

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 4<sup>th</sup> December, 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, let us determine if we have quorum.

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

Hon. Senators, I am informed that we have quorum. Therefore, we may proceed.

### PAPER LAID

### REPORT ON REVIEW OF THE SENATE STANDING ORDERS

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House.

Report of the Rules and Business Committee on Review of the Standing Orders.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. I rose on a point of order because there are papers relating to Uwezo Fund Regulations that we want to lay before the House. So, I request that in the next few minutes, I will lay them when I get them from Clerk's Department.

**The Speaker** (Hon. Ethuro): We will allow you to do so as soon as you get them.

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## NOTICE OF MOTION

### COMPENSATION FOR VICTIMS OF DETENTION AND OTHER HUMAN RIGHTS ABUSES

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg to give notice to the following Motion.

THAT, aware that the Bill of Rights in the Constitution is an integral part of Kenya's democratic state and its framework for social, economic and cultural policies whose main objective is recommission and protection of human rights to among other things preserve the dignity of individuals and to promote social justice; recognizing that many Kenyans suffered from human rights abuses perpetrated by government agencies, especially between 1970s and 1980s including detention without trial and against those suspected of complicity in the coup attempt of August 1982; noting with concern that the victims of these abuses were treated inhumanly leading to painful deaths while others were dismissed from employment exposing them and all their families to undignified social, economic and psychological conditions; further noting that the High Court has in the past awarded several former detainees millions of shillings in damages for torture, concerned that most of the surviving victims are poor and cannot afford to access the court processes, this Senate calls on the national Government to comprehensively deal with the compensation of former detainees and those unfairly dismissed from employment after the August 1982 coup so as to facilitate reconciliation and entrench the development of a just society in Kenya.

## STATEMENTS

### SALARY ARREARS AND OUTSTANDING ALLOWANCES FOR FORMER COUNCILORS

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Sessional Committee on Devolved Government concerning salary arrears and other outstanding allowances for former councillors. In the Statement, I would like the Chairperson of the Committee to;

(i) State whether he is aware that former councillors who served in Chepareria Town Council and Pokot County Council are owed a lot of money in salary arrears and other allowances;

(ii) Explain why the former councillors have not been paid and clarify who is responsible for settling outstanding dues; and,

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(iii) State what plans there are to pay them and indicate when they will be paid.

**Sen. Kagwe:** Mr. Speaker, Sir, I rise to respond to a Statement which was sought by Sen. Musila in which you ordered that I read the reply today.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir.

**Sen. Wangari:** Mr. Speaker, Sir, I am not so sure whether we have disposed of the issue which was raised earlier by Sen. (Prof.) Lonyangapuo. Sen. Kagwe wants to respond to a Statement sought earlier, but at the same time, Sen. (Prof.) Lonyangapuo sought a Statement and I thought we had not disposed of that matter. In the absence my de facto Minister for Devolution in this House or in the absence of the Chairman for the Committee on Devolution, I want to take responsibility and assure Sen. (Prof.) Lonyangapuo that the Statement can be available in two weeks time. Since we will be going on recess, maybe, it can be delivered the first day of the next session.

**The Speaker** (Hon. Ethuro): That is the first day when we resume. Proceed, Sen. Kagwe.

#### WITHHOLDING OF KCSE CERTIFICATES BY SCHOOL HEADS

**Sen. Kagwe:** Mr. Speaker, Sir, pursuant to the Standing Order No.43(2) of the Senate Standing Orders, the Senator for Kitui County, Sen. Musila requested for a Statement from the Chairperson of the Senate Standing Committee on Education, Information and Technology. The Senator sought a Statement regarding the withholding of Kenya Certificate of Secondary Education (KCSE) by secondary school heads contrary to the Kenya National Examination Council (KNEC) Act No.29 of 2012 which outlaws the withholding of examination certificates by any institution. The Statement is expected to address the following questions:-

(i) Why are the certificates being withheld, depriving students, particularly from poor counties an opportunity to seek employment

(ii) When will the Cabinet Secretary issue instructions to all schools to release all certificates held by heads of institutions without any condition.

Mr. Speaker, Sir, I wish to respond to the issues raised by Sen. Musila as follows:-

The Ministry of Education, Science and Technology is aware that pursuant to Section 10(1) (b) of the National Examination Council Act, 2012, one of the functions of the council is to award certificates or diplomas to candidates. The Ministry is also aware that such certificates or diplomas shall not be withheld from the candidate by any person or institution. However, Section 59(n) and (o) of the Basic Education Act, 2013, authorizes school boards of management to administer and manage the resources of their institutions and also to receive, collect and account for any funds accruing to their institutions.

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Further and according to Section 67(1A)(ii) of the Teachers Service Commission code of regulations for teachers revised in 2005, non-collection of any authorized monies due to the Kenya Government boards of management or District Education Boards, will be deemed to be loss of public funds and may lead to disciplinary action against the head of institution. This part of the law is meant to ensure that school heads manage the resources available to them prudently to ensure that learners, not only remain in school, but are properly taken care of. Failure to collect any funds due to schools, therefore, will adversely affect learning and the quality of education is likely to be compromised.

