties as they have done in Turkana County and then as soon as they start investing, we take *pangas* and start chasing them away. We cannot claim *haki yetu* even before some of these things have started to bear fruit. We should be clear that when we are inviting investors, it will take time for the factories they will build to bear fruits in order for us to start getting jobs. We appreciate the fact that they must offer jobs in the areas that they are situated, but we must also give it time. I urge that when an investor comes, let us not start analyzing where the investor comes from and think that they have now come to grab the production capacity of our areas.

There is a tendency in this country where it is very fashionable to invite an investor from India, Pakistan or the United Kingdom, but when an investor comes from Machakos to Nyeri, we think that they are grabbing our property. That is simply biting our nose to spite our faces and it does not make any sense. If you have the audacity to

invite an investor from Pakistan, then start with the investor from Turkana or Kisumu and see whether they can come to your county and then move on to the investor from Pakistan. The investor from Pakistan will raise eyebrows when I start a matatu business in Kitui and I come from Nyeri and that matatu is not welcome. Why would a person in Pakistan think that his factory is welcome in Kitui if a matatu investor from Kirinyaga is not welcome in Kitui? Therefore, we must change our mindset and start thinking broadly and appreciating that an investor is an investor, irrespective of where he comes from.

For example, you will find that in Sen. Orendo's constituency, he has a beach land that can be used for hotels. If a German comes and puts up a hotel in his constituency, he will be very welcome and that will be considered good investment and growth, but if Sen. Kagwe builds a hotel in the same place, then he would be grabbing land in Sen. Orendo's constituency. What is wrong with us? When you cannot appreciate your own people, how can you appreciate other people? It follows without saying that such thinking can only be detrimental to national good, unity and to the level of investments in our country.

With those few words, I beg to support.

**Sen. Orendo:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Motion. One thing about Sen. Muthama is that all the Motions he introduces in the House are high impact Motions that touch on the lives of ordinary *wananchi* directly. For that reason, I want to support this Motion.

I appreciate the fact that we are operating under a new system of governance where we have two levels of Government; the national Government and the county government and a lot of functions have been devolved to the county government. Having said that, it is important to note that the Constitution still demands and obligates the national Government to make sure that the welfare of its citizens is enhanced and sustained and that all citizens of Kenya are well fed to ensure economic growth and so on and so forth. For that reason, it is in order in the way that this Motion has been structured, to compel the national Government to undertake to develop a policy framework to ensure that fruit production in Kenya is supported in terms of preservation, storage, marketing and all that.

Mr. Deputy Speaker, Sir, may I also remind Kenyans that we are very good at policy formulation but very poor at implementation. Even as we debate this, I am aware that even in the Tenth Parliament, we passed several pieces of legislation that are touching on this same issue, but the Government must now take the responsibility to bridge the gap between policy formulation and policy implementation. In my opinion, this is one thing that I feel is lacking. Successive governments seem not to have had an idea on how to bridge this gap. They need to come up with a strategy where all these pieces of legislation that have been passed by successive Parliaments and approved by different arms of the Government can be put together and we give enough weight to the implementation process, so that rather than continue rolling out policies every time without implementation, we can start implementing the very many policies we have passed and the pieces of legislation that are spread out in almost all the arms of Government. That will take us somewhere.

Mr. Deputy Speaker, Sir, even as we support this, Kenyans need an attitude change. In Kenya, it looks like anything foreign goes, even if it is of a low quality. Just brand anything and say: "Imported from space or from wherever", people will buy it and leave the natural product which is of a higher quality from Kenya. Therefore, we need to love the brand Kenya. We need to appreciate products that come from our nation, so that in that appreciation, we help to sustain our investors and those products that are produced in Kenya.

