

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 14<sup>th</sup> May, 2013**

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

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

### PRAYERS

### QUORUM CALL AT COMMENCEMENT OF SITTING

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

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have 29 hon. Senators present. We have a quorum

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

### COMMUNICATIONS FROM THE CHAIR

**The Speaker** (Hon. Ethuro): Hon. Senators, I have various Communications to make. I will start with the one on a retreat for hon. Senators.

### WORKSHOP FOR HON. SENATORS ON DEVOLVED SYSTEM OF GOVERNMENT

The Commission on Implementation of the Constitution (CIC) in conjunction with the leadership of the Senate has organized a one-and-a-half day retreat to be held in Mombasa on Friday, 17<sup>th</sup> and Saturday, 18<sup>th</sup> May, 2013.

The aforementioned retreat is a follow up of the Induction Workshop for hon. Senators that was held in Naivasha on 19<sup>th</sup> and 20<sup>th</sup> April, 2013 and is aimed at developing a common understanding of the devolved system of Government. In particular, the Retreat seeks to contextualize and elucidate the role and place of the Senate in the devolved governance structure.

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Hon. Senators, the details and particulars of the preparations, plans and logistics for this event are contained in my correspondence to all of you, which has been sent by the Office of the Clerk.

I, therefore, wish to take this opportunity to invite and welcome all hon. Senators to this important event and look forward to seeing you there.

#### DIVISION OF REVENUE TO COUNTY GOVERNMENTS

Hon. Senators, the second Communication is on the question of disbursement of resources to counties. This is a matter that was raised by the hon. Senator for Kakamega County.

On Tuesday, 7<sup>th</sup> May, 2013, the Senator for Kakamega County, Sen. (Dr.) Khalwale, rose on a point of order seeking direction from the Chair on an alleged stand-off or misunderstanding between the Commission on Revenue Allocation (CRA) and the Treasury on the amount of money the latter intends to disburse to the devolved governments.

The hon. Senator noted, with concern, that as a custodian of the interests of the devolved government, the Senate needed to pronounce itself on the important issue of financing of the devolved governments. The hon. Senator claimed that the “Senate is quiet” and as a consequence, “the public will be forgiven if they thought that we are sleeping on the job.”

Sen. (Dr.) Khalwale further quoted the provisions of Article 217 of the Constitution which formed the basis of his point of order and noted that all the requirements in the Article, and I quote “had not been met by the Senate, the Treasury and the CRA.”

Hon. Senators, let me start by referring you to Article 217 of the Constitution and specifically sub-articles (1) and (2) which---

Let me sit so that I allow hon. Senators to come into the Chamber.

*(The Speaker (Hon. Ethuro) paused and took his seat  
while hon. Senators entered the Chamber)*

Hon. Senators, let us proceed.

Hon. Senators, let me start by referring you to Article 217 of the Constitution and specifically sub-articles (1) and (2) which were quoted by Sen. (Dr.) Khalwale.

Article 217(1) and (2) state as follows, and I quote:-

(1) Once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.

(2) In determining the basis of revenue sharing under clause (1), the Senate shall-

- (a) take the criteria in Article 203(1) into account;
- (b) request and consider recommendations from the Commission on Revenue Allocation;
- (c) consult the county governors, the Cabinet Secretary responsible for finance and any organization of county governments; and
- (d) invite the public, including professional bodies, to make submissions to it on the matter.

Hon. Senators, you may recall that this Senate as presently constituted has not undertaken the functions enumerated in Article 217 as quoted above for the following reasons:-

I wish to draw the attention of the Senate to the provisions of Section 11 of the Sixth Schedule to the Constitution, which states as follows, and I quote:-

“(1) Until the first Senate has been elected under this Constitution—

(a) the functions of the Senate shall be exercised by the National Assembly; and

(b) any function or power that is required to be performed or exercised by both Houses, acting jointly or one after the other, shall be performed or exercised by the National Assembly.

(2) Any function or power of the Senate shall, if performed or exercised by the National Assembly before the date contemplated in subsection (1), be deemed to have been duly performed or exercised by the Senate.”

In the performance of this function, the National Assembly on 27<sup>th</sup> November, 2012 discussed and adopted the report of the Budget Committee on Allocation of Resources to Counties under the following Motion:-

“THAT, this House adopts the Budget Committee Report on the basis for allocating resources among the counties for the period 2012-2015 laid on the Table of the House on Thursday, 22<sup>nd</sup> November, 2012.”

The hon. Senator and other hon. Senators may wish to note that the question was amended through a Motion moved by the then hon. Member for Turkana Central. The correct position is, therefore, that in terms of the Constitution, the Senate is deemed to have fully discharged its functions as required by Article 217 of the Constitution. However, if there are emerging issues on the basis and criteria for allocating resources to counties, the Senate is at liberty and can take them up especially now that the Senate has constituted its Committees.

In conclusion, therefore, let me draw the attention of Sen.(Dr.) Khalwale and the Senate to the provisions of Article 217(8), which states as follows, and I quote:-

“Despite clause (1), the Senate may, by resolution supported by at least two-thirds of its members, amend a resolution at any time after it has been approved.”

I hope that the Senate is accordingly guided on the matter.

Thank you.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise on two points of order. First, I want to thank you for that Communication, which has created a way forward. At the moment, we are fairly uncomfortable. It looks like we will have to re-look at some of the decisions that were made, either by the CRA or in consultation with the Treasury.

### POINT OF ORDER

#### MEASURES TO ENSURE SECURITY OF HON. SENATORS DURING DEMONSTRATIONS AT PARLIAMENT BUILDINGS

My second point of order is that, I personally - and hopefully the rest of the hon. Senators and hon. Members of the National Assembly - wish to be assured of their security. Some of us are still housed at Continental Building. This afternoon, when I drove to come to the Senate, it was impossible to come through because I was caught in between the traffic behind and ahead of me. There was also teargas being loped---

**Hon. Senators:** And pigs!

**Sen.(Dr.) Khalwale:** Yes, pigs! Whereas my point of order is not intended to interrogate---

*(Hon. Senators applauded Sen.(Prof.) Anyang'-Nyong'o  
as he walked into the Chamber)*

Mr. Speaker, Sir, hon. Senators are applauding the arrival of Nyong'-Nyong'---

**Hon. Senators:** Anyang'-Nyong'o!

*(Laughter)*

**Sen. (Dr.) Khalwale:** Thank you, for that correction.

My point of order is not intended to interrogate the merits or demerits of that particular demonstration. However, given the structure that we have around the Senate, at the Kenyatta International Conference Centre (KICC) and between the KICC and where our offices are hosted, we would like the Chair to assure us of our security.

For somebody to go out of his way and carry live pigs, some of them dead, carry blood and pour it, that is someone who is very angry. Most of the time, I normally just

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walk between KICC and my office. I can imagine if I was walking, with that kind of angry person, we do not know what else that person would have done. I am not too sure that this was not stage managed. To cover a live event, the mobile transmission unit of a television station has to be mobilized in advance. How come mobile television stations were at the gate of Parliament without the express authority of the Speakers of the lower and upper Houses?

This calls into question the next issue of the dignity of the Houses of Parliament of the Republic of Kenya. It is interesting to note that a permit was issued by an officer in the city to allow for the movement of pigs around the city. This is an issue that speaks volumes about an affront against the dignity of this House.

Mr. Speaker, Sir, in the last ten years, you and I were hon. Members of the lower House. The Speaker of the National Assembly came out strongly in defending the dignity of the National Assembly. Hon. Senators, I do not know what has become of our country. In just as many days, we have seen our little girls being put on international television that they sleep with dogs. The people pushing this – I saw whites in the background. Today, again, as they call hon. Members and hon. Senators “pigs”, I also saw some whites in the background. Kenya is no longer the same insignificant little country that the white man left in 1963. Today, in terms of population, Kenya is ranked number 31 in the world. We are only number six to Nigeria as an African country. Small countries like Norway and Sweden cannot be compared to Kenya. As wananchi enjoy their freedom, we would like you to take this time, together with the Speaker of the National Assembly, and remind them that in the Lower House, the Speaker made a ruling and indicated the furthest that people who are picketing can approach Parliament. He also ruled what a demonstrator needs to do before he or she demonstrates outside Parliament. It is very easy for a suicide bomber to take advantage of this kind of situation and we shall all go or some of us will go the way we lost Sen. Mutula Kilonzo.

I beg that you give direction on this important matter.

**The Speaker** (Hon. Ethuro): Hon. Senators, let me speak to the second point of order as raised by Sen. (Dr.) Khalwale. Indeed, the Chair is aware that demonstrations have been taking place, and they have not followed the directive that was given previously in the Tenth Parliament. I want to assure all hon. Senators that immediately we learnt of the would-be demonstrations, we ensured that our Serjeant-at-Arms, in consultations with the police, were out there to ensure that hon. Senators were protected. We also mobilized efforts, including the police station within KICC. So, to that extent, I want hon. Senators to feel free, comfortable and know that they are secure.

To the demonstrators, I want to reiterate what my predecessors have spoken on. This is a country of civilized people, of laws and constitutionalism. The Constitution allows members of the public to demonstrate, including hon. Senators, hon. Members and members of the civil society. That is everybody’s right. But our laws also very clearly spell out that you cannot impede an hon. Member or hon. Senator from moving from point “A” to point “B” especially when coming to perform their legislative work.

Hon. Senators, I will, therefore, sit with my counterpart to ensure that the provisions that had previously been provided for are complied with. We will also look at other ways, which you can make suggestions on, on how any would be protestor can be accommodated without necessarily interfering with the work of legislators.

Next Order!

## MESSAGES

### MESSAGE FROM THE NATIONAL ASSEMBLY TO THE SENATE

#### CONCURRENCE OF THE SENATE ON THE DIVISION OF REVENUE BILL, 2013

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Message from the National Assembly that I wish to bring to the attention of the Senate. Pursuant to Standing Order No.40(3) and (4), the Clerk has delivered to me the following message from the National Assembly regarding the Division of Revenue Bill:-

THAT, the Division of Revenue Bill, National Assembly, Bill No.1 of 2013 was published in the Kenya Gazette Supplement No.63 of 29<sup>th</sup> April, 2013 as a Bill originating in the National Assembly and was passed by the National Assembly on Thursday, 9<sup>th</sup> May, 2013 in the form attached hero;

And further that the National Assembly now seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.

Signed by the Hon. Justin B.N. Muturi, M.P., Speaker of the National Assembly.

14<sup>TH</sup> May, 2013.”

Hon. Senators, Standing Order No.146 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate in the manner by way of First Reading in accordance with Standing Order No.127.

I, therefore, now direct that the Bill be listed for First Reading tomorrow morning.  
Thank you.

## NOTICE OF MOTION

### MEASURES TO ADDRESS ROADS DEVELOPMENT ACROSS THE COUNTIES

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**Sen. Musila:** Thank you, Mr. Speaker, Sir, for this opportunity. I beg to give notice of the following Motion which is directed to the Ministry or Department of Transport and Infrastructure. The Notice of Motion reads as follows:-

THAT, noting with concern the skewed infrastructural development in Kenya particularly in the road sector, aware that without suitable roads to connect all counties, the nation cannot meaningfully achieve the development goals envisaged in Vision 2030; noting further that in his Presidential Speech on the occasion of the State Opening of Parliament on 16<sup>th</sup> April, 2013, His Excellency the President promised the nation to “improve local roads so that our people can move freely across our nation”; the Senate resolves, that the National Government takes immediate steps to correct the skewed roads development in Kenya and requires the Department of Transport and Infrastructure to submit to the Senate, through the Senate Committee on Energy, Roads and Transportation, an annual report of roads development programmes covering all counties in Kenya beginning July, 2013.

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

### POINT OF ORDER

#### CRITERIA FOR DETERMINING MARGINALISED COUNTIES TO BENEFIT FROM EQUALISATION FUND

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

**The Speaker** (Hon. Ethuro): Yes, Sen. Musila.

**Sen. Musila:** Mr. Speaker, Sir, last year, I had seen the Chair wanting to raise a matter under a Standing Order. I thought after Statements, you would give me an opportunity to do so. Is this the time that I can raise the matter?

**The Speaker** (Hon. Ethuro): You can proceed.

**Sen. Musila:** Mr. Speaker, Sir, I stand on a point of order seeking the Ruling of the Chair on a matter concerning the Equalisation Fund. This is not necessarily connected with the point of order that was raised by Sen.(Dr.) Khalwale, but it specifically concerns the Equalisation Fund. As you are aware, Article 204 (1) of the Constitution states:-

“There is established an Equalisation Fund into which shall be paid one-half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

Article 215 of the Constitution also establishes the Commission on Revenue Allocation whose functions is to make recommendations, and I emphasize, “recommendations”, concerning the basis for the equitable sharing of revenue raised by and tabled by National Government.

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Article 216(5) further states as follows:-

“The Commission shall submit its recommendations to the Senate, the National Assembly, the national executive, county assemblies and county executives.”

In addition, I want to recall that Article 96 of our Constitution gives the role of the Senate as, among others, to determine the allocation of national revenue among counties.