Mr. Speaker, Sir, the Ministry via its circular reference MOE/91/44 dated 9<sup>th</sup> January, 2008, issued guidelines to schools for the implementation of the free day secondary education, subsidizing students' fees by issuing an annual grant of Kshs10,265 per student, per year. The grant is meant to cover tuition and other related services, but meals and boarding costs are the responsibility of parents and guardians. The issue of outstanding fees, therefore, arises from failure on the part of parents and guardians to pay for meals and other related costs for their children. It is, therefore, expected that parents or guardians who are unable to pay this levies, not school fees, but levies, on time make individual arrangements with respective institutions on the best way to fulfill their obligations. Otherwise, schools cannot operate effectively with colossal sums of money due to them outstanding.

On the other hand school heads have no choice, but to comply with the procurements that I have read of the Basic Education Act and the Teachers Service Commission code of regulation for teachers as detailed above. The Government is encouraging the development of more quality day secondary schools to mitigate against the high cost of boarding fees.

Mr. Speaker, Sir, in addition to the Statement that I have read I believe that there is also communication to Sen. Musila by Mr. Wasanga who is the secretary and chief executive of the KNEC. The letter says very clearly that it is illegal for any person or institution to withhold a certificate issued to a candidate by KNEC. Any candidate whose certificate for KCSE or any other examination has been withheld by a teacher or head of institution can seek redress to have the certificate released to them based on the provisions of the KNEC Act, 2012.

Further, in my conversation with the Cabinet Secretary concerned, we made it very clear that as a Committee of the Senate, we will not stand to see anybody's certificate being withheld and that the Ministry must issue all certificates to all persons.

Thank you.

**Sen. Musila:** Mr. Speaker, Sir, if you listened very careful to my friend, the Chair of the Committee for Education, Information and Technology, Sen. Kagwe, there were a lot of contradictions. First and foremost, the Statement that he read to us is the same as the one that was read on 16<sup>th</sup> October, 2013 which this House rejected on account that it was unsatisfactory. Now the Chair has read the same Statement despite the House not being satisfied. The other contradiction is that the Ministry of Education says that the law

demands prudent management of school resources and, therefore, by implication, they are withholding the certificates of these poor children as lien for balances of schools fees. Again, I sought the intervention of the boss of the KNEC and he has confirmed that it is, indeed, illegal for anybody to withhold certificates. He even wrote me a letter and said that if any institution is withholding certificates, it is doing so unlawfully.

The third contradiction is that the Chair said that his Committee would not allow certificates to be withheld. So, I ask myself, it is now a year since I raised this matter. We are soon going on recess, I hope. Come January, another lot of students will demand their certificates, but they will not get them. We are now debating the Uwezo Fund to facilitate the youth with Kshs6 billion, but at the same time, we are withholding their certificates. Could we get an unequivocal confirmation from the Chair and the Ministry that they are going to issue instructions to institutions to release these certificates and that they will abide by the law as passed by the National Assembly?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to thank the Chairman for that candid answer, but I also want to share with him the frustrations that I know even the Government must be having. That even good laws or good directives from the executive are very difficult to be implemented or supervised. Since some of the heads are being mischievous because they are still living in the old system of impunity in this country. Could the Ministry direct that all certificates be taken to the office of the District Education Officer so that the children can collect them from that office and not from the office of the principal who holds on them as collateral for collecting school fees?

**Sen. Kagwe:** Mr. Speaker, Sir, I do agree with Sen. Musila that there is an element of contradiction regarding the position of the Ministry, but the contradiction is not from the Ministry. It is the contradiction of the law because it is the law that says very clearly that these people in schools are themselves responsible for schools and the funding in schools. The Ministry of Education has never issued a circular to the effect that certificates should be held by the headmasters and the principals. Therefore, if they have not told the teachers to withhold certificates and, in fact, they are saying that the law must be followed and certificates to be issued. I think the contradiction that arises here, is what the headmaster is supposed to do if he has to collect the money owed to the school. That is what the law says. The same law is telling the headmaster that he must give the certificates.

Mr. Speaker, Sir, the position we have taken is that the certificates shall not be withheld and they must be issued forthwith.

As to Sen. (Dr.) Khalwale's question regarding whether, indeed, those certificates should be sent to the District Education Officers, that is something we can pursue. We can ask the Cabinet Secretary concerned to see whether that is a viable way of doing this. I think it could because it leaves the responsibility of the collection of funds to the district officer himself. Therefore, when Sen. Musila raised this matter with me, I have taken a lot of time to discuss this with the Cabinet Secretary. I have been to his office, I have taken a lot of time with him, we invited the Cabinet Secretary to the Committee and

discussed this matter at length. All we, as a Committee, can do is to push the Ministry and ensure that there is a legal basis where the policy of the Government is to issue certificates as soon as they are due.

That is all we can do, but it is not possible for me to say that the Committee can order a teacher who is under the law obligated to collect that money. So, there is a contradiction and I think this is a bigger issue than a simple Statement. Perhaps, this is something that may need even a change in the respective acts so that it can be a properly and legally taken position where certificates cannot be withheld. Therefore, we should remove the contradictions that are there in law.