We also need to have incentives for farmers. The Senator who spoke before me has already talked about this. We also need the national Government to work very closely with research institutions to compel county governments to undertake research on the kinds of soils that are contained per county, so that any investor who goes to, for example, Turkana, Kwale, Kilifi, Siaya or Nairobi counties, finds a blue print on the types of soils, what is able to grow in that place and the climatic conditions. With that kind of blue print available to investors, it is also a form of incentive. If the national Government can put it as a policy that all the county governments should undertake a soil sampling strategy so that they have all the details and data to give to any prospective investors, that will be an incentive.

Mr. Deputy Speaker, Sir, I want to add my voice on the issue of land in Kenya. We need to be careful on this issue. I do not see any foreign investors coming to Kenya. Why should you come to Kenya and buy land at Kshs300 million when Uganda is giving you land for free and you just construct your industry? You are buying land for Kshs900 million to put up a factory that is going to employ Kenyans. When Sen. Orengo was the Minister for Lands, he tried to ensure that land reforms take root. But if we do not revisit the issue of land tenure in Kenya and especially now that we have these devolved units, we might have some strange land policies coming from certain counties where they might insist that you can only be given land to invest if you come from that particular county or if you have some real connections by virtue of birth. That will kill development.

Mr. Deputy Speaker, Sir, we also need to develop a comprehensive and practical marketing strategy for investors and farmers. In the absence of that, anybody can produce anything. But if there is no comprehensive marketing strategy to support these initiatives, then that effort will die. We need to help our farmers and small-scale investors sell their produce both locally and internationally. We also need to undertake reforms to remove constraints, for example, in the area of transportation. If farmers will spend about 50 per cent of their income transporting their produce from the farm to the market or between markets, then this is not viable.

A lot of our small scale farmers do a lot of inter-market and intra-market business, between the rural areas and the urban areas. If this kind of transportation is not taken care of, there will be a problem. Our small scale farmers really fend for themselves. You find a woman with ten sacks of mangoes besides a road and almost pleading for two days, by which time, the mangoes are all rotten. Maybe we need a policy or some kind of transportation mechanism meant just for farm produce.

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

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

Mr. Temporary Speaker, Sir, apart from that, we need an insurance policy for small-scale farmers and investors; a policy that is friendly and takes care of women and youth groups that have come together. These are groups that grow mangoes or aloe vera and because of weather conditions, that year they do not harvest. That initiative needs to be cushioned from dying by an insurance policy that is friendly and affordable enough for these people to continue with their business.

Mr. Temporary Speaker, Sir, we also need to remove price distortions in this business. For example, the price of farm inputs, labour, energy and so on. If we do not address the cost of energy in Kenya, which is now escalating, we will have a problem. You cannot pay 80 per cent of your income to KPLC and think that you will still be relevant in this field.

Mr. Temporary Speaker, Sir, apart from that, if the Government wants to encourage its citizens to become investors, economic growth must be sustained. Poverty levels are skyrocketing. You do not expect a nation with 90 per cent of poor people to invest in income generating activities. Studies have shown that economic growth alone does not reduce poverty. The economy might be growing, but it might not reduce poverty. The economy might be growing to the benefit of the five per cent of citizens, when the other 95 per cent continue living in poverty. The national Government needs to come up with policies that will help reduce this gap. If this gap continues to widen, whether we invest in 1,000 factories or not, then we will not even have the market for that produce because people will not afford whatever will have been produced.

This brings us back to the issue of land. We have people owning big tracts of land which is lying idle. In a county, if you have one family owning 60,000 acres of land, the rest of the people do not even own land to even grow mangoes or cultivate anything. How do you expect that we will support this kind of initiative? We have to start by addressing the root cause of the problem that has been bedeviling this country before we deal with what we are suffering from. In my opinion, if you have a county where 95 per cent of the people are squatters and 5 per cent of that county own the entire county, then whatever you do, whether they are going to build industries or not, it is still going to the 5 per cent; whether you give incentives or not, it will still be impacting the 5 per cent who are already rich. Therefore, we need to address the root cause even as we come up with this.

Mr. Temporary Speaker, Sir, having said that, I still want to re-emphasise that we need to bridge the gap between policy formulation and implementation.