Mr. Speaker, Sir, I am privy to information that the CRA determined that only 14 marginalised counties should benefit from the Equalisation Fund. To the best of my knowledge, this Senate never received recommendations from the CRA on the criteria used in selecting the 14 marginalised counties. I say this because some very marginalized counties were left out when choosing the 14. I am sure hon. Senators are aware of this.

I have also received information that without any input from this Senate, the Treasury has already proposed to the National Assembly the amount each of the 14 marginalised counties are to be allocated. In my view, this act contravenes the Constitution. I seek the ruling of the Chair on this matter, with a view to bringing a Motion to the Floor of this Senate, to debate the criteria for the selection of the 14 counties and, therefore, proceed to allocate funds.

Mr. Speaker, Sir, I seek your guidance on this issue, which apparently is being done without the consent, approval or even input of hon. Senators.

Thank you.

**The Speaker** (Hon. Ethuro): Sen. Musila, your request will be considered. I will give an appropriate Communication the way we have done for the hon. Senator for Kakamega County. But to make the distinction, in terms of the Equalisation Fund being considered by a House of Parliament, this is indicated in Article 216(5). The Chair is fully aware that we did not follow the same procedure which we had outlined in answering Sen. (Dr.) Khalwale’s query where the National Assembly then, which was acting as the Senate, dealt with the matter. On the issue of the Equalisation Fund and determination of marginalised areas, for purposes of Article 204(2), that procedure has not been followed. But let me look at this issue in detail and give a more considered opinion.

Next Order!

## MOTION

### SERVICING OF LOANS AND DEBTS INCURRED BY FORMER LOCAL AUTHORITIES BY THE NATIONAL GOVERNMENT

**Sen. Orengo:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, acknowledging that County Governments are an essential framework, pillar and structure of governance and democracy in Kenya and exercise constitutional authority and functions; aware that the work



and performance of county governments may be undermined, burdened and frustrated by debts and loans incurred by local authorities as previously constituted under the law; recognizing that devolved system of Government must be protected and defended in order to attain the underlying principles, objects and functions as set out in Articles 1, 6, 10, 174, 175 and 186 as well as the Fourth Schedule of the Constitution of Kenya, 2010; the Senate resolves that the National Government takes over the servicing and payment of all major debts and loans owed and incurred by all the local authorities or other such entities that existed before the establishment of county governments.

Mr. Speaker, Sir, if there is any great achievement of the Constitution of Kenya, as promulgated in August, 2010, it is the system of devolved governments. As I have read out in the Motion, if you look at those specific provisions, this Senate and Parliament as an institution has the role to protect and defend not only the Constitution, but also the devolved system of government. The Senate has even greater responsibility in ensuring that this devolved system of government not only works, but is able to carry out the objectives which are spelt out not only in the Constitution, but in the various legislations that have been enacted since the promulgation of the Constitution.

Mr. Speaker, Sir, if we look at the Objects and Principles of the Devolved Government as found in Article 174, I do not need to mention each one of them, you will agree with me that the county governments, through the devolved system of government, have many functions and responsibilities that we must have a clear perspective and view of in order to ensure that they work in the manner that was anticipated by the makers of the Constitution. If you look at Article 174, there are provisions which relate to the Constitution, but more importantly for purposes of this Motion, Article 174(d) says:-

“The objects of the devolution of government are-

(d) to recognise the right of communities to manage their own affairs and to further their development;”

Emphasis here is on “communities to manage their own affairs”. It is needless to say that communities in our structure and system of Government can only be able to achieve and implement this provision through the county governments.

The other objective as stated in Article 174(f) says:-

“The objects of the devolution of government are-

“(f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;”

This will be done using the devolved system of government as a mechanism for achieving this.

Article 175(b) is more important when we think about the work of county governments. It provides:-

“County governments established under this Constitution shall reflect the following principles—

(b) county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and---”

So, there are two functions, to be able to govern, but more important for the people is to deliver services effectively. This is in the Constitution, and not on any other subsidiary legislation.

Part (2) of Article 176 requires that:-

“Every county government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so.”

So, the county governments are not on their own the final phase of devolution. They are under duty to devolve further – to decentralise – so that services go right to the people.

Article 186 of the Constitution talks about respective functions and powers of the National Government as opposed to county governments. It talks about situations where there is concurrent jurisdiction.

Finally, on this part of the Constitution, there is a particular function that requires the intervention of the House. It talks about what happens when there is a transfer of functions and power between the two levels of Government. Article 187(2) says:-

“(2) If a function or power is transferred from a government at one level to a government at the other level—

(a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; ”

So, it is talking about devolution and the powers that reside with the Governors, the County Assemblies or with the county governments for that matter. Without allocation of resources, it will just be a story of promises, hopes and expectations, but there will be no implementation or achievement of these requirements.

There is Article 190 which deals with Parliament. Where Parliament is referred to in the Constitution in relation to devolution, we should read the Senate as the principal component of Parliament which should advance this cause.

Article 190(1) says:-

“Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.”

This is an agenda that I still think that this Senate, over the years, will have to really delve into to make sure that, in fact, we have put in place sufficient legislation. A lot of this legislation was a product of the previous Parliament sitting as a National Assembly. But I think now it behoves on the Senate to sit down to make sure that there is proper legislation to ensure that these county governments can perform their functions.

Finally, just on the Constitution, in a provision which was read earlier by Sen. Musila on the issue of public finance, especially on the equitable share and other financial laws – which is Article 203, also found in sub-article 1(d); that there needs to be national legislation to ensure that county governments are able to perform the functions allocated to them; and (f) to make them meet developmental and other needs of the counties. So, there is a whole cocktail of provisions in the Constitution that are geared towards ensuring that these devolved systems of government can actually operate. Now, there are a lot of roadblocks in the way that would make it difficult for county governments to move on this road towards providing services to the people. One of them is the issue of taxation.

Article 209 basically imposes the duty of legislation and taxation on the National Government. It is only the National Government which may impose taxation. So, to that extent, the extent to which county governments can get revenue through legislation is predicated on probably the generosity of the National Government, which is the institution that can levy taxes. And then the borrowing powers of the county governments – I think this is a good provision – but, again, county governments cannot borrow without guarantees and conditions which are put in place by the National Government.

So, the situation as we look at it today, which is the main focus of this Motion, is that if you look at the way the local authorities operated before the promulgation of this Constitution, they were really part of the central Government. I know there were the local councils and so on, but really, the operation of local authorities through the office of the chief officers, who were the clerks; it was basically local government as seen from the various county councils and other entities which constituted the local authorities. It was an appendage of the central Government at the time. For that matter, their conduct, whether in borrowing or incurring debts, buying or acquiring property, depended on the decisions which were made by the central Government at that time. So, you will find that in a lot of cases, many loans and burdens that visited some of these local authorities were through the direction or the guidance of the central Government at that time; and if not directly, but indirectly through chief officers like the clerks and so on.

Recently, there was a study done, but before I come to that, there was some kind of report on the state of the county councils as existing at that time. This report indicated that only 44 counties out of the 174 that existed were able to pay wage bills – leave anything else – but out of 175, only 44 were in a position to pay their wage bills. Some of them did not even know the number of employees they had. I think we are aware that many of these local authorities, at some point, in order to deal with ghost workers, had to make some interventions. But a report which was done last year on local authorities through the guidance of the Tenth Parliament determined as follows: That over 100 local authorities across the country owed Kshs11.2 billion to the State, co-operative societies and salary arrears as at 30<sup>th</sup> June, 2010. This is more than three years ago, so the figures are much higher now. In fact, this report is, indeed, an understatement.

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According to this report, Nairobi as a county owed over Kshs8 billion; but in reality, you would find that Nairobi owes in debt more than Kshs30 billion. The Municipal Council of Mombasa owes more than Kshs2.8 billion; Kisumu Municipal Council owes Kshs1.3 billion. So, if you take an example like Kisumu County, which is just one municipal council – and there are many municipal councils – owing Kshs1.3 billion, surely, with the provisions that they have been given under the current allocations, they are not going to be able to meet the constitutional mandate, functions and authority as spelt out clearly and as I have read them out and in other consequential legislations, like the County Elections Act. So, I would seek the support of the Senate to support this Motion in the sense that we are telling the national Government that, at least, for these debts that were incurred before these county governments were in existence, it would be prudent for the national Government to take them over, manage and service some of these debts, if not all of them, and the county governments then would be left to implement the key objectives of these county governments, particularly in providing services.

You would notice that from the allocations that can be derived from what we have already seen from the estimates – and I do not want to anticipate debate – it would look like the money that has been allocated to these county governments, nearly 80 to 90 per cent, will just be spent on wages, leave alone servicing of debts. In fact, I would urge that this Senate reconsiders any such allocation because if we are going to leave the allocation of Kshs231 billion or even Kshs300 billion, you will still not be dealing with providing services; you will be dealing basically in merely meeting the recurrent expenditure. If you look at the functions of county governments as spelt out in the Fourth Schedule of the Constitution from agriculture, to health, to water, to reticulation of electricity and energy; to pre-primary education, to access roads; I mean, if you look at the entire functions of the county governments, these allocations actually will not make it possible for these county governments to stand on their feet. It is upon us, as a Senate, to make sure that, indeed, they can.

Indeed, when you go to the country and meet the people as Senators and Governors, there are a lot of expectations. In fact, I think there is a bigger responsibility on Senators – and I sympathize with you because when these problems are detected at that level, they are thrown to the Senator. I was at a meeting on Friday and all the problems to do with the county – which were a myriad, leave alone the issue of debts – they were expecting that it is the individual Senators who will deal with these problems. Therefore, I think as a first step, it will send the right signals that this Senate wants the county governments to work by removing this debt burden in terms of loans and other monies that were incurred in terms of expenditure. But I do not say that this should be a blanket kind of resolution by the Senate. There should be some kind of audit to know which ones are appropriate for takeover by the national Government. In doing this, I think we will start on the right footing.

The implementation of the Constitution is not about how it ends; it is about how it begins. So, if we start right on this, then I think the county governments will last. But if we start on the wrong footing, then it will be like in 1963, when we had a devolved system of Government which was denied revenue and the original commissioners – no, commissioners were introduced later – but each region had a president; they became nominal figures in the national governance arrangement and eventually, that system of government died. But in order to make sure that this system of government continues, I think this Motion should be supported.

So, Mr. Speaker, without further ado, I beg to move and ask Sen. Kiraitu Murungi to second.

Thank you, Mr. Speaker, Sir.

**Sen. Murungi:** I want to thank you, Mr. Speaker, Sir. It is my great pleasure and privilege to second this Motion by my old friend and comrade in the struggle, Sen. James Orengo.

Mr. Speaker, Sir, the system of devolution is under serious threat and we, as the Senators, and as the people who are in charge of making sure that devolution works, have to take these threats seriously.

Mr. Speaker, Sir, these debts which have been inherited and which have been listed by the honourable Senator could give the county governments a stillbirth, and all the promises of devolution that have been made in this country could be reduced to zero and we could go back to the year 1966, when the devolution system was wound up purely by denial of sufficient resources.

Mr. Speaker, Sir, I am happy that our other friend, Sen. (Prof.) Nyong'o, has come back; welcome Professor. You will recall for the last 30 years what a struggle we have waged in this country against an imperial presidency. That struggle has been waged in the streets; it has been waged in Parliament and even today, it is being waged here on the Floor of the Senate.

Mr. Speaker, Sir, there have been cries for devolution. Sen. Orengo has given the constitutional provisions - Article 1, 6, 10, 174, 175 among others – and the whole principle of devolution was really to dismantle those concentrated powers in the centre so that we could ensure equitable sharing of national and local resources to all Kenyans so that we could also facilitate decentralization of the state organs, functions and services from the Capital City, Nairobi, to all the corners of this country.

Mr. Speaker, Sir, given the context and the rough terrain we are seeing, it may not be possible to achieve these constitutional objectives. It is very sad that despite the very clear promises made by President Uhuru Kenyatta and the Deputy President William Ruto, on several occasions, including to the Members of the Senate who are seated here; that this Government will implement the principles of devolution as set out in the Constitution, what we are seeing on the ground is different. When a Government changes, the Minister and the Permanent Secretaries also change but the rest of the Government officials remain in place. We have a fossilized level of Government, from

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Job Group “K” up to Job Group “S”. These do not change. If you look at the senior civil servants in the Government today, you will see that these are the people who were recruited at the height of the imperial presidency in the 1980s and they are the ones we are relying on to implement devolution. This can be compared to former President Nyerere trying to introduce socialism among capitalists in Tanzania.

The implementation of devolution has begun with endless debates, conflicts and quarrels between that realm of Government and those who want change. This grand standing you are seeing with this lady, Sarah Serem, is something that she is not doing by herself. She is representing some forces and the whole intention is to frustrate devolution. It is to demoralize Senators and members of the county assemblies so that we give up. However, you should send a very clear message that we are not giving up. The whole idea is to deny Senators and county assembly members resources to make devolution effective in this country. We should see clearly through this game and insist on financial and administrative autonomy for both the Senate and the county governments.