**Sen. Billow:** Mr. Speaker, Sir, the Chairman of the Committee says that it is a contradiction in terms because although they are required to give out the certificates, they cannot actually force the head teacher to give out because of the money owed. What I think Sen. Musila and others have been asking for a long time is; if the Government can waive debts for farmers running into billions of shillings, why can they not waive outstanding fees of a poor child whose certificate is the only source of future incomes? I think that is the point. The Ministry should not allow double speak on this matter. They should come out clearly and direct all those headteachers to give out those certificates and provide ways of paying schools that money or waiving their debts.

**The Speaker** (Hon. Ethuro): Order, Senator! You have made your point.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, listening to the Chairman answering that question and also listening to Sen. Musila reacting to it and talking about contradictions, it is quite obvious, there are contradictions. However, I think the Chairman has said what he had to say on that issue and the question I would like to raise is this: Since there is that contradiction in the law and it appears that it is mandatory that the principals of secondary schools must release certificates to the students and the other law says that the principal can be surcharged for not collecting fees and dues, because this is Government money, does the Chairman not think it is time that the two laws were harmonized? Even the principal himself or herself has to be indemnified or kept harmless from that contradiction so that when he releases those certificates to the District Education Officer or the students, he is held harmless and should not be surcharged.

We must think about it from both sides because even the principal has a job to protect or to do. On the other hand, I would like to ask the Chairman whether it is possible to give statistics on a percentage basis. How much the holding of certificates enables the principals to collect the outstanding fees so that we can see how we can deal with the legal part of it.

**Sen. Haji:** Mr. Speaker, Sir, I personally feel that there is no conflict at all because when the principal is required to collect fees he can only collect fees from those who can afford to pay, but there are very poor people who will not be able to pay. Therefore, there is no way he can milk money out of them.

**The Speaker** (Hon. Ethuro): Hon. Senators, I want to reiterate what I had said previously. The job of Senators during Statement time is either to seek for the Statement,

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seek further clarifications or to issue a Statement. If you are not issuing the Statements, you have really no business volunteering information. You can only do so when the Chair is the one submitting the Statement and then you can add. But for the rest of you, you can only interrogate further. If you really have nothing to interrogate, you can just relax.

**Sen. Wamatangi:** Mr. Speaker, Sir, I am seeking a clarification from the Chair of the relevant Committee, if they knew from the word go that there was some legal implication that required some amendments as far as the Education Act is concerned, I wonder why they went that far without going that route of amending the Education Act to give the headmasters or the school principals a free hand or allowing them to issue the certificates without necessarily asking for the money. I wonder why they went that far rather than going that route of first amending the Act.

**Sen. Ndiema:** Mr. Speaker, Sir, from the report that we have been given, there seems to be a standstill situation where we really are not certain as to whether fees must be paid before certificates are issued. The clarification I am seeking is whether the Chairman tried to find out the magnitude of this problem; the amount that is owed up to now so that we can look at ways and means of either writing off or the Ministry budgeting for that in the same way the Uwezo Fund was budgeted for. Really, these young men who have not had certificates for many years cannot do what they were trained or educated for.

**Sen. Kagwe:** Mr. Speaker, Sir, the level of interrogation and interest in this Statement shows clearly that this is a matter of concern to all of us, as Senators, and leaders in the country because nobody would want any children or people in his or her county to miss job opportunities because of certificates. However, what has been proposed or some of the clarifications that have been sought by some of the Senators are actually different issues all together.

For instance, Sen. Billow sought to know whether it is possible for a debt write off to be made so that if the money is actually owed, the Government can, as former President Kibaki did, issue a simple Presidential directive that those certificates be given. Tied to Sen. Billow's question and the clarification sought by Sen. Ndiema regarding how much we are talking about, I do not know how much it is. All I can do at this point regarding that particular aspect is to promise the House that I will ask the Cabinet Secretary to get a clarification of how much money is owed to the Government by the various students and whether it is possible for the write off to be made.

As for the issue regarding Sen. Njoroge's question, why we did not first seek to make the amendments that are necessary in order for that to be done; all I can say is that sometimes it takes questions such as these ones to realize the contradictions that exist and, indeed, without discussing this matter, we, probably, would not have known that a contradiction exists.

Mr. Speaker, Sir, having said that, with regard to the contradiction we are talking about, at no point does any law say that the certificates should be withheld. Therefore, it is possible to deal with this matter concurrently. In other words, it is possible for us to

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talk to the Government as we are continuing to do as a Committee and to ensure that those certificates are issued even as we discuss further. I would like to tell Sen. Njoroge that it does take a bit of time to issue a Statement. I sympathize with the students who cannot afford to pay their fees. It is obviously clear that students whose certificates are being held are students who cannot afford to pay, because they could have paid already. Therefore, what Sen. Haji is proposing; that they are holding certificates for only those who cannot afford is true because all those who have not paid, basically, cannot afford.

It is a question of writing off for all those whose certificates are being withheld. Perhaps a consideration for this would be even to write off some of the ones which have been held for two years because nobody can leave a certificate in a school for two years when they have the money to pay. If they had the money they would have paid. The danger is where it is possible, for a blanket statement to be made such that even those who are able to pay are not going to pay on the basis that certificates are being issued irrespectively. So, there has to be some sort of fine tuning and a balance to ensure that students who are not able to pay are exempted. This is something we have to seek from the Cabinet Secretary concerned.