With those remarks, I beg to support.

**Sen. Kanainza:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support the Motion. I start by congratulating Sen. Muthama for thinking about farmers and generally the agricultural sector in our country.

It is true that agriculture plays a big role in the economy of this country. The best way for us to move forward is to have proper policies that will enable us move and improve our agricultural sector. At the end of it, we will be enhancing the economy of this country. If we focus on the production of fruits and vegetables, we will have a high

yield, but suffer so much because of wastage. That is why we need a good policy framework that will help us to curb this problem that we are facing. As we visit different counties, we find that many people are practising horticulture. There are people with greenhouses. In some counties, people are even being supported to construct greenhouses. But we should ask ourselves: After they harvest, what will happen to the produce?

For example, in the case of tomatoes, how will the farmers make profit without means of preservation? In Lugari Constituency, where I come from, there is a place called Luandeti, where they actually produce so many tomatoes. The same applies to Misikhu in Webuye East. You will get women selling their tomatoes at Kshs10 or Kshs20. It is a real pity because they spend so much money to grow the tomatoes, but do not have a better way of selling their produce. Therefore, we should encourage modern food preservation and storage methods and use Information and Communication Technology (ICT) to do marketing of our produce. This will also create jobs for our young people.

Mr. Temporary Speaker, Sir, freezing is a very effective form of food preservation. It helps to retain the original quality of the agricultural produce for a long period of time. At the same time, freezing does not require a lot of energy. That is why it is very important for the national Government to come up with a policy that will enable us improve production and even encourage the local and foreign investors who want to put their resources in agriculture. Actually, freezing has been successfully used in different places as a way of preserving food for a long time.

Mr. Temporary Speaker, Sir, since we are in the digital era, we should apply new technology of industrial freezing that will ensure that our products are stored for longer periods, without interfering with their quality. In Rwanda, for example, there is a Workforce Development Authority which looks into the issues that affect people. It also gives guidance to the Government to ensure that the needs of the people are put into consideration. I support the creation of such a workforce authority because it will advise the national Government and the Ministry of Agriculture, so that as they formulate this policy, they will capture the needs that are required at the moment.

Mr. Temporary Speaker, Sir, I support the Motion and urge the Government to develop a policy on food preservation and storage through modern refrigeration.

**Sen. Orendo:** Mr. Temporary Speaker, Sir, I would like to make some brief comments, because the time is nearly up.

Mr. Temporary Speaker, Sir, if you look at some of the cash crops that we have in this country, for example, coffee, at the turn of the last century, it was not grown in this country as a cash crop or any other form that we can say it was an indigenous crop to the people of Kenya. The same goes for tea and even sugar cane. There had to be interventions by the Government to make the coffee, tea and sugar industries to be what they are today. Over time, we have seen that there are certain inadequacies and flaws that can be addressed either through legislation or dynamic policies targeting those particular agro-industries and cash crops.

Mr. Temporary Speaker, Sir, this Motion actually is not talking about the future, but the present. I commend the Mover of this Motion for bringing it. He has determined

through his socialization, travel in the country and engagement with the public and farmers, that there are enormous amounts of fruits which are grown in this country and go to waste. That is true because sometimes I take a ride from my home in Ugenya and go through many markets. You will find that there are tonnes and tonnes of fruits, but after two or three days, those fruits go to waste and the farmers get disappointed. In the next season, they would not want to grow the same fruits or crops.

Mr. Temporary Speaker, Sir, in terms of its observation and demand for a policy that can address this existing problem, I think that this Motion is very commendable. It is commendable in the sense that if you go to supermarkets to buy groceries, there are fruits from all over the world. You do not see fruits from Kenya in our large-scale supermarkets. They come from places as far as Israel. They are preserved and brought here – thousands of miles away - and sold to us at very high prices. If you compare what an orange costs in the supermarket and what it costs in a market in Ugunja, the difference is very big. You do not understand why in terms of marketing and even the preservation that we are talking about, we are not able to transport these fruits to Nairobi and external markets, in order to make the farmers get income and people to get employment. So, these interventions are necessary.