With regard to the Transitional Authority (TA) which is charged with mid-wiving the devolution process, if you look at the officers manning it, you will see that they are the same fossilized civil servants that I am talking about. In Section 7 of the Transition to Devolved Government Act, the Authority is supposed to prepare an inventory of all assets and liabilities of existing instructions of the existing governments including local governments so that those can be sorted out and we give a clean start to the county governments. Unless those debts are paid, there will be no money at all even for the new county governments to pay their staff or to deliver services which are very badly waited for by Kenyans.

We are all aware of what happened at the Kenya Airways. It was virtually on the verge of bankruptcy. This Government injected Kshs6 billion to pay off the debtors of owed by the Kenya Airways in the process of restructuring it so that we could attract strategic partners to come and run the company. Without us paying those old debts - if we allowed them to continue being carried by Kenya Airways – we would not be talking about Kenya Airways today.

We did a similar restructuring for the Kenya Power and Lighting Company in 2003. This one owed debts of Kshs16 billion. The Government had to come in and take up preference shares and give the Kenya Power and Lighting Company (KPLC) a lease of life so as to provide electricity to Kenyans. Time has come for this Government to do the same for the new county governments. We cannot afford to saddle them with debts which are not their own. The new county governments are not county councils. These are new creatures of the Constitution and have no business with what happened before they came in. This Motion should be supported by all the Senators who want to implement devolution in this country. We should scrutinize the budgets coming to this House very seriously because many of them are skewed. I have seen, for instance, what is being discussed in Meru. The budget that was prepared with the support of the TA officials

gives Kshs300 million to construct a mansion for the Governor but gives zero to the Speaker of the County Assembly of Meru.

I beg to second.

*(Question proposed)*

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I want to start by congratulating the Senator for Siaya for bringing such an important Motion to the Senate.

If you look at the operations of the county governments, although in their infancy, you will get a very clear impression, as the Senator for Meru said that there is every intention to malnourish this child. All things are going wrong. You cannot start county assemblies with no intention to make them assemblies to do their work. All you need to do is to look around and see comparable jurisdictions that have similar sets; the provincial legislatures and governments in South Africa, the State Legislatures and Governments in Nigeria and in Cameroon, among other places, you will see that we got it all wrong. We seem to think that county assembly members and structures are a promotion in a very miniscule manner of county councils. That is not what we intended. It is not right that you put a Governor in place, give him a good salary, give him Kshs300 million to build a mansion and no corresponding Kshs300 million to build a little house for the Speaker and no talk on how to handle the very assembly that will legislate, oversight and do everything else in the county. You are asking County Assembly Members in Nairobi to pass and oversight a budget of Kshs15 billion and yet you are paying them Kshs79,000 a month. If our intention was to tame corruption, then we are on a superhighway. Some of the county governments have debts that will make it impossible for them to take off in any way; debts that range from unpaid National Social Security Fund (NSSF) dues, unpaid construction obligations, unpaid water bills and electricity bills not to mention the enormous responsibility bestowed upon them. What difference would it make if the County Council of Kakamega employed small boys with strings to drop *boda boda* riders so as to collect Kshs50? What is the difference between a county council and a county government? That is what is going on. They are unable to institutionalize their services and activities because they cannot move.

I was impressed to see Governor Isaac Ruto, one of the great Members of Parliament that we had in the Tenth Parliament in terms of relevance to debate saying, very clearly, that if the intention of the National Government was to turn them into a bureau for human resource management, then they had succeeded. They told us to go and employ an executive council, secretaries and staff and then they would send money to pay salaries and that would be all. What is the value of this? This Senate, as the custodian of the interests, foundation and the future of devolution, must not only pass this Motion but also have the implementation mechanism to make sure that that the National Government abides by what we say, do and what we pass in this Senate. If we do not do

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that, five years down the line, Kenyans will start regretting passing a wonderful idea. Senator Murungi put it the best way someone would put it. We have new music but with old dancers doing the same old jig; centrists who do not believe that anything should leave Nairobi, who believe that anything good can only come from Nairobi, and centrists who see that any outsiders in the county demanding for issues are a nuisance. That is why we are having this ping pong.

The Constitution and the laws are very clear that revenues are to be shared on percentage basis. However, we are abandoning percentages and talking about figures the same way that hon. Kimunya used to do with the CDF. The economy is growing and we have set percentages but someone is thinking that Kshs250 billion is too much and that they should be given Kshs180 billion as if we are buying a shirt from the market. Should I give, should I not give? *Pata potea*. We cannot start devolution like that. For these units to take off, including your own, Turkana, we must give them a clean start to start off because some of them are in such dire financial constraints. You will find big ones like Nairobi, Mombasa, Nakuru, Kiambu and Machakos can raise sufficient revenue from land rates, land rents but what about those ones like Marsabit, Kwale, Bungoma and Busia? They will sit there and eventually, you will see them looking like the famous cartoon you see from traders; one boisterous fat man laughing that he sold on cash and a poor fellow impoverished and looking sick saying he sold on credit. We are throwing these counties into that situation where they are either running on cash or credit basis. At the end of the day, the Governors will come to Nairobi to meet the President or the Senators and when asked what he or she has done for the last three years for the people, they will say that they are paying salaries. Is that what counties have been set up to do? I say no!

The volume of responsibility that the national government has transferred to the county governments is mind-boggling. Sooner than later, you will find the national government shedding off medical care and remaining at level five hospitals only. They will say that they will only take care of Class C roads and above and yet there are some counties that do not even have a Class C road. You will find that the national government will take care of only national schools, but how many of them are there? There are very few, so the rest are expecting to be funded from the county kitty. You will find that the county governments will be given little money for the youth and women and told to budget for them but how much are we giving them? It is piteous and yet they have to pay debts. What will happen is that very soon you will see members of the public using clever lawyers, like Sen. Kajwang here, going to court, garnishee the accounts of the counties and attach their money. Much soon than later, you will see members of the public or organizations owed money applying to commit the Governor to civil jail because of debts, the same way they do to Permanent Secretaries and others who are accounting officers. As long as the Governor is an accounting officer, he must honour the responsibility of paying debts. By doing this, we are saving the devolution that we all cherish and putting it on track to success, we are putting it in a position for *wananchi* to

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pick, the way it is said in the United Nations (UN) that pick first the low hanging fruits. The low fruits are for people to see the difference between a county council and a county government in terms of service provision, facilities and orientation.

Mr. Speaker, Sir, finally, even as we remove these debts, there is something that the Senate must insist on; security issues in counties. It is not possible for the Governor of a county to be a chief executive and does not sit in security organs. He does not even know what is going on within his own county. Like in my troubled county of Bungoma, a County Commissioner, who has been declared illegal by the High Court, calls a security meeting and expels the Governor from sitting in the meeting. I am talking about a county where there is insecurity and the people are being brutalized day and night. It is the Governor who is accountable to the people of Bungoma and indeed any other county. This Senate has a legal and moral duty to protect the interests of the county governments, protect and uphold the dignity of Governors and all instruments around them because they represent the will of the people.

**Sen. G.G. Kariuki:** Mr. Speaker, Sir, thank you for giving me this opportunity to support my brothers who have spoken before me. As far as I am concerned, this is a serious matter but we need to view this matter as something that is not very new to us. Listening to my previous speakers, they look “emotionalized” over something which needs very serious thinking and cannot just be a matter of playing to the galleries.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. G.G. Kariuki of Laikipia who has the distinction of having been a Member of the First Parliament of this country and who we expect to learn from in terms of experience, age and practice to say that those who spoke before him, that is, Sen. Orengo, Sen. Kiraitu and I, were playing to the gallery when we are dealing with very serious issues? Is he in order? This is casting aspersions on colleagues.

*(Sen. G. G. Kariuki remained standing on his feet)*

In the Senate or any other Parliament when one Member is speaking, the other one has to sit down. Is he in order?

*(Laughter)*

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

**Sen. G. G. Kariuki:** Mr. Speaker, Sir, I hope you will protect me and allow me to air my view independently and with confidence without being harassed by my friend who has been in Parliament for quite some time. I think time has come when we all forget that we have been practicing---

**The Speaker** (Hon. Ethuro): Order, Sen. G. G. Kariuki! You have just been challenged to demonstrate that the speakers before you were not playing to the gallery. So, you need to respond to it before I dispose of the matter.

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**Sen. G. G. Kariuki:** Mr. Speaker, Sir, I did not find that as a point of order but an argument. That is my personal judgement. When we are here---

**The Speaker** (Hon. Ethuro): Order, Sen. G. G. Kariuki! Please, resume your sit. This is a Motion that has been approved by the Speaker and further approved by the Rules and Business Committee which is a committee that you gave to the Senate to manage the business. As Sen. Wetangula has said, it was the Mover, the Seconder and then one other contributor whom I gave the opportunity by virtue of being the minority leader. So, who among them is playing to the gallery? So, just apologize and proceed, Sen. G. G. Kariuki.

**Sen. G. G. Kariuki:** Mr. Speaker, Sir, to avoid confrontation from the Chair, I would like to withdraw the word “gallery” and continue. I hope the hon. Senators would just listen because I gave them a lot of my ears when they were talking.

**The Speaker** (Hon. Ethuro): Order. You know the Chair is a good friend of yours but some of these things are so basic. Withdraw the words “playing to the gallery” and apologize. When you proceed, I will protect you.

**Sen. G. G. Kariuki:** I apologize. Having apologized, I can now be allowed to proceed.

**The Speaker** (Hon. Ethuro): Proceed.

**Sen. G. G. Kariuki:** Mr. Speaker, Sir, this is a very important Motion and I wish my friends could have given me time to express myself over this matter. This is a Motion that we all know there have been a lot of problems during the old Constitution where the county councils were being ordered to give money out to friends and now all that is debt to be paid by the county councils. It is very difficult especially for the person who is familiar with the past system of government. Things were very bad. While I support this Motion, it is important for us to note that we should not just pass this Motion the way it is, and I am not proposing any amendment because they are just my views. When we are talking about all the debts to be paid by the central government, there is need for the Senate to decide and sit with the officers of the Senate and determine how much money we are talking about and who is owed. There are some local authorities like the City Council of Nairobi who are owed by the Government. How are you going to write it off? If we have to write off debts, then we need to know how much money is involved.

Mr. Speaker, Sir, let us look at 1963 and the problem we had. During that time, and I was lucky to be in that system, there were issues that needed to be resolved at that time but devolution was killed. I want to tell the Senate that there is no one today who can destroy devolution because it is very clear in our Constitution. Devolution is there even if this Senate goes. I do not see anybody who has the capability of calling all Kenyans together and telling them to dissolve devolution. It is not possible. If you look at Article 185, you will see the functions of the county assemblies and those of the central government. Who is going to come forward here and misdirect the whole nation, which united to pass the Constitution? There was a lot of opposition when this Constitution was being passed but the only thing that I have seen in my political life where God had

intervened is when this Constitution was passed because there was a lot of opposition. Those who are in the system anticipated this problem and knew what was going to happen. That is why you cannot stop them from manipulating or working against the system but we can only do that if we are guided by the Constitution which is very clear in our mind.

This is not the only problem that the county governments are going to face. There will be a lot of other problems. If we do not follow and make sure that this Constitution is implemented, then no Senator will be re-elected. Out there, we are the people who are supposed to protect the county governments. We are the people who are supposed to give them funds and support them financially. When we are talking the way we do, we must take over our responsibility as the Senate. We are here to protect the interest of the county governments. Unless we do that and wait for a Motion like this – when we start talking about history or what has happened, what is going to happen – that actually is not for the Senate! The Senate is here to make sure that county governments are working properly and have all our support.

Mr. Speaker, Sir, two or three weeks ago, the county governments or the governors had not realized the power of the Senate. But now, all of you have quiet contacts to the effect that “please, help us; please protect our counties,” and that is what is happening. Let us appear as if we are new to this system. This way, I am not opposing the Motion, as I promised from the word go.

*(Laughter)*

But I want all of us, as Senators, to accept our responsibility. We have a huge responsibility; this is not the beginning of the expression that we have problems.

Now, Mr. Speaker, Sir, talking about the fact that the governor or the speaker or so-and-so was not given a house, or money was not spent to build a house for the Speaker, is not a major issue. The major issue here is whether the county government has our support. Do we support it to the maximum? One might think that the Kshs231 billion which was allocated; we should not just cry over it---

**The Speaker** (Hon. Ethuro): Your time is up, Sen. G.G. Kariuki!

**Sen. G.G. Kariuki:** I beg to support, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): The Senator for Kisumu.

*(Applause)*

**The Senator for Kisumu** (Prof. Anyang’-Nyong’o): Mr. Speaker, Sir, I rise to support this Motion by my friend, Sen. Orengo, which has been seconded by Sen. Kiraitu Murungi from Meru. I also must appreciate the contribution of my long time friend, G.G. Kariuki, the Senator from Laikipia. I want to make a few points on this Motion and I also want to make an amendment, particularly to capture some of the issues that Sen. G.G.