**The Speaker** (Hon. Ethuro): Let me direct how we will proceed with this matter because I do not think it will be fair to Kenyans for us to stop this matter at this stage. I would like to encourage our Chairman and the Committee to go through the HANSARD, look at all the issues that the Senators have raised, make this a proper matter that the Committee can interrogate. In any case, even what the Chairman has said are proposals which I am sure if you pursued further, then we will be able to determine this because this is a problem and it has been there for a long time. I remember it was an issue that even came up in the Tenth Parliament. It is like three Parliaments have dealt with the matter. Seeing the kind of enthusiasm and the information the Committee has, then you have the historical moment to complete this matter once and for all, to the satisfaction of all the parties. I think if you proceed that way, then you can bring us a report with some finality. That would be my directive.

**Sen. Musila:** Mr. Speaker, Sir, I want to thank you for your statement and I hope that this matter will be concluded.

MEANING AND INTERPRETATION  
OF WHAT CONSTITUTES “A BILL  
CONCERNING COUNTIES”

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I rise to seek for further clarification from you on this vexing matter of the meaning and the interpretation of what is a Bill concerning counties and the necessary consultation that is supposed to take place between the Speakers of the two Houses.

I noticed that today morning, the debate on the Statutes Law Miscellaneous (Amendment) Bill of 2013, has been going on in the National Assembly. I also notice

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when I went through that Bill this morning, a copy of which I have, that several clauses in the Bill refer to Acts concerning counties that are intended to be amended. With your permission, allow me to cite just a few. There is an intention to amend the Urban Areas and Cities Act, the Transition to Devolved Government Act, the County Governments Act, the Agriculture and Fisheries Food Authority Act and, finally but not least, there is also an intention to amend the Crops Act and the Kenya Agricultural Livestock Research Act.

As you have heard from the few examples that I have given, they are all clearly concerning the counties. If these Bills are concerning counties, I would like you not to get tired, but to come out clearly to us and tell us candidly whether, indeed, there has been any consultations between you and the Speaker of the National Assembly in the meaning of Article 110 Sub-section 3 of the Constitution of Kenya. You will tell us whether we should hold our horses if, indeed, this Bill is coming before us.

Mr. Speaker, Sir, if such consultations have not been done and if this Bill is not intended to come before us, it will go further in confirming what is rapidly becoming the reputation of the National Assembly. The National Assembly is now starting to look like it was created to cannibalize other constitutional institutions.

You remember when this matter first came to this House, a section of the media and a section of the public thought and reduced it to a simple case of a supremacy battle between the National Assembly and the Senate. Because of this carelessness, you can see there is a serious crisis. The President has been embarrassed and the National Assembly has pronounced itself. The President has respected the decision of the National Assembly because he cannot disobey Parliament and he has rendered the country into a constitutional crisis. It is important that you, with the sober mind that you have had so far and being the voice of reason, you come out and tell us what is going on. We do not want to lose our country just because of the cannibalism of the National Assembly of Kenya.

*(Applause)*

**The Speaker** (Hon. Ethuro): Order, hon. Senators!

Hon. Senators, this matter is not about to go away. You will agree with me that this was the basis under which we went to the Supreme Court for an advisory opinion.

The Supreme Court agreed with this House with regard to that procedure. Even so, we have agreed with the leadership of the National Assembly on the same procedure. I must confess, however, that we still have challenges in implementing some of those issues.

If you look at Article 110(3), you will see that before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties or whether it is a special or ordinary Bill.

That requirement has not been faithfully followed. However, we have made a determination. Some of the Bills, including the one you have cited affect counties. It is,

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therefore, my expectation that after the National Assembly considers the Bill; it will come to the Senate. If it does not come, we will also have made a determination. We will say that it has not followed the due process and the consequences are obvious. All the relevant state organs are fully informed of that position.

*(Applause)*

Let us hold our horses for now. A time will come when you will tell me whether the horses should be released or whether we should keep on holding them. Thank you.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, you have left out the first arm of my concern. You have addressed what I expected. However, I want you to clarify whether you have held consultations as a must and jointly with the Speaker of the National Assembly.

**The Speaker** (Hon. Ethuro): That “circular” seemed to have the word “yes”. I said that we are having challenges, but we have held consultations. We hope that since the procedure in the Constitution is well spelt out, there will be a process to dispose of that. It is premature for me to say whether those discussions are bearing fruit or not.

Let us wait for the outcome of the Debate that is going on in the other House.

**Sen. Wako:** Mr. Speaker, Sir, I have been thinking about this issue and in particular, from the point of view of how to avoid a situation where the President is put in a situation where if he does something, he takes a certain line of action which is unconstitutional. I am wondering whether you have had enough consultations with the President, with your counterpart at the National Assembly and whether you have come to an understanding that before the President gives assent to any Bill, it should have your signature and the signature of the Speaker of the National Assembly. Both signatures should show the President that you have agreed that the Bill does not concern counties or that the Bill touches on the counties. That way, you can take appropriate steps. At the end of the day, this is Parliament, which is composed of the National Assembly and the Senate which is inducting Bills. Therefore, when it comes to Bills that do not concern counties, it should not be presumed that the Speaker of the National Assembly can move to the passage of the Third Reading for signature of the President.

The President should be made aware by the signatures appended there that consultations have taken place and that you agree that the Bills do not touch on counties. If these are Bills that do not touch on counties, then the President must be made aware. The President should also be made aware about a Bill that touched on counties that came to this House; we deliberated on it and made our contributions.