Mr. Temporary Speaker, Sir, even in the horticultural and flower industry, which has become a large contributor to the national economy, there have been interventions that are made. If you go to the airport, there are plans to make it possible for some of these flowers to be preserved and flown to the Europe. Even now, I understand that our flower farmers are taking flowers to Russia. So, I commend this Motion because it is addressing a problem that I see everyday and affecting an area which has got a very high potential. If these policies can be put in place to ensure that we can preserve, store and market the fruits that we produce, the economy of this country and the agricultural sector, which is vital, will grow and develop fully.

So, Mr. Temporary Speaker, Sir, the Mover has to reply to this Motion. I beg to support and commend Sen. Muthama for bringing a Motion like this. Sen. Muthama, I commend you because many of your Motions that come here – like Sen. Ongoro was saying – have a very direct and positive impact on farmers and on our people, generally, just like your politics out there. If you want to see the real Muthama – and I know the real Muthama – just see the Motions that he brings here.

Thank you very much, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): I now call on the Mover to reply.

**Sen. Muthama:** Thank you, Mr. Temporary Speaker, Sir. I rise to respond to this Motion and most sincerely wish to thank all the Senators who contributed in a very positive way.

Mr. Temporary Speaker, Sir, this Motion, as Sen. Orengo said, was direct and clear to the point because it addresses the needs of the people we are leading. It addresses the problems that are facing the common *mwanaanchi*.

Mr. Temporary Speaker, Sir, I have asked the Government, through this Motion, to do very simple and basic things; one was to develop the policy on fruit preservation and storage through modern refrigeration. To lead, you must understand the people you are leading and you must truly understand the class of people you are dealing with. One

thing in Kenya that we have forgotten is that once we come to Nairobi, we get jobs here, we get appointments in high positions and we tend to forget that the people who elected us and who are expecting services are not in Nairobi. They are in the rural areas.

Mr. Temporary Speaker, Sir, here, we are flushing toilets, we have electricity, we also have money and financial stability to go to a pharmacy and buy any medicine; we have doctors on call and we also have the money to go and choose the fruits we want to eat. If the Government takes this initiative and truly gives refrigeration machines in every county or in every region; avails funds that will purchase the same and store it there, when Del Monte are not in a position to have stocks of fruits to make their products, they can go and buy from these regions. By doing this, we would have empowered farmers; and by empowering farmers, you have empowered the whole nation. Why is that? Because fertilizers will be purchased; the sellers, who are registered business people will pay taxes to the Government; agricultural chemicals will be purchased, businessmen will make money and as a result, they will contribute to the national kitty in terms of taxation. So, you will find that by actually investing that little money there with the farmers, you have tripled the income to the Government.

So, Mr. Temporary Speaker, Sir, it is my kind and sincere request to the Government that we should move from that habit of saying “the Government, the officers; the Government, the cars; the Government, the high facilitation that is given” and go back to the basics and say “address the needs of the farmers.”

Mr. Temporary Speaker, Sir, if the two Motions I have brought here will be taken seriously; one with regard to coffee and tea and this one concerning fruits, we will have catered for about 30 per cent of the tax collections in this country. This year, we are expected to collect Kshs1.2 trillion. If we were to also target these fruits, we would have Kshs3.2 trillion and that money would trickle down to *wananchi*.

**The Temporary Speaker** (Sen. Murkomen): I would like to remind you that this is not a Motion affecting counties. Therefore, I will just go ahead and put the question.

*(Question put and agreed to)*

Hon. Senators, it is now time to interrupt the business of the House.

**Hon. Senators:** We have one minute to go. It is not yet time.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, we only have one minute to go and for the convenience of the House, we will now interrupt the business of the House.

The Senate stands adjourned until Tuesday, 5<sup>th</sup> November, 2013 at 2.30 pm.

The Senate rose at 6.29 p.m.