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Kariuki was talking about. But let me assure you that this is not an apparition; this is me. It is not an image of me, it is actually I.

So, I thank you, Mr. Speaker, Sir, and my fellow Senators for giving me solidarity and I want to thank you for this very cordial Chamber that we are in. I think this is a very good atmosphere to meet in. I think it is going to lead to very constructive deliberations.

The first point I want to make, Mr. Speaker, Sir, is that the counties that we have established, as Sen. Orendo said, are actually going to be entities for doing business. And if you are going to do a business and your balance sheet is not in order, you cannot borrow money. So, the first thing that must be done is for these counties to have proper balance sheets so that they can be able to borrow money and invest. Because one other thing we are going to do as a Senate, as Sen. G.G. Kariuki said, is to look for money for these counties, and this money is not just going to come from Government. This money will have to come from other sources where the Constitution allows the counties to borrow money from. Therefore, our first responsibility, as Senators, is to look at the balance sheets of these counties and like all the speakers have said before, they are not in very good shape. I was the Chairman of the Public Investments Committee (PIC) for about three years in the mid 1990s, and Sen. Leshore was in my Committee; one of the things we realized is that most of the county councils or districts then had not had their books audited for 17, 20 or even 25 years, and it was very difficult for them to do business with anybody. We remember dealing with a lot of private sector entities who were owed money by these entities and it was very difficult to recover. That is one point.

The second point I want to make, Mr. Speaker, Sir, is that when we look at some of the money that was owed to county councils or districts then, some of them were debts which could have been paid. As Sen. G.G. Kariuki says, in those days, a district officer or a district commissioner could be ordered to give money to somebody, just because that somebody was somebody. Now, this is the kind of money that cannot just be written off; it must be paid. The third thing is that a lot of money owed by county councils are actually statutory deductions; money that should have been paid to the National Social Security Fund (NSSF)---

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

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

**Sen. Haji:** Mr. Speaker, Sir, I am sorry to interrupt my neighbour friend, but is he in order to insinuate that district officers were just able to give money? Some of us were district officers at that time, and we had no money and we did not deal with money at all! Where is he getting this information from?

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): Mr. Speaker, Sir, I was a Member of the District Development Committee (DDC) of Kisumu District for 10 years, and I do remember very clearly; we raised this issue where every March, we could assemble to pass a budget and then in May, we could go around the district supervising the money that had been invested, and there was very little to show for the money that we had passed. And there were cases where contractors were actually given cheques to

perform projects which they never performed. These are the kind of things we are talking about and they are there in the books, and we can look at them.

Finally, Mr. Speaker, Sir, which is very important and which is the point I was making, these statutory deductions owed by municipal councils or county councils then are actually money that is owed from one government body to another government body. So, it can very easily be sorted out without necessarily we, as Senators, voting money to our counties today and then using that same money to pay the statutory deductions. It does not make sense. What we need to do, as the spirit of this Motion says, is for us to look at these monies owed and let the Government sort them out government to government or department to department.

The last point I want to make before moving my amendment, Mr. Speaker, Sir, is that in terms of development, if indeed the counties are going to engage themselves with the act of development, we must make sure that they have a bigger development budget than a recurrent budget because---

**The Speaker** (Hon. Ethuro): Order, Professor! In fact, we are consulting here because, strictly speaking, previously you would move your amendment and then speak to it. But our Standing Orders now permit you to amend it at any time. But I am just reminding you that you have less than five minutes to go. So, if you have an amendment, you may wish to prosecute it first.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): Mr. Speaker, Sir, thank you very much for educating me.

Mr. Speaker, Sir, therefore, I will move my amendment.

Mr. Speaker, Sir, I beg to move that the Motion be amended as follows:-

By deleting the full stop after the word "government" at the end of the Motion and inserting the following words "after proper auditing of these debts and loans and the concurrence of the Senate."

So, Mr. Speaker, Sir, I do not know whether you want me to read the whole Motion again, but my colleagues understand.

**The Speaker** (Hon. Ethuro): You can read the last line.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): Let me read the last line, Mr. Speaker, Sir. The last line says – it is a very long line.

**The Speaker** (Hon. Ethuro): Such entities---

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): "---such entities that existed before the establishment of county governments after proper auditing of these debts and loans and the concurrence of the Senate."

**The Speaker** (Hon. Ethuro): Then you have nothing to delete.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): No---

**The Speaker** (Hon. Ethuro): You are just adding.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): I am just adding, but you have to delete the full stop.

**The Speaker** (Hon. Ethuro): Okay.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): Because if you do not delete the full stop, it is not proper grammar. So, you have to remove the full stop and then add that.

Mr. Speaker, Sir, let me say the following; it is really our responsibility, as Senators, to work very closely with the county assemblies. For us to work very closely with the county assemblies, we must ensure that our colleagues in the county assemblies are respected. I think the point that Sen. Murungi was making was very important because if, indeed, county assemblies feel that they are no better than the previous councillors, we are not going to engage in very meaningful discourse with them because they are going to see us as imposters from above, who are big boys talking to underdogs.

Let me give you an example, Mr. Speaker, Sir. The son of Joe Biden, the Vice President of the USA, is currently the Attorney-General of Delaware State. When his father was named the Vice President, he was asked to take over his father's seat as Senator for Delaware and he refused. He said he had rather continue as the Attorney-General for Delaware State to complete the work he was doing at the State rather than go to the Senate.

Mr. Speaker, Sir, this is the kind of spirit that we must instil in our county assemblies; by making sure that this so-called Commission for Revenue Allocation (CRA) must know that in order to attract good human resources, you must give them good terms of service to perform well.

**The Speaker** (Hon. Ethuro): The Senator for Kisumu, your time is up.

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): I beg to move the amendment.

**The Speaker** (Hon. Ethuro): Who is your seconder?

**The Senator for Kisumu** (Prof. Anyang'Nyong'o): My seconder is Sen. Khaniri.

*(Laughter)*

**Sen. Khaniri:** Thank you very much, Mr. Speaker, Sir, and thank you, Professor, for allowing me to second your amendment. But just before that, I want to take this opportunity to thank and congratulate Sen. Orengo for bringing the original Motion. This is a very, very good Motion; it is very important and I want to assure Sen. Orengo that if he had not brought this Motion now, in the next two or three weeks, I was coming up with a similar Motion. Therefore, I want to thank you and congratulate you for that.

Mr. Speaker, Sir, the Motion as moved by Sen. Orengo is fantastic, but it has even been made better by the amendment that was moved by the good Professor, my friend and neighbour, Prof. Anyang'-Nyong'o.

Mr. Speaker, Sir, although he observed that some of these are debts are statutory deductions and so forth, there are some that are questionable. Some of them were incurred through some dubious contracts that were done by the previous local authorities and, therefore, there is need that before these debts are wholly committed to the National

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Government to pay, they should be properly audited to ascertain which ones are payable and which ones were accrued through some dubious contracts. I, therefore, want to support and second in the strongest terms the amendment moved by Sen. (Prof.) Anyang'-Nyong'o.

Mr. Speaker, Sir, if you ask any Kenyan about the new Constitution, they will tell you the biggest gain in the new Constitution is the whole idea of devolution. Kenyans are optimistic about devolution; Kenyans see an opportunity to develop the country equitably through devolution. Therefore, we, as the custodians of devolution, the Senate, must ensure that Kenyans, indeed, reap full benefits of devolution as envisaged in our Constitution. It will be disastrous, it will be disappointing to the Kenyans, it will be a failure on our part as the Senate if, at the end of the five years, Kenyans have not benefitted from devolution as it is envisaged in the Constitution. Kenyans expect to get good roads, good infrastructure, good hospitals and health centres; good learning institutions and good services through the whole idea of devolution and yet, we all know that there are some very powerful forces in the national Government that are hell bent to ensure that devolution does not succeed. This is done through meagre allocation of resources – Sen. Wetangula said it very clearly that the formula for allocation of resources is very clear – and yet some elements in the National Government want it to appear as if they are doing a favour to the county governments. Clearly, they want the devolution or the county governments to fail. That is how we come in as a Senate to ensure that county governments and devolution succeed in this country.

Putting the burden of paying old debts on county governments is even stifling them more, considering that they are getting very meagre allocations from the National Government. If you add that to the fact that they have to pay old debts from councils, then Kenyans would not reap the benefits they would want to reap from devolution. These county governments will not construct the roads we expect them to construct, build health sectors and other health facilities and to give the services we expect them to give. Therefore, that is why it is proper for these debts to be taken over by the National Government and as said by Sen. (Prof.) Anyang'-Nyong'o, after a proper scrutiny to know which ones are genuine debts.

Sen. Murungi observed it earlier that this will not be the first time. This was done for the Kenya Power and Lighting Company (KPLC), Kenya Airways and I can even add to the list the National Bank which was rescued by the Government. Therefore, this will not be anything new. We want the county governments to start on a clean slate. We expect very much from them. They have been given a lot of responsibilities by the Constitution and, therefore, the resources we allocate them must be commensurate with the responsibilities they have. For devolution to succeed, this Senate must fully support the county governments and ensure that they get what rightfully belongs to them as it is provided for in our Constitution.

*(Sen. Wako raised his hand)*

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**The Speaker** (Sen. Wako): Order, Senator for Busia! We do not raise hands in this House.

*(Question of the amendment proposed)*

**Sen. Haji:** Mr. Speaker, Sir, I take this opportunity to thank you for allowing me to contribute to this very important Motion brought by our brother, Sen. Orengo. From the beginning, I would like to support the Motion.

The mandate given to the counties through the Constitution is very clear. Under the Fourth Schedule, Article 2, it is stipulated from No.1 to 8 some of the functions that are expected to be undertaken by the county governments. As we all know, counties cannot undertake the mandates which the whole country during the elections went to the polls expecting. Leaders told *wananchi* that the Constitution had given them the right to have their own system of devolution as stated in the Constitution and that under this system, local leaders who would be elected would undertake the mandates.

It would be very sad for the National Government or for anyone else to negate this policy which Kenyans went out and voted for under the referendum, overwhelmingly, hoping that the county governments would take up their responsibilities in ensuring that development is not skewed as we have seen previously under one single national government.

I understand that any successive government will be held responsible for any loans that the previous government had taken. However, this time round, this is quite different. A local government entity is quite different from the devolved government system because no one had to vote for the local authorities to be established. They were established without consulting people and, therefore, Kenyans do not feel obliged that any loans or money given to the local authorities that was misused by those who were running the authorities should be paid by the devolved governments. We will not be doing justice to this new system of government.

I subscribe to those who feel that these loans should be taken over by the Government in one way or the other. That is why Sen. Murungi has told us about Kenya Airways, among other entities. We also know that individual loans given to farmers by the Agricultural Finance Corporation (AFC) were written off. Some people took loans under the Guaranteed Minimum Returns (GMR) and could not pay back. These loans were written off. These are quite different. They are not loans given to an individual. They are loans which were given to local authorities which were there before. Therefore, if anything went wrong in administering the funds, then the mistake lies with the Central Government which had all the powers to ensure that nothing went wrong in dispensing the funds.

We all come from areas where there were county councils. There is nothing tangible that shows what local authorities did with the funds that they were given,

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particularly, the Local Authority Transfer Funds (LATF) money that was given to the local authorities. The LAFT money preceded the CDF and today, wherever you go in this country, you can touch, feel and even see with your eyes what the CDF has been used to do in terms of education, water, roads and schools, among others.

As a Senate, under the Constitution, we have a mandate--- If you open any page of the Constitution you will see it alluding to the responsibility of the Senate as to protect, help and assist the county governments so as to raise enough money to undertake whatever is expected of them. We are appealing to the Government by saying that we cannot lie low with regard to this matter. We cannot watch devolved governments being strangled right from the beginning. The Government must find ways of dealing with the loans. My brother, the Mover of the Motion, said that besides them not being given enough money, they are being told to pay loans. Besides that, many staff members of the local authorities are being pushed to the county governments. This means that owing to the money they earn, they will continue to do the same things they have been doing by paying salaries and pensions of those who are being imposed on them.

I want to support this Motion.

**Sen. Kerrow:** On a point of order, Mr. Speaker, Sir? Would I be in order to suggest that you put the question of the amendment?

**The Speaker** (Hon. Ethuro): I suppose, Senator for Garissa, you have already concluded yours. Before I agree to put the question, what is your point of order, Sen. Murkomen?

### POINT OF ORDER

### NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

#### PARALYSIS OF COUNTY ASSEMBLY SITTINGS OVER SALARY DEMANDS

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I am very sorry to interrupt at this moment.

I rise under Standing Order No.33 to move a Motion of Adjournment of the Senate to discuss a very important but urgent issue which I want this Senate to discuss with your permission. This issue is known to all the Senators. It is about the *impasse* and the paralysis of the county assemblies. As you all know, all county assembly members are on strike. Considering that this is one of our very important mandates, under Article 96; to protect the counties, I want to request that this House, at your convenience, Mr. Speaker, do adjourn and discuss this important Motion.