**The Speaker** (Hon. Ethuro): Order, Sen. Amos Wako! Those are some of the discussions we are having on how Bills should proceed from either House for signatures. Being a former Attorney-General, you will appreciate that the Attorney-General himself feels as if he is out of the loop. So, we are working at making sure that all relevant organs become party to the process. However, you have made a good suggestion.

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**Sen. G.G. Kariuki:** On a point of order, Mr. Speaker, Sir. I stand with regard to your ruling and to add some advice to it. One, this House needs to be aware or to find out whether the things which are happening all the time are politically motivated to cause this House and the Head of State to fight. If every time the Lower House will be presenting a Bill to the Head of State and it will be upon him to decide whether to sign or not, the public will expect to hear the Senate complaining. The best thing here is to ensure that we are not playing political games. That can only be investigated by some of you and some of us. We should try and understand where we are directing our efforts. Are we going to compromise or is there a political game which is, probably, being instituted by outsiders without our knowledge, causing the two Houses to fight?

**The Speaker** (Hon. Ethuro): That is an opinion by one Senator and shall remain his opinion.

STALLED CONSTRUCTION OF MAKUTANO-  
KIKIMA-TAWA ROAD

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. Mine is in connection to requests for clarification that had been sought which I did not give yesterday since the Senators who had requested were not present. I see that they are present. With your permission, could I proceed to give the statements?

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

**Sen. Obure:** Mr. Speaker, Sir, the first one was a request made by Sen. Abdirahman Hassan of Wajir who wanted the Ministry to provide a list and details of all stalled road projects in the country and the time frame that they can be repaired.

I will lay on the Table the list. The Minister requested me to give the following clarification.

The Ministry wishes to confirm that there are no stalled road projects under any of the road authorities. However, there has been slowed progress of works for the ongoing road projects in the Financial Year 2013/2014 due to delayed release of funds. The contractors were recently paid and are expected to resume normal operations of the road works. The pace of implementation for the projects and planning bills are expected to pick up as soon as funds are received from the Supplementary Budget. The list and details of all projects are listed in the attachment one, two and three for all the three road authorities.

I table the list.

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

The second one was a request made by hon. Dr. Khalwale. Hon. Khalwale wanted the Ministry to provide a list of road projects which will benefit from the Kshs10 billion

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development Funds for the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA).

I am pleased to attach the list and I am sure that Sen. (Dr.) Khalwale will have time to look at it.

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

The last and final one was in respect to a clarification sought by the Senator for Nyeri, Mutahi Kagwe. He wanted to know the lifespan of the Kitui-Kangundo Road as well as the Makutano-Tawa Road.

The lifespan is 15 years from the time that the project is completed. This is based on traffic analysis by the time that the designs were carried out. It is also based on estimates of traffic loading.

He also wanted to know how payments are made and on what basis. Payments to contractors are based on measured and certified works based on the rates quoted in their bid documents. The contractors raise interim certificates on the basis of monthly measured and approved works which are verified, signed and approved by the resident engineer for payments.

Where do the delays in payments occur? The contractor is entitled to interest on the delayed payments based on the agreement reached. The contractor's obligations are entered.

The third clarification that was sought was about what the Ministry is doing about roads that have stalled as a result of non-payment to contractors. The Ministry is not aware of any roads that have stalled. The contractors have released their rate of work and their contractual right as provided in the payments due to delayed payments. However, most of the contractors were recently paid and are expected to resume normal operations of road contracts works.

The remaining contractors who have pending bills are expected to resume works once funds have been received from the supplementary budget to pay.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, I want to thank Sen. Obure for the response. However, I kindly request you to allow us to look at these documents so that we interrogate the statement tomorrow.

I kindly request you.

**Sen. Khalwale:** Mr. Speaker, Sir, I also join Sen. Abdirahman in requesting that I be allowed to study the documents until tomorrow.

**Sen. Kagwe:** Mr. Speaker, Sir, as that happens and we discuss it further tomorrow, I also want a further clarification of the statements that have been made. A while back, you will recall that Parliament branded some contractors as "cowboy contractors" in a report that was adopted by Parliament. The report said that the contractors must not be awarded further work by the Government of Kenya. Would you clarify, in due course, whether, indeed, there are any "cowboy contractors" that are being

awarded any government contracts, contrary to the Motion that was adopted by the House?

**The Speaker** (Hon. Ethuro): Hon. Senators, the request by Sen. Abdirahman and Sen. Khalwale to defer it to tomorrow is a fair one, given that the Chairman was tabling documents. So, they need to look at them, although he could answer the one by Sen. Mutahi. Since we have deferred it, you can respond to all of them tomorrow.

#### SEIZURE OF CAR REGISTRATION NO.KBQ133U

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning the seizure of a car, registration number KBQ 133U, belonging to a Mr. Abdi Aziz Mohamed Ali of identity card No.216816878 at Wajir Army Camp since 7<sup>th</sup> May, 2013.

Mr. Speaker, Sir, in his Statement, I would like the Chairperson of the Committee to address the following:-

(1) The circumstances that led to the impounding of the vehicle and the goods that it was carrying.

(2) What steps the Government is taking to release the vehicle to the owner, as it is being held unlawfully.

(3) In any rate, the damages caused and state whether the owner will be compensated for the loss incurred, resulting from the unlawful withholding of the said vehicle and its goods.

Thank you, Mr. Speaker, Sir.

**Sen. Haji:** Mr. Speaker, Sir, much as the allegations are serious, unfortunately, since we are going on recess on Thursday, I will not be able to provide the answer. But even before we resume, I will try to write a letter to find out what happened.

**The Acting Senate Minority Leader** (Sen. Abdirahman): Mr. Speaker, Sir, I thank Sen. Haji. I know that we might go on recess, but knowing the kind of person he is, I would plead that if he can do for me anything even tomorrow, because this is a serious injustice, I will appreciate.

**The Speaker** (Hon. Ethuro): Sen. Haji, whatever you can do, do it. If not, you will respond when we resume.

#### INSECURITY AT MALALANI IN KITUI COUNTY

**Sen. Musila:** Mr. Speaker, Sir, I am seeking your indulgence to also remind the able Sen. Haji, the Chairman of the Committee on National Security and Foreign Relations, that he did undertake two months ago to give a statement on insecurity in Malalani in Kitui County. I know the frustrations that he is going through, but that notwithstanding,

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he owes it to this House, to give us the statements that we seek. So, I beg to request that he gives us this Statement before the House goes on recess.

**Sen. Haji:** Mr. Speaker, Sir, I feel shy not to be able to give an answer to my former boss. I was his District Commissioner (DC) and he was my Provincial Commissioner (PC). That notwithstanding, I must admit that I have been disabled by the fact that I am not able to give this Statement. But as you are aware, my Committee has summoned the Cabinet Secretary as well as his officers on an unrelated issue. But we intend to discuss all the issues that are outstanding and, possibly, we will be able to deal with this issue.

**The Speaker** (Hon. Ethuro): I think that, that is the end of Statements. What is it, Sen. Billow Kerrow?

## PAPER LAID

### REPORT ON THE DRAFT PUBLIC FINANCE MANAGEMENT (UWEZO FUND) REGULATIONS, 2013

**Sen. Billow:** Mr. Speaker, Sir, I had sought your indulgence to table the Joint Committee Report of the Standing Committee on Finance, Commerce and Economic Affairs and the Sessional Committee on Delegated Legislation on the Draft Public Finance Management (Uwezo Fund) Regulations, 2013.

**The Speaker** (Hon. Ethuro): Which Committee was handling the Regulations on National Honours?

Sen. (Prof.) Kindiki!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I think that the Regulations on National Honours were being handled by the Committee on Health, Labour and Social Welfare and I see that the Vice-Chair, Sen. Kittony, is here.

**Sen. Kittony:** Mr. Speaker, Sir, it is within our mandate, but I was surprised to see it being tabled in this House yesterday. It has not come to our Committee. I contributed yesterday and said that it needs a lot of amendments. I also said that it has come a little bit too late, because we should have deliberated on it much earlier. The Chair is not here and the Committee has not looked at it. Therefore, it puts us into a difficult situation.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! I am sure that you all know that while we appreciate the input from Committees on any business, failure by the Committee to produce a report does not stop the business of the House. So, we will proceed on that Order once we reach there.

Before I call out the next Order, there was a matter that arose yesterday from the Floor, which was sought by Sen. Orengo. He asked me to look at the HANSARD and I promised that I would do so. The HANSARD reads:-

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**“The Speaker** (Hon. Ethuro): Order, Sen. Orengo! One, we will check on the HANSARD, because when you start by questioning whether somebody heard, you are only telling us that you heard better than everybody else. So, we need to verify and we will give you your dues, if it is the correct position. If not, we will also give you the opposite.”

I have checked the HANSARD and I confirm that Sen. Orengo deserves praise for being alert. In fact, more alert than the Chair. Sen. Murkomen was contributing to the Motion on the Honours and said:-

“The President has two very critical functions. On one hand, he is the Head of Government, but on the other, he is the father of everyone. He is the Head of State. When performing the functions of the Head of State---

It was at that point that Sen. Orengo rose on a point of order and asked:-

“Mr. Speaker, Sir, did you hear what Sen. Murkomen said; that the President is the father of everybody? The President is not my father. Kenya is not a feudal State, but I agree that he is the Head of State.”

Then I said:-

“Order, Sen. Orengo! Did you hear or listen to Sen. Murkomen?”

He replied:-

“Mr. Speaker, Sir, I heard and listened to him.”

Then I said:-

“If you did so, you should not, therefore, put words in his mouth. He said that the President is the father of the nation, but did not say that he is the father of everybody.”

Then, he challenged me to check on the HANSARD because he listened very carefully. I just want to confirm that he listened very carefully and I did not listen carefully.

Thank you.

*(Applause)*

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

**The Speaker** (Hon. Ethuro): It is not for debate, Sen. Khalwale. The fact that you were not here yesterday is not our problem. I was only clarifying a position that I had put and expecting to get Sen. Orengo on the wrong foot. It is good to acknowledge when he had listened very carefully.

As we move on to the next Order, we will use the Supplementary Order Paper. I hope that everybody has a copy. The amendments are proposed on that particular Order Paper, as you take the Committee of the Whole.