*(Several hon. Senators stood up in their places)*

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**The Speaker** (Hon. Ethuro): Order, hon. Senators! Hon. Murkomen had hinted this to the Speaker. I, therefore, find the matter urgent, definite and of national importance. He has acquired more than the necessary number of Senators to support him. I, therefore, order that this matter is debated later today, any time from 5.00 pm or when the other matter - which I will put the question - is concluded. I say so because before I put the question for the amended Motion, we must remember this is a matter affecting counties. You know the procedure for this. I rule that the proposed amendment is affecting the counties and in accordance with Standing Orders Nos.69, 73 and 74, we will proceed to division and roll call voting before I put the question.

**Sen. Orengo:** Mr. Speaker, Sir, do I have a right to speak to the amendment of the Motion?

**Mr. Speaker:** Order, Sen. Orengo. The Chair was trying to be sympathetic to you but then you added the rider and repeatedly so that you have a right and for that point to sink, you have no right absolutely and therefore, it is not a right. Once you move the Motion, it is already the property of the House and there is no single Member who has a monopoly over it. It is gone and out of you. Just influence in terms of the influence to be made.

**Sen. Kajwang:** On a point of order, Mr. Speaker, Sir. I was apprehensive that you will move to the more substantive part before I raise the Motion. The Motion I wanted to raise is that we have not quite spoken to the amendment except one or two people. I would have wished that you give a chance to two or three more people to speak on the amendment before you can put the question. It is an issue that can completely overturn the Motion.

*(Consultations)*

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. Is it in order for the Senate to vote on a superfluous amendment because Section 7 of the Transition to Devolved Government Act already obligates the authority to make an inventory of the assets and liabilities of the local governments? Therefore, to the extent that this superfluous amendment actually defeats the purpose of the Motion, I think we should not vote on it. If you want us to debate on it, I am prepared to make more submissions on why it is superfluous. Is it in order for us to do that?

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

**Mr. Speaker:** On the same? Okay, I will give a chance to Sen. Orengo and Sen. Billow to speak on what the Senator for Busia has said.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. Unfortunately for me I had spoken to Sen. Anyang'-Nyong'o on this matter and he was generally in agreement. When Sen. Murungi spoke on this Motion, it was brought to my attention that there is a specific provision in the Transition to Devolved Government Act which gives it the

function to ensure the successful transition to the devolved system of Government, prepare and validate an inventory of all existing assets and liabilities. To that extent, I think it will be touching on an issue which there is already statutory provision or mechanism and requires the authority to work together with other relevant state organs and public entities in order to go through that process. If you look at the Constitution on the definition of what is a state office or state organ, it will include the Senate. So, that provision is already in the law and I think it will create unnecessary bureaucracy again on this issue.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir, is it in order for the hon. Senator to suggest that validation of an inventory of assets and liabilities is indeed the same as an audit? The issue is that whereas the act requires that statements of assets and liabilities be prepared and validated by the local authority, what we are saying in this amendment is that there has to be an audit, that is, an independent auditor verifying those liabilities in particular and to “concur by the Senate” means those audited debts with audit reports are provided to the Senate where the relevant Committee approves and forwards them to the Government of Kenya.

**Mr. Speaker:** Let us finalize with the Senator for Kakamega and the Senator for Meru.

**Sen. (Dr.) Khalwale:** On a point or order, Mr. Speaker, Sir. I am just rising to request you to find out whether it is in order for the former Attorney-General to mislead the House that this amendment is superfluous when the intention of the amendment is to put law and quality to the Motion; law in the sense that it is only the Attorney-General who can submit to this Senate an audited document that can stand any challenge in a court of law. Also in this amendment, Sen. (Prof.) Anyang’-Nyong’o is attempting to ensure that no deals are cut at the local level whereby people will introduce claims that are not real. So, he is saying that this be brought to this House so that we can register our concurrence. Is he in order to mislead the House that the amendment is superfluous?

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

**Mr. Speaker:** He was responding to your arguments. Points of orders cannot be part of an endless debate. Honourable Minority Leader, it is not your business to know who I give the chance. I was only disposing the issue with the Attorney-General because he was already on his feet. So, let us finalize this with the Senator for Meru.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I do not think that it is in order for us to spend so much time of this House just on semantics and trying to split hairs. Section 7(2)(e) of the Transition to Devolved Government Act is very clear that the Transition Authority has to validate the assets and liabilities of all local authorities before handing over to the county governments. On the point by the Senator for Mandera, that there is a difference between audit and validation, how do you validate without finding out whether it is valid or invalid?

Mr. Speaker, Sir, I think the Question should be put. We all understand the arguments around this issue now. I do concur with the very learned, emeritus Attorney-General that this amendment is superfluous.

### COMMUNICATIONS FROM THE CHAIR

#### RULING ON WHETHER SENATORS WILL GET MORE TIME TO SPEAK TO THE AMENDMENT

**The Speaker** (Hon. Ethuro): Order, Senators! There are two issues I want to rule on. The first one was whether we would give more time for the Senators to speak to the amendment, which the Senator for Homa Bay had strongly persuaded me, but given that many people have attempted to do the same through points of order, I therefore wish to decline to pursue that route.

#### RULING ON WHETHER PROF. ANYANG'NYONG'O'S AMENDMENT IS SUPERFLUOUS OR NOT

**The Speaker** (Hon. Ethuro): The second matter is what became the subject of the numerous points of orders. First, I am persuaded that the amendment by the Professor is not superfluous. Two, and why I am persuaded so, is that the section of the Transition to Devolved Government Act you are quoting about and I have it on the authority of the Chair of the Transition Authority that, even that inventory is not complete as we speak now. But assuming that it was even complete, then it can be part of the audit – if I can use the layman language and not the strict accountant language that the Senator for Mandera was referring to – it can still be part of the audit. So, I do not see any disconnect between what the Transition Authority could be doing, which to me could be part of the proper audit that is required here. But the more fundamental point really for me is that the Senate would want to be a responsible Senate. You do not want to put a case and you are not very sure of the issues you are raising. So, it is important that the case for the waiver for the debts and loans be based on concrete evidence and data.

As Senators, you may also wish to recall that when the Government set out the Local Authorities Transfer Fund (LATF) programme, it was for purposes of clearing debts. But you and I know that those debts are yet to be cleared, and that is why we have this Motion today. They seem to be increasing instead of decreasing; so, I think it is only reasonable that, as a House, we do what is reasonable and what is right. Therefore, we will proceed to put the Question.

I, accordingly, now direct that the Division Bell be rang for eight minutes.

*(The Division Bell was rung)*

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**The Speaker** (Hon. Ethuro): Order! Order, Senators! Our eight minutes have elapsed. Please, resume your seats. Eight minutes have now elapsed.

**Sen. (Prof) Anyang'-Nyong'o:** On a point of order, Mr. Speaker. After discussions with my colleagues and appreciating what is written under the law, I would like to withdraw the amendment.

**Sen. Mugo:** On a point of order, Mr. Speaker, Sir. Is the Senator in order to withdraw an amendment which is properly before the House? This is the property of the House and it no longer belongs to him.

**The Speaker** (Hon. Ethuro): Order, she is right! The amendment had already been proposed. Therefore, it is the property of the House. More fundamentally, we had reached a stage where we called for a division and the Bell was rung and we even locked the doors; what else do you really want us to do?

I direct the Clerk to call out the roll.

## DIVISION

### ROLL CALL VOTING

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

**AYES:** Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Abdirahman, Wajir County; Sen. G. G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kimani, Kiambu County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangopuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Ndiema, Trans Nzoia County; Sen. (Prof) Anyang'-Nyong'o, Kisumu County; and, Sen. Sang, Nandi County.

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

**NOES:** Sen. Boy, Kwale County; Sen. Hassan, Mombasa County; Sen. Kajwang, Homa Bay County; Sen. (Prof.) Lesan, Bomet County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Wako, Busia County; and Sen. Wetangula, Bungoma County.

**Teller of the Noes:** Sen. Boy Juma

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows.

**AYES:** 15

**NOES:** 14

**ABSENTIONS:** Nil

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*(Question defeated by 15 votes to 14)*

**The Speaker** (Hon. Ethuro): Hon. Senators, since the “Ayes” are less than 24, the Motion is lost.

*(Question put and negatived)*

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, would I be in order to request that you explain the 24 Members rationale because this should be a computation of the total number of Members in the House before the vote is cast.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, in the interest of time, I would like to remind my good brother, the Senator for Migori that you have already very clearly explained to the House this matter. The threshold for voting is 24. For us to pass a Motion, we must have 24 votes. If the Motion we are voting on does not have 24 votes in support, then it is lost. He explained this very certainty. My brother was in the Chamber when you did.

*(Laughter)*

**Sen. Wako:** On a point of order, Mr. Speaker, Sir. I think you had made an earlier ruling on a Motion for Adjournment and said that the Debate would start any time from 5.00 pm. That Motion of Adjournment should start because it is now after 5.00 pm. Would I be in order to request that you postpone the matter at hand, so that we move on to the pending Motion?

**The Speaker** (Hon. Ethuro): Sen. Wako, you are definitely not in Order! You need not to remind the Chair of its own ruling. That is what I was about to decree, but let me dispose of the request by Sen. (Dr.) Machage and also to remind Senators that there is no harm if a Senator seeks information. We agreed that from the very beginning, we are all learning. I suppose like in all schools, not all students learn at the same time and pace. So, if you look at the Constitution of Kenya, Article 123(2) regarding when the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects, or does not affect counties. Article 123(3) states that when the Senate votes on a matter that does not affect counties, each Senator has one vote. Article 123(4) (c) states that the matter is carried only if it is supported by a majority of all the delegations. The majority of 47 is 24.

Dr. Machage, I know you are a doctor. However, the level of your confidence in your profession is usually higher than the average. So, you need to get that threshold of 24 and above. Anything below 24 which is 23 and below, is lost. Even if there was no single vote on the Noes, the Noes will have it as Sen. Hassan would want to hear alongside others.

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Having said so, we will suspend this business to proceed with the main Motion tomorrow then we will take the Motion of Adjournment as earlier sought by Sen. Murkomen.

### **MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33**

#### **PARALYSIS OF COUNTY ASSEMBLY SITTINGS OVER SALARY DEMANDS**

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move:-

THAT, noting the important functions and responsibilities of county assemblies as set out under Article 185 of the Constitution; aware that the county assemblies play an integral role in development of the counties; concerned that all the county assemblies in the country have adjourned *sine die* in protest at their terms and conditions of service; recognizing that it is the role of the Senate under Article 96 of the Constitution to protect the interest of county governments, the Senate urges the Transition Authority, the National Treasury, the Salaries and Remuneration Commission, the Commission on Implementation of the Constitution and other relevant bodies and organs to initiate immediate dialogue with the county assemblies and take the necessary action and measures with a view to ending the impasse and enabling the county assemblies to resume their operations.

Mr. Speaker, Sir, as honourable Senators are aware---

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen. You need to move the Motion.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. Therefore, I beg to move that this House adjourns to be able to deliberate on this very important Motion.

Mr. Speaker, Sir, as we are all very much aware, all the counties across the country have adjourned. I met some of the county assembly Speakers in Nairobi. Some of them were asking me to give them directions to the office of the Salaries and Remuneration Commission. I even do not know the directions to that office because the Chair of that Commission has not been so friendly as to attract any elected Member to visit her.

The county assemblies as at now are not operating. We all know the serious responsibilities of the county assembly members as provided for in Article 185 of the Constitution. I had the privilege of serving at the task force on devolved government. Parliament did a very good job in the County Government Act, because it provided not only the functions of county assemblies, but went ahead to enumerate the roles of the county assembly members.

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As we all know the county assemblies have a responsibility to vet and approve nominees for appointment to the county public office as provided for in the Constitution and the Act. As at now, many county governments have appointed their county executive committee members, but they cannot operate if they do not get approved by the county assemblies. If they are not sitting to be able to discuss the issues and if the Governors bypasses that provision, the people of Kenya in respective counties will lose because they will not have an opportunity to ventilate and audit the competences and qualifications of people being nominated to the State offices at the county level. This exercise is very important. We need the counties to be able to operate and perform this important function.

Mr. Speaker, Sir, the county assemblies are required to approve the Budget and expenditure of county governments in accordance to Article 207 of the Constitution. Very few Senators were consulted by their counties when the county executive and the Governor were working on the county Budget. At an opportune time, this House will pronounce itself on this matter through amendments to ensure that these honourable Senators are consulted before the Budget is tabled. Be it as it may, it is important to know that the county executive is not going to operate or have a meaningful Budget, if the county assemblies are not sitting to determine this matter.

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

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

Madam Temporary Speaker, we have just discussed the issue of borrowing. One of the important functions of the county assemblies is to ensure that the management of public debt at the county level is in order in terms of the amount of money that the county can borrow from within and outside the country. I know we will continue with that Motion, but it is important to note that one of the most critical players in terms of borrowing at the county level is the county assembly. Those county assemblies require people who are qualified, able, stable and have sound emotional equilibrium to be able to think through these very important functions that the county assembly is given under the Constitution.