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE NATIONAL HONOURS REGULATIONS, 2013

**The Temporary Chairperson** (Sen. Ongoro): Hon. Senators, we are now in the Committee of the Whole to deal with The National Honours and Regulations, 2013.

*Regulations 2 to 29*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Chairperson, I beg to move:-

THAT regulations 2 to 29 be deleted and substituted with the following new Regulations-

Interpretation.

No. 11 of 2013.

**2.** In these Regulations, unless the context otherwise requires-

"Act" means the National Honours Act, 2013;

"Cabinet Secretary" means the Cabinet Secretary responsible for national heritage;

"national honour" means an official recognition, decoration, status or award conferred by the President in terms of Article 132(4) (c) of the Constitution;

"Judiciary Honours Advisory Committee" means the Judiciary Honours Advisory Committee established under section 7 of the Act;

"National and County Governments Honours Advisory Committee" means the National and County Governments Honours Advisory Committee established under section 5 of the Act; and

"Parliamentary Honours Advisory Committee" means the Parliamentary Honours Advisory Committee established under

section 6 of the Act.

Categories of

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national honours. **3.** The following categories of national honours may be conferred by the President-

- (a) under the Order of the Golden Heart of Kenya-
  - (i) Chief of the Golden Heart (CGH);
  - (ii) Elder of the Golden Heart (EGH); and
  - (iii) Moran of the Golden Heart (MGH);
- (b) under the Order of the Burning Spear-
  - (i) Chief of the Burning Spear (CBS);
  - (ii) Elder of the Burning Spear (EBS);
  - (iii) Moran of the Burning Spear (MBS);
- (c) Order of the Grand Warrior of Kenya (OGW);
- (d) Head of State's Commendation (HSC);
- (e) Uhodari Medal (UM);
- (f) Distinguished Conduct Order (DCO);
- (g) Silver Star of Kenya (SS);
- (h) Distinguished Service Medal (DSM); and
- (i) Long Service and Good Conduct Medal (LSGC).

Persons on whom  
national honours

may be conferred. **4.** A person shall merit the conferment of a national honour if the person is —

- (a) a person who has exhibited or exhibits exemplary qualities, actions or achievements of heroism, sacrifice, bravery, patriotism or leadership for the defence, benefit or betterment of the country or a county;
- (b) a person who has made an exemplary contribution to the country or a county in the economic, social, scientific, academic, public administration, governance, sports, journalism, business, security or other fields;
- (c) a State officer or public officer who has made an exemplary contribution to the betterment of the national or county governments, the executive, the judiciary, the legislature, an independent commission or an independent office;
- (d) a person who has otherwise brought honour, glory or pride to the

Republic.

Recommendation

to be based on

medals in stock. **5.** When making recommendations to the President for conferment of a national honour, the Advisory Committees shall take into account the number of medals in stock at the time and shall ensure that the total number of persons recommended for conferment of national honours does not exceed two-thirds of the medals in stock.

Submission of

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recommendations. **6.** (1) A person may recommend a nominee for conferment of a national honour at any time, but not later than three months prior to the proposed date of conferment.

(2) In making the recommendation under paragraph (1), the person shall ensure that the citation and grounds for recommendation are set out in clear and precise terms.

Publication of list  
of persons  
recommended.

**7.** The respective chairpersons of the Advisory Committees shall, prior to forwarding to the President the list of persons recommended for conferment of national honours, by advertisement in at least two daily newspapers of national circulation, invite the public to present any views on or objections to the list to the respective Advisory Committee.

Receipt of title of  
honour,  
certificate,  
insignia.

**8.** A recipient of a national honour shall receive, in respect of the honour conferred, a title of honour, a certificate and an insignia.

Acknowledgment  
of receipt of  
insignia.

**9.** Every recipient of a national honour shall sign a warrant form to acknowledge receipt of the insignia for the honour.

Sitting at State  
and public functions.

**10.** During State functions and public functions, recipients of national honours shall sit in such areas as shall be designated for such recipients.

Insignia.

**11.** The insignia distinguishing the classes and categories of national honours shall be of such description as shall be provided for by the Cabinet Secretary by notice in the *Gazette*.

Mode of wearing  
Insignia

**12.** The mode of wearing the insignia shall be as provided for by the Cabinet Secretary by notice in the *Gazette*.

Abbreviations for  
title of honour.

**13.** (1) The abbreviations for a title of honour conferred upon a person shall appear immediately after the recipient's last name.  
(2) Where a recipient has been conferred with more than one national honour, the respective titles of honour shall appear in the manner set out in paragraph (1) and in the order of precedence of the titles as set out in Regulation 3.

Loss of national honour.

**14.** (1) The loss of a national honour shall be reported to the respective nominating Advisory Committee.  
(2) On receiving a report of the loss of a national honour, an Advisory Committee shall make the appropriate inquiries and take such action as may be appropriate to facilitate a replacement.

Forfeiture of national honour.

**15.** A recipient of a national honour shall forfeit the honour if the recipient, after the conferment of the honour-

- (a) is dishonourably discharged from the Kenya Defence Forces, the National Intelligence Services, the National Police Service or the Kenya Prisons Service;
- (b) is adjudged to have contravened the provisions of Chapter Six of the Constitution; or
- (c) is convicted of an offence and sentenced to a term of imprisonment for a period of six months or more.