The county assemblies are supposed to approve the county development plan. Again, at the opportune time, this House will interrogate how many counties have development plans. How many of them have strategic plans because most of them are groping in the dark. Be it as it may again, the county assemblies are expected to approve this very important plans. Those who will sit in the county assemblies must be men and women who will have the necessary emotional equilibrium to be able to discuss such important functions.

Madam Temporary Speaker, I know people have protested and brought pigs to town. They have called Members of Parliament “pigs” and so on. When I was coming



here I found a “missing pig”. I think when they said “Mpigs” they meant a missing pig. On a serious note, the county assembly members cannot earn Kshs79,000 before tax and Kshs61,000 after tax, without house allowances. How do we expect them to undertake the functions I enumerated here before when they earn that kind of salary? It is almost impossible for a county assembly member earning Kshs61,000 to check the Governor who is earning almost ten times or Kshs600,000. You do not expect county assemblies to attract people who are qualified enough to look at county development plans, budgets and vetting of officers in the county when they are earning Kshs61,000. You do not expect the county assemblies to hire staff, just like the Senate has its staff, including the Clerk, who are going to earn more than the county assembly members. Therefore, logically it means those who will work in the county assemblies must accept to earn Kshs40,000 or Kshs20,000. If that is the case, we are basically strangling devolution. Let us not lie to ourselves through street protests. It is not about salaries. It has something to do with attracting qualified staff and qualified county assembly members who will take this country forward.

I was in the task force when one senior member of the Treasury told us that counties are merely glorified local authorities. This is the mentality that is being brought forward by the Salaries and Remuneration Commission, the Treasury and the National Executive. So, they are trying to tell us not to discuss matter of remuneration of county assembly members.

For that reason, I want to request this House to take this matter seriously and ensure that the county assemblies are operating. We must ensure that the national government institutions and constitutional offices that are supposed to ensure that county assemblies are operating do so very quickly. We must ensure that county assemblies go back to work. For that reason, I want to move and request Sen. Hassan to second.

*(Sen. (Dr.) Khalwale stood in his place)*

**The Temporary Speaker** (Sen. Lesuuda): Sen. (Dr.) Khalwale, what is it?

**Sen. (Dr.) Khalwale:** I want to contribute.

**The Temporary Speaker** (Sen. Lesuuda): Since Sen. Hassan Omar has been called out, let us allow him to second.

**Sen. Hassan:** Madam Temporary Speaker, thank you for that extremely wise ruling.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Madam Temporary Speaker. This is a Motion that is likely to elicit a lot of interest from every Senator present. I want to request the Chair to reduce the time of contribution to, perhaps, three or five minutes, so that everybody can ventilate because we still have another agenda coming at 6.00 p.m.

**The Temporary Speaker** (Sen. Lesuuda): The time allowed for this is five minutes, so I think we will sustain that.

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*[The Temporary Speaker (Sen. Lesuuda) left the Chair]*

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

**Sen. Hassan:** Madam Temporary Speaker, I stand here to second this Motion by my brother Sen. Murkomen, Senator for Elgeyo-Marakwet. As a Senate, we need to assert our fundamental role in the Constitution as those who protect the interest of the county administration. It is not in doubt that systematically one institution after another has tried to define and undermine the role of the Senate, county assemblies and devolution. I am reliably informed by my friends from Mandera that each county assembly member in Mandera County is a university graduate. That is the kind of seriousness at the county level. We, as a country, must attach that seriousness to the county assemblies for whatever definition or considerations. Therefore, for the Salaries and Remuneration Commission to try and define the roles of country assembly is not in the best interest of this country. The state of the county assembly is part of the broader conspiracy to undermine devolution.

*(Applause)*

The conspiracy is to make sure you do not attract the right people to serve as county assembly members, Senators and Governors, so that eventually mediocrity creeps in and, therefore, devolution falls asunder. It is important now at this point for the Senate also to assert its rightful role in the devolution structure. I think the Transition Authority (TA) partly is the reason we have the devolution chaos. The Senate must, therefore, assert its legislative and whatever other functions to ensure that devolution retains its proper place. The county assemblies and the Senate must be respected.

Madam Temporary Speaker, I heard Madam Serem yesterday say that the reason she pegged the salaries of Members of the National Assembly in tandem with those of the Members of the Senate is because, in her own assessment of the duties and roles of the Senator, she found that we had a lower threshold of responsibilities. Those of us who listened to her live interview heard what she said. Those were her words. It is not in Serem's mandate to define the structure and organization of Government. Therefore, the Senate and other bodies charged with that responsibility must henceforth rise to that responsibility. She has the mandate to set the salaries, but she has no mandate to tell us that we have lower responsibilities. Just because your function is defined by two or three lines does not make the ones whose functions are defined by more lines as greater functions. It is simplistic if she cannot determine who between a Senator and a Member of the National Assembly has higher standing and stature in the organization of Government. She has no idea what the role of the county assembly is all about.

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In my view, it is important to unlock this stalemate so that the county assemblies work. In laying the foundation of the county assemblies, these county assemblies must get to work as soon as is practically possible with part of their demands being negotiated. I have seen several functionaries of Government saying that they are ready for dialogue, so that we come out of this *impasse*. We, as Senate, must direct that there be dialogue with members of the county assemblies. I want to assure them as a Senate that we are ready to defend devolution. Even if it means that we go back to the people because it is the people who gave us this mandate. We are ready to do so. We are ready to explain to the people of the Republic of Kenya the justifications and positions that have been taken by county assembly members. We must continue to make public service attractive. We must not remove the incentives from public service. Let all young Kenyans who aspire to be professionals see that there is a profession in public service. Do not undermine the public service to create the county councils of yesteryears where a mayor could sit on the entire county council and engage them in bribery and little struggles of life and undermine the very essence of what devolution was all about. I am confident that this Senate will assert itself and restore the stature. I want to tell Serem that, we, in Mombasa voted *enmasse* for the Constitution because we believed in devolution. We have continued to believe that we must stand up for devolution. Therefore, we shall not allow any Commission or any agency or authority to undermine the spirit and letter of devolution. I know that county assemblies are an important legislative organ; it is an important organ in asserting the devolution of this country. We, as a Senate, must direct that dialogue must rein so that we resolve the *impasse* that we are currently facing at the county assemblies.

**The Temporary Speaker** (Sen. Ongoro): Your time is up!

**Sen. Hassan:** I beg to support.

**The Temporary Speaker** (Sen. Ongoro): The Senator for Kakamega.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I would like to talk to two people; that is, the Kenyan public and the President of the Republic of Kenya. When we passed the new Constitution, we knew it was going to have consequences. These salaries we are talking about are because of those positions which were created in the new Constitution. Unless they have an answer for this, things will not be easy. If they hide behind pigs, they hide behind strong statements from high offices which would create a crisis in this country.

Madam Temporary Speaker, I come from one of the largest counties in this country. My member of the county assembly, lives in Soi, which is actually in Eldoret. He comes to Kakamega for debate and goes back, he has done this for two months, I must congratulate them. They are really resilient. I support the issue of better pay for members of the county assemblies.

Madam Temporary Speaker, I forgot to come with the copy of a document that has now been circulated from Treasury directing the kind of people who will be hired to serve under the county governor. There is the old set up from sub county administrator up

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to village administrator and assistant village administrator. Believe you me, hon. Senators, those people attract a better salary than members of the county assembly. They even have house allowance; they even have airtime allowance and travel allowance, yet the legislators who were voted for popularly by the people are not going to be enjoying these particular privileges.

Madam Temporary Speaker, may I speak on behalf of Kakamega County? Kakamega County has got men and women in the county assembly of high intellect. I know, for example, the Leader of the Majority in the County Assembly of Kakamega, Mr. Reuben Nyangweso Sechere of ODM is actually a pharmacist. He is doing us, the people of Kakamega, a favour to bring those kinds of qualifications in the debate to our assembly. We would like more and more of those kinds of people. I know of a young man in my assembly, who is a County Representative of Idakho Central; he is called Onesmus. Onesmus is a clinical officer who actually runs his own medical practice which is thriving. He is not in the assembly to collect funds. In fact, recently he gave my community a free ambulance which we are using. So, we must debunk this idea that these young men and women are out there to make a kill. What “kill” is there about Kshs79,000? It is all known to all of us that these members in the lower house – we have been there for many years – and we know that there is no day you will go to the constituency – if you come from Western or Coast Province – and if you are lucky, you will spend less than Kshs200,000 in a weekend. This is for real! I am not talking about “tough boys” like Wako and others who normally spend about Kshs800,000 in a weekend!

*(Laughter)*

Madam Temporary Speaker, I am forever serious. I want to blame squarely the drafters of the Constitution because they should have had in mind the cost of Government. We are amongst some of the Members of Parliament who stood up on the Floor of the House and said that we should be mindful of the cost of running Government. We said that we should not have too many hon. Members of Parliament. The same members of the civil society fought us. I remember hon. Midiwo even suggested that we reduce Members of Parliament from 290 to 150. When we were being fought, the same members of the civil society wanted an easy way into Parliament. Now that they are not there, they want to keep on doing what they are doing. Please, let us decide whether we want county assemblies or not; let us decide whether we want to kill devolution or not; let us decide whether we want qualified people to be in leadership in this country or not. Once we make those decisions, then let people be paid. Otherwise, we are all going to *jua kali's*! Who does not know that I run a medical practice?

**The Temporary Speaker** (Sen. Ongoro): Your time is Up! Sen. Lesuuda.

**Sen. Lesuuda:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Motion. I want to thank Sen. Murkomen

for bringing it up. It is something that we have been grappling with. It is something that the county representatives have been raising with us from the counties that we come from. Even though not being the leader of delegation, but now being a registered voter in Samburu, of course, I interact with the county representatives from there.

Madam Temporary Speaker, it is very sad for us to see politics being criminalized in this country. Politics is like any other career. It is really unfortunate because just as any other profession, we want to professionalize politics in this country. It is a pity that, at the same time, we want to criminalize it, especially for county representatives. I know, for example, in Samburu County, we had a big number of wards. Most of them were lumped together. Therefore, one county representative now has to take care of a very large area. Roads in Samburu County are very impassable. A county assembly member has to wake up two days earlier if he has to participate in the sitting. This Kshs61,000 is not enough because it does not include house and traveling allowances. Let us just be fair to these people.

Secondly, these are the people who are closer to the people even more than us. These are the people who when anyone in the constituency or in the county or ward would want to reach, he or she will reach the county representative first. We, as Members of the Senate, who are committed to safeguarding devolution in this country must listen to them. We must initiate dialogue immediately to end the current *impasse* in country assemblies. We want to see county assemblies working.

As I said, some wards in Samburu County are vast and they require their representatives be well facilitated. If we pay them well, we will attract many professionals to our counties. People did not know that many Samburu people have masters' degrees until we saw in the newspapers when they applied for jobs in our county. Those professionals want to work in their counties. They can only work in those counties if salaries and other terms are attractive. Most of them resigned from their lucrative positions to work in those counties. However, they were disappointed when they were told they will only earn Kshs61,000. So, I really support that the dialogue has to start and we have to revisit that pay. We have to give them what they deserve and for the job that they are doing.

So, thank you and I beg to support.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Madam Temporary Speaker. I want to follow the footsteps of all those who have spoken and support the Motion very strongly. I recall that when I first entered Parliament in 1993, we were being paid Kshs23,000 every month. Sen. G. G. Kariuki was there too. I had been working for the African Academy of Sciences (AAS) Programmes and I was being paid Kshs86,000 a month. Therefore, I took a tremendous salary cut to be a Member of Parliament.

It is only in Parliament where there is no career path and recognition of how long you have served. It does not matter how many times you are elected. The rate is the same. What is worse is that after the Cockar Commission had recommended, very wisely, that the terms of service for Members of Parliament be improved. After that had been

implemented to an extent that salaries came to about Kshs800,000; somebody now wants not only to refuse to recognize the length of service people have given, but also to take us down to a lower figure. I do not think that in terms of human rights and the national labour laws, this is allowed.

One thing that is certain is that it is good to have a Salaries and Remuneration Commission because for a long time we always said that Kenya needed to review incomes. However, when you are doing so, you cannot import injustice into the process. This will not work. Further, I gave you an example earlier when I was speaking to the previous Motion of the son of Joe Biden who is the Attorney-General in Delaware. He refused to take up his father's position in the Senate because he was serving the people of Delaware. He loves his job and values that there are citizens in Delaware. He is being given a proper remuneration to stay there rather than go to the Senate. This is what we must look into with regard to county assembly persons. They should stay in their positions long enough to add value to the assemblies, but not to run away as they have run away today, from what I understand. That does not set a very good example. In any case, if we refuse to recognize these needs and insist that because of some figures worked out somewhere they must continue to serve as determined by this person, they will be disgruntled for the five years they are there and we will not get very good value from their service to the assemblies.

This is what the English call being penny wise and pound foolish. You are trying to conserve money, but you are not getting value for what you are giving. This is really foolish as far as I am concerned. It is better to enter into dialogue with the county assembly members and get into an understanding of what is practicable and possible, rather than to condemn them.

Recently, I talked to one of the ward representatives in my county. We did some arithmetic. He said that if he was paid Kshs61,000 and had to spend money for transport, eat lunch while he is there, at the end, what he would take to his family would be Kshs14,000. This is not enough money to pay school fees and to plough the farm. The expenses he leaves at home to go to the assembly are not being taken care of.

While talking about these figures, the Salaries and Remuneration Commission should look very critically at the lives of the people at the county assemblies just as much as they should do to Parliamentarians. I believe that rather than give in to this populist culture that is emerging in Kenya, when it comes to people elected to serve, they serve for purely selfish interest. To me, this is not the case. We did not. We make sacrifices for this nation, so that it can move forward. At the point when the nation is taking off and a fellow somewhere is abusing us, this is not being courteous, especially when it is directed to somebody of my age. It is not fair for somebody who does not appreciate the history of this country and where we have brought these institutions to start abusing their representatives. This is not very fair. Instead, we should build them.

I beg to support.

**Sen. Haji:** Thank you, Madam Temporary Speaker. I want to join my colleagues in supporting this Motion. I agree with Sen. (Dr.) Khalwale that there are many of us who had reservations about this Constitution. We said, from one side of the House, that apparently the whole nation was being driven by the civil society in drawing up the Constitution. If you look at the coalitions we have had in this country, you will see that they have been draining the resources. They are driven by lawyers who want some kind of employment to supplement their jobs in Parliament.

Madam Temporary Speaker, the fellows who are running around here with pigs are people with no stature; who do not know what they are doing. They are being misguided and used by the civil society. If you watched them on the television, I am not shy, to say some of them looked like hippos. They continue to abuse Members of Parliament and Senators as if we are silly. We are not silly. The people who elected us to this House are not fools. They are not fools because they knew what they were doing. We were the best choice among many other candidates who stood, but did not make it to the National Assembly or the Senate.

Madam Temporary Speaker, if you watched Ms. Serem as she said what she was saying, she was full of airs, very abusive, she demeaned us and we will not let her go unchallenged. Both the Senate and the National Assembly should pull up and make sure that we place her where she belongs together with all her members. This is totally wrong. If you asked to know about the salary of her driver, you would realize that he earns about Kshs80,000 and yet county assembly representatives who have been elected by thousands of people are expected to earn Kshs61,000. They have no houses. I was surprised when my brother was talking about one of the councillor's who comes from Eldoret. If you go to Wajir and Mandera, you will see that the representatives go for over 300 kilometres to go to the county headquarters. Do we expect them to eat sand? Do they not have children to pay school fees for? They have. We should exert our positions by fighting for the county assembly members. They must be paid handsomely because they have a role to play.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Madam Temporary Deputy Speaker. I support the Motion. I congratulate the Senator for Keiyo, the total man Senator for bringing the Motion. This is a Motion that sheds a lot of light on problems that are going on in the country. Those county representatives have a lot of responsibilities as enumerated by Sen. Murkomen. Right now, it is budget time, but they have adjourned their sittings indefinitely, meaning that neither will they pass budgets nor will they approve the county executive committees. Nothing is going on. What we are seeing is a whole lot of arrogance. I have a county representative in Bungoma County who represents 38,000 voters; one county representative, a lady. She comes from almost 100 kilometres away from Bungoma Town. She has to travel by bus, *matatus* or *piki piki* to go legislate for the county.

If you look at Nairobi, you will see that 60 per cent of the county's GDP comes from Nairobi. You are saying that the county representative in Nairobi earns Kshs61,000

and yet, we know how much the rents here cost and the cost of education. We have young graduates who have left their careers to go into politics. You are telling them that asking for proper remuneration is comparable to greed. I do not know what the word “greed” means any more.

We have people like rejectionist philosophers, unemployable people running on the streets of Nairobi saying all manner of things against anybody and everybody everywhere. They are the ones who went to dump pigs at the gates of the National Assembly. To borrow the words of Robert Mugabe, the President of Zimbabwe, “such fellows are so profane that they are only beneath pigs and dogs.”

That is what Robert Mugabe said to people of such behaviour. They must be sensitive to others. We have our Muslim colleagues who go to that Parliament. How should they feel when they find pigs at the gate of the National Assembly? We must find a way of bringing sanity to our public lives. This country needs proper direction. The Salaries and Remuneration Commission must listen and find out what jobs people are doing. You will hear them talking and wonder whether they have dropped from outer space and yet the Commissioners themselves are earning extremely obscene salaries. These are obscene salaries that nobody else is getting in Government. They are giving us unsolicited lessons about the economy by saying that it is not doing well and that when it is doing well, they will look into these issues.

This country will not run like that. If this is an attempt to truncate devolution, we want to put them on notice that they will fail because this Senate is there to protect devolution. We will protect devolution and make sure that it works. I recommend that we go beyond this as a Senate and call upon the Executive. The Salaries and Remuneration Commission is independent to the extent that nobody interferes with it, but it is not independent to harm others. This will not be allowed.

I beg to support.

**Sen. Karaba:** Thank you, Madam Temporary Speaker, for giving me this chance to say one or two words about our county representatives. You know that we and the county representatives are products of very strenuous campaigns which, of course, went on for more than two years. The culmination of these campaigns was the election of the county representatives, Members of Parliament, Governors and here we are as Senators.

People need to understand the pain of becoming a county representative, a governor or a Senator. It has taken us a lot of time. We have spent a lot of money to be in this august House. Similarly, county representatives spent a lot of money to be where they are. I remember one time when the newspapers had indicated that county representatives would earn Kshs300,000. I do not know what happened, it was reduced to Kshs79,000. At the point of reduction, these people had spent a lot of money to become county representatives. This was like an ambush. They were ambushed to the positions they are at a salary of Kshs79,000. At the realization of that, most of them are now rebelling. If the trend continues, we may have civil strife. There will be rebellion in our counties and we will not make any progress. It has been very expensive to introduce

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devolution. You will also note that the Constitution making process was done in the years 2003, 2004 and 2005 and cost the Government a lot of money. The greatest achievement was devolution.

Now that we are nursing the child, devolution, as Senators, we are the custodians. We are the people who should provide oversight. We must do it without shame so as to protect governors and county representatives because they are at our mercy. If this does not happen, we will be held responsible. It is a challenge and that is why we are here. We are not wasting time, but to make sure that county representatives are properly remunerated. Some of them, as you have heard, cover a big region, for example, those who cover the North Eastern, the Rift Valley and parts of the western region. Some of them represent over 50,000 voters, but at the end of the month, they get Kshs61,000. This is a salary equivalent to that of a house help who is employed by officers who earn high salaries. We need to move in solidarity. We have the responsibility to ensure that county representatives are well endowed.

I support.

**Sen. Musila:** Madam Temporary Speaker, first of all, I would like to congratulate the Senator for Elgeyo-Marakwet for bringing to the attention of this Senate this grave matter. The county assembly members have not abandoned work because they want to do so. They have done so, because it has been impossible to sustain themselves while doing the work which they were elected to do. Therefore, this Senate must stand in solidarity with them throughout the country. As many Senators have said, I have county assembly members who have to travel 300 kilometres to the county headquarters in Kitui and have to stay there living in hotels or elsewhere they choose. I even do not know how they have been able to live in hotels and survive. This is an action taken by members of county assemblies that must be supported by us. When the Constitution was being crafted, and I happen to have been one of those who were in the Parliamentary Select Committee on the Constitution, the idea of reducing local county council representatives was to ensure that they were properly remunerated. That is why we made huge decisions to ensure that the areas of representation were huge. We reduced the number of former councillors and the whole idea was to remunerate them properly. Many people have been making a mistake by thinking that those people are councillors. These people are legislators. They are making laws and approving budgets unlike their predecessors. I think the mistake that Serem is making is to equate these county assembly members with councillors. Are we going to resolve the issue of salaries for elected leaders with this lady who is so arrogant? This lady has shown so much arrogance. I just want to tell her that we have seen many before like her and they are nowhere to be seen. Therefore, to bring in an organization like PriceWaterHouse Coopers to decide the salaries of county assemblies, what do they know about the functions and the area covered by them? What do they know about the functions of a Member of the National Assembly? What do they know about the role of the Senator? To say that a Senator, for example, should be paid mileage to his home and back to Nairobi, when will the Senator go to the various constituencies that he represents

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in this Senate? Therefore, I want to tell Madam Serem and those of her kind, particularly those who did a shameful thing by going to the gates of the National Assembly and pouring blood - God knows where they got that blood from - that I think we are taking this freedom too far. Those guys should have been clobbered, tear-gassed, arrested and taken to prison because they have defiled the institution of Parliament.

Therefore, I want to appeal to the Executive, if the President is serious in what he told us when he was opening Parliament, that he is going to protect devolution, let him start by ensuring that Serem's assertion that the county assembly members get Kshs61,000 is reversed. If possible he appoints another commission to properly decide on how much money the county assembly members should earn.

With those few remarks, I support.

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, let me also thank Sen. Murkomen for bringing this Motion, so that we ventilate on the serious issue of salaries. As I speak here, the Speaker for Bomet is upstairs in the cafeteria. He came to see the famous lady to try and resolve the problem as send by his county assembly members. For all the reasons we know, he was not able to see her and so he decided to see the Senator for Bomet to try and resolve the problem. When I try to fit into the shoes of the members of the county assembly as they try to come out of this tricky situation, I think we are expecting a miracle here if we do not do the necessary things. We should, probably, be down on our knees or we should turn the clock back to 2000 years ago when miracles were plenty. Right now, miracles are difficult to come by. Therefore, we need to do something.

As we continue to lament about this issue of salaries, we should be able to address some of the shortcomings in the systems that we have. For example, there is a huge disconnect between this Senate and the county assemblies. These are areas in legislation that we need to amend. Whereas we have Standing Orders No.41 and 42 where we receive and can send messages to the National Assembly and the President can send a message to the Senate, we do not have a provision where county assemblies can send messages anywhere, whether to the National Assembly, or to the Senate. So, there is no communication between us and the people we purport to stand for. It is very important that we have these avenues before the tempers get to the level where we are now. If there was an avenue in which we could communicate, then we could have addressed some of these issues.

Madam Temporary Speaker, I want to join my colleague Senators in sympathizing with the situation, but we should not just sit there and sympathize. It is important that the message gets to the only person who can solve this problem, that is, the chief executive of the land. He should be able to unlock this problem so that we can go on with the activities of getting devolution to the people. We have stood here many times and said that county assemblies are the primary elements of devolution. So, if we let it go unsupported then it does not matter how many times we lament here and talk about devolution. We must be able to do everything to make sure that the members of the

county assembly, who are the initiators of the whole process of the activities of a devolved government, are supported.

With those few remarks, I support this Motion.

**Sen. Orengo:** Madam Temporary Speaker, I will be brief. I also want to congratulate the Senator for Elgeyo-Marakwet. I want to say that if these positions of county assemblies are positions that we could wish away, then they could not have been there in the Constitution. The positions of county assemblies are offices established under the Constitution. If you look at the structure of the Government in the counties, the offices of the county assemblies are established before the offices of the executive committees. The offices of the county assemblies are established before the offices of the Governors. If that was not the wish of those who authored this Constitution and those who enacted it, the position of county assemblies would have been created in some subsidiary legislation. If you look at even the hierarchy within the Constitution, the position of county assemblies come before the commission on salaries. So, in the constitutional arrangement, the position of county assemblies is critical to the system of Government that is established under the Constitution.

I would beg and urge this Senate to be together in this issue. I know of county representatives in Siaya who are lawyers. They left their practices in order to add value to the county assembly. So, they are professionals. There is somebody who is an agriculturalist, but he wants to spend a lot of time in the county assembly doing oversight and other roles. In Siaya, I have a county representative who comes from an Island, he has to hire a boat for three hours to get to the main land and then drive for another two and a half hours. We are not serious about these county assemblies. The Constitution says that there are two levels of governments and two levels of Parliaments, that is, the National Assembly and the county assemblies. Those that are opposed to this are part of the enemies of devolution and we must protect it and defend it.

**Sen. Elachi:** Madam Temporary Speaker, I also stand to support the Motion. The first thing that amazes me is the civil societies who were in the front defending the Constitution and fighting for devolution. Today, they have even gone beyond abusing the same Constitution without respecting the religion of others. When you bring pigs in Parliament and you know very well we have our Muslim brothers, it means you have gone beyond by not respecting those who are represented by them.