Amendment, suspension or revocation of national honour.

**16.** Pursuant to section 10 of the Act, the respective Advisory Committee shall advise the President on the amendment, suspension or revocation of a national honour conferred on a recipient.

Conferment of honours to citizens of another country.

**17.** Where an Advisory Committee proposes to recommend a citizen of another country for conferment of a national honour, the respective Advisory Committee shall, where appropriate, liaise with the Cabinet Secretary responsible for matters relating to foreign affairs so as to obtain the views of the relevant country on the proposed recommendation.

Register of national honours.

**18.** The Cabinet Secretary shall keep and maintain a register of the national honours conferred which shall set out the names of all the recipients of national honours which shall be available for inspection by the public.

Transitional  
recommendations for conferment of national honours made after the coming into effect of the Regulations.

**19.** Regulation 6 shall not apply for the purposes of the first

Madam Temporary Chairperson, the Senate Majority Leader tabled the National Honours Regulations, 2013 on 20<sup>th</sup> November, 2013 and yesterday, through the debates, a number of issues were raised by hon. Senators, which have led to improvements and amendments to these Regulations. The Order Paper that has been circulated has some of the amendments that are suggested in Regulations 2 to 29. Some of the things that have been introduced include the marginal notes, which is good for the understanding of the Regulations.

Under Regulation 3, we also propose to reorganize the various categories of national honours and not to create new categories. We just want to reorganize them in a better way because the initial regulations were a bit cumbersome and scattered. But the same categories that were proposed are the same categories that are retained under Regulation 3.

Madam Temporary Chairperson, under Regulation 4, it is also proposed to expand the ways and means by which one is conferred national honours by providing for certain general categories, especially under (c) and (d) of Regulation 4 where, for example, a State or Public officer who has made an exemplary contribution to the betterment of the national or county government as Executive, Judiciary, Legislature, independent Commission or independent office can be one of the categories of persons on whom national honours may be conferred upon and also generally any person who has otherwise brought honour, glory or pride to the Republic.

So, this now applies to any person who can be a farmer, police officer, nurse or even a house wife; whose conduct, achievement and contribution has significantly impacted on the nation. I can see some of my colleagues, when I said house wife, looking at me suspiciously. I want to add that this can be a house wife or even a house husband – like Dr. Timothy Njoya, who likes calling himself a house husband – for purposes of being gender sensitive.

Madam Temporary Chairperson, those are some of the issues that have been raised through the proposed amendments. Other than that, there is Regulation 10 on the sitting arrangements, which has caused us a lot of problems since the last general elections. We have so many leaders now, and now that we are creating, reorganizing and recognizing heroes through a law and through regulations, we want to transfer that honour into the way we treat heroes and the people who carry national honours when they attend public functions. It does not help to call or to confer somebody with the Moran of the Golden Heart (MGH) or Distinguished Service Medal (DSM), but when they attend a public function, whether at the national or county forum, that recognition is not appreciated. It defeats the whole purpose of conferring national honours.

Madam Temporary Chairperson, there is also a suggestion recommended there under Regulation 14 on how one may lose national honours. Regulation 14 is providing for the reporting of the loss of national honours to the Advisory Committee. The loss of national honour shall be reported to the respective nominating Advisory Committee. If it is a member of the Legislature who has lost a national honour under the grounds which

are specified, then that should be reported so that there is a bit of inquiry and it is noted. A replacement may even be done.

Madam Temporary Chairperson, Sir, without wasting a lot of time because hon. Senators have had occasion to look at those amendments, I beg to move that these amendments be now approved by this House. I request the Senate Majority Whip to second.

Thank you, Madam Temporary Chairperson.

**Sen. Elachi** seconded

*(Question of the amendments proposed)*

**Sen. Billow:** Madam Temporary Chairperson, I seek to propose further amendments to the amendments which have been proposed by the Senate Leader of Majority. I want to propose a further amendment to Regulation 4.

Madam Temporary Chairperson, I propose to add category (e) which reads as follow:-

“A person who has been elected or nominated and is serving as a Member of the Senate or the National Assembly and served for at least one term to be conferred in the rank of the Chief of Burning Spear (CBS).”

Madam Temporary Chairperson, I want to propose this because if you remember the Bill we just passed last week on the National Flag and Emblems, in the pecking order on that Bill, offices of the National Assembly and the Senate, are ranked in a category of people who are all automatically conferred because of their positions. For example, the Chief Justice, the Speakers and the Governors are all awarded these honours automatically. It is unacceptable, in my view, that all those people will be awarded honours and will sit in accordance with Regulation 10. However, if you are a Member of the National Assembly or of the Senate and you have not been given that honour, then you do not fit into that category. It is important that we synchronize this with that pecking order that we have in the National Flag and Emblems Bill, which we proposed in the Bill last time.

*(Applause)*

*(Question of the further amendment proposed)*

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Chairperson, I concur with the amendment suggested by Sen. Billow Kerrow. But since we know that this House is the Upper House and the National Assembly is the Lower House, why do we not go further and make this suggested amendment even clearer? For example, Sen. Haji has a medal that is higher in merit. He was conferred with the medal of Elder of the Golden Heart

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(EGH) just like those who served as Ministers before. Why do we not say that Senators should be conferred with the honour of EGH?

**An hon. Senator:** Yes!