When you look at the Revenue Bill today, you will find that commissions are going to spend Kshs13 billion for the Financial Year 2013/2014. All of it is going on salaries. Madam Serem is now taking us back to the dark days of KANU when she used to work in Telkom. I am sorry to say that they would go to start businesses and that is what she wants the county assembly members to do. She wants them to come up with business of procuring. It is the same people who are the managers of the affairs of the county assemblies. So, how would they deliver those services? What Serem has lacked is what we call relationship between the arms of Government. Parliament is the third arm of Government and commissions are the fourth arm of Government, so there is a way in

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which people can dialogue. If you feel you want to cut wages then let us start from the highest, that is, the President. Then you can talk to the county assemblies and say you have reduced salaries of every person within the Government and the public service. When we look at those county assemblies, you even wonder why people left their professions to come and give service to Kenyans. The civil society has played a role in this country, but now, I think their role is over. They are afraid that the work they used to do in every region has been taken over by the county governments. Therefore, they have found another avenue to start fighting the same devolution, so that they can have an avenue to do their work.

I beg to support. It is time to teach Madam Serem what she needs to know.

**Sen. (Prof.) Lonyangapuo:** Thank you, Madam Temporary Speaker. I join my colleagues in supporting this Motion. For exactly 50 years, we have had a Constitution that has not taken our country well. We, therefore, found it fit to come up with the devolved government system for which we are going to have two governance structures; one at the national level and one at the county level. We also have two legislative arms; Parliament and the county assemblies.

Madam Temporary Speaker, we all know that for that Constitution to be changed, some parts of this country remained marginalized for a long time. The idea of the devolved government system came in so that, possibly, there can be an equal measure of development in this country. When these elections came, some of us from those counties that thought we were marginalized for a long time, went for our best brains to come and serve the county. We thought that maybe for the first time, we can bring value directly to the people who were born in those places. To this extent, West Pokot, where I come from, we have 20 wards and 20 Members of County Assembly (MCAs). You will be surprised that 16 of them have degrees, some with first class honours; this is in West Pokot where sometimes people think the people have not gone to school. What does that mean? It means that we had hope and we still have hope that this system is going to bring all the intellect that is going to build the county.

Madam Temporary Speaker, when we heard and when we saw the type of salaries that were released just two days before elections, which were supposed to be released before the roll out of the election programme, it was a shocker! We expected that we should not punish the intellect of the people that we have sent there. Not only do we have those problems and challenges, they also do not have anywhere to stay. I have one fellow from Alale Ward, which is the size of Nairobi County. He has to move 350 kilometres to come to Kapenguria and, for your information, there is no road. What we are saying here as Senate is that, we should assert our authority to say that we need the Government and the top leadership of the land to step in and correct things. We are not here to babysit a system that is going to fail. The pigs must go home where they came from. We cannot “dirtify” the dignity and sanctity of Parliament the way we saw today. Kenyans must learn this. If you have a problem, do not display your foolishness the way we saw. There are channels through which we can express ourselves and express them well.

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Madam Temporary Speaker, I support this Motion to say that all of us who are sensible Kenyans must stand and make things move forward.

**The Temporary Speaker** (Sen. Ongoro): Lisa Chelule.

**Sen. Chelule:** Thank you, Madam Temporary Speaker, for giving me this time to contribute. First and foremost, I must thank my fellow Senator who brought this Motion to the Floor. I am in support of it because of the following reasons. I hope that under the new Constitution, there are no personnel who do not know the difference between a Member of the County Assembly (MCA), a Senator, a Governor and, maybe, a Member of Parliament (MP).

As I speak today, I want to speak about the issue of the area of coverage for the MCAs. We must not forget that for their area of coverage, three wards were put together for these people. Today as I am standing here, a number of MCAs are representing more than 100,000 people. When we do not take them into consideration, it means that we are targeting the community itself. It is not a salary for nothing, but a salary for quality services. These people should be given enough money so that they will render quality services to the community. Today as I am standing here as a nominated Senator from Nakuru, I know there is an MCA who travels more than 250 kilometres from Kipchororo to Nakuru. So, can you imagine such an MCA coming to Nakuru to legislate because it is part of the roles of an MCA. Such a person cannot even mobilize people to talk about legislation just because he has been demoralized. So, today, we are not happy to say that we are Senators who are protecting the interests of the counties if we are going to keep quiet about this.

Madam Temporary Speaker, I stand here this afternoon to support the Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Madam Temporary Speaker. I also want to support the decision that has been taken by the MCAs across our country.

Madam Temporary Speaker, I am speaking as the Senator for Tharaka Nithi and I want to say as follows. We have watched with disbelief as we vilify elected leaders and make it as if it is a criminal offence to be in representational politics. But no other cadre of leadership has been humiliated more than the MCAs.

Madam Temporary Speaker, the gap between the salaries of MCAs and that of Members of the National Assembly and Members of the Senate is too big for no apparent reason. The Constitution prohibits me not to use this forum and my position of privilege as Senator to discuss my own salary. However, I just want to say that the same Constitution empowers me to protect the county governments and the interests of our counties. Those county governments are both the executive arm and the legislative arm; how come the Governor and his executive, who play an important role, have been pampered with all manner of facilities and everybody there is paid so well, but when it comes to the elected arm of the county assemblies, they are given peanuts?

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, I welcome the information.

**Sen. Billow:** Madam Temporary Speaker, I just want to inform Prof. Kindiki that, indeed, this salary that has been approved by the Transition Authority (TA) for the personal assistant of the Governor alone is exactly close to Kshs90,000; the salary for the secretary of the Governor, approved again by the TA is Kshs79,000---

**An hon. Senator:** That is the same as the one for the MCA!

**Sen. Billow:** Imagine!

**The Temporary Speaker** (Sen. Ongoro): Order, Senators!

**Sen. Billow:** That is equal to or actually more than what a whole leader of a ward who is responsible for approving a budget that runs into billions and being responsible for oversight of the same billions. Again, the lowest paid public servant in any of these counties, including the local authorities that were there is almost Kshs40,000. In fact, in the remotest ones like in my county, the lowest paid public servants is paid Kshs40,000.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I want to thank my colleague, Sen. Billow Kerrow, for that information. We are not saying that secretaries are not important people. We are saying that people should be paid according to their qualifications and the functions that they perform. Having said that, I want to make a final remark.

The Chair of the Salaries and Remuneration Commission whom we respect because of the Constitutional Office that she holds has gone overboard to abuse her constitutional position. She is behaving like a politician; she is issuing political statements and competing with politicians. In a nutshell, to exhaust my 20 seconds, I want to say that we will not entertain; as elected leaders, being lectured by public servants. She is abusing her powers under the Constitution. She should tone down and speak with decorum when she is speaking to people who have been elected.

**Sen. Adan:** Thank you, Madam Temporary Speaker. I would like to add my voice to this Debate. I will give about three points that I need to add. First and foremost, is the role played by the county assemblies in terms of supervising the County Executive.

The County Executive Members, as per the structure, are earning Kshs225,000, if I am not wrong. The county assembly representatives are earning Kshs79,000. So, who will be supervising who? Clearly, we will have a big problem because the members of the Executive will misbehave simply because they will look at county representatives as their juniors. We must do something about that.

The second point is that these structures were developed before these institutions were put in place. It is important for the Salaries and Remuneration Commission to review these structures. It is important to learn from the current experience and practice that what they had looked at before the institutions were put in place has been proven to be wrong. I request the Salaries and Remunerations Commission to review these structures because of the current issues that are coming up.

Lastly, it is embarrassing to have the Salaries and Salaries and Remuneration Commission, especially the leadership, answering leaders through the media. We are talking about reforms. She has to tone down and respect leaders the same way that people respect her. It is important to respect her and the institution that she is heading. If we are to carry out harmonization, then we must start from the bottom; the subordinate staff member. Harmonization of salaries cannot start with Parliament. It appears as if she is targeting Parliament. Let her go back to the drawing board and harmonize the salaries from up there up to the bottom.

**Sen. Sang:** Thank you, Madam Temporary Speaker. I want to join my colleagues in supporting this Motion. I think, as my colleagues have mentioned, the responsibilities bestowed upon Members of the County Assemblies is huge. We, therefore, need to facilitate them. The Salaries and Remuneration Commission is setting up Members of the County Assembly so that they fail. If you give huge responsibilities to a county assembly member and then deny them the resources required to carry out the responsibilities, in that sense, you are playing politics. I want to join my colleagues in asking the members of the Salaries and Remuneration Commission to be reasonable.

The reasons that we needed a salaries commission is because we needed to rationalize salaries. However, we are in a situation where the Salaries and Remunerations Commission is creating more problems than we expected. So, it is important for all of us to support this agenda. I propose that since we have a Devolution Committee in this House then we can task the Committee to engage with this matter a little bit more so that we can deal with the issue once and for all and get the county assemblies back to work.

We have seen county assembly members, despite the fact that they are earning meager resources and have not earned their first salaries, doing a great job. We have seen them rejecting some of the County Executive nominees. We have seen them doing thorough jobs in terms of vetting. We need to motivate them and ensure that we can sustain this kind of performance by the members of the county assembly. We, therefore, need as a House to stand with them. While we still negotiate behind the scenes for our salaries, we need to be bold and come out openly and help members of the county assembly to press the Salaries and Remuneration Commission to review their salaries and provide them with mileage transport/allowances. Some of them travel up to 200 kilometres. Let us help the county assembly members so that we can have county assemblies playing their rightful role of oversight. You cannot play an oversight role if you are earning Kshs79,000 and yet the person you are supposed to check is earning close to over Kshs1 million. We need to be realistic so as to work together.

**Sen. Billow:** Thank you Madam Temporary Speaker. I just want to add a couple of points. The most important thing to note is that what this Commission has argued, time and again, is about the wage bill. However, the wage bill is Kshs500 billion for the 700,000 public servants and the fact that the Government cannot sustain it. The total amount of the wage bill for the elected leaders who were affected by the reduction of salaries; Governors, Senators, County Assembly Members and Members of the National

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Assembly among others is Kshs10 billion. If you ask your child what fraction of the Kshs500 billion public wage bill that the commission is concerned about then it comes to 0.2 per cent. It is not even 1 per cent. How does the reduction, therefore, of the salaries of these elected members of the society really reduce the public wage bill? It does not make sense.

Secondly, the group targeted is the leadership of the country. We spent years fighting for freedom and democracy of this country. These institutions have come a long way in terms of enhancing democracy, in terms of enhancing the freedoms of people, in terms of ensuring accountability and in terms of ensuring that there is transparency in the way public service is delivered and the way public finances are accounted for. If today those institutions that are charged with ensuring that there is accountability and who are the leadership of this country are undermined, I do not understand whether the aim is not to kill these institutions in the long run. What will happen is that the quality of leadership and the kind of people attracted to these institutions will slowly by slowly drift away from these institutions.

Today I know in my county Mandera, more than 90 per cent of the county assembly members are people with either the first degree or second degrees. If you tell them that, indeed, the salaries of the personal assistant of the Governor will be more than theirs and yet it is approved by them, then what would happen is that in the next election we will not attract any of these quality people. Ultimately then these institutions will die. So, I actually find a situation where the commission is unfortunately, as accountants would say, are more penny wise than pound foolish. They do not seem to see the larger picture. The larger picture is that you must retain the top leadership in any institution. Even if you go to the corporate world, the people you compensate are the leadership of the company or that corporate entity because those are the people who will determine whether that corporate entity will succeed or fail. When you under-compensate that leadership of management then you are killing that corporate entity. The same thing will happen today if we do not look at those 700,000 and we only select about 1,000 or so elected leadership only in terms of reviewing salaries; then we are going to kill those institutions in the long term. I think the whole process of paying the county assembly members this paltry amount is undermining devolution grossly.

I beg to support the Motion.

**Sen. Gwendo:** Madam Temporary Speaker, I am going to try and support this Motion in the shortest time possible. While my fellow Senators were talking I remembered a county representative I interviewed a few months before I came to this House. This county representative came to Nairobi in 2004 to get a job. He has been a watchman from 2004 till today. He took his time to educate people in Kibera about the Constitution and encouraged them to register as voters. Finally, he was voted in as a county representative in one of the wards in Kibera. This is a man who understands that the Senate is supposed to safeguard their aspirations. He called me the other day and asked me what we are doing to help them. So, as we support this Motion, let us do

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something about it even if it means summoning Serem to go and dialogue with them because in the press conference she said she is ready to dialogue. In that small window that she has left for dialogue, let us help them. She left some opening saying that she is ready to dialogue. As the people who are the fathers and mothers of these county representatives, let us do something to help them.

**The Temporary Speaker** (Sen. Ongoro): We still have one minute.

**Sen. Mositet:** Madam Temporary Speaker, first of all, I would like this House to remember that I am the one who said that our county representatives are really feeling bad. I just wish that I could be given some time so that I can narrate a typical case in my county. I have a county representative who lives in Loitokok, his name is Leng'ete. He represents Ilasit Ward. He travels for about 250 kilometres from Njukini to Kajiado. Every week he sells one ram at a cost of about Kshs7,000. He then uses Kshs2,000 for travelling, Kshs1,000 for lunch and dinner then he lodges with Kshs2,000. We were just told the other day that the allowances for those people are Kshs3,000, but you can see that he ends up using about Kshs5,000. This is somebody who left his job, he was a lawyer, to represent his people.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday, 15<sup>th</sup> May, 2013 at 9.00 a.m.

The Senate rose at 6.30 p.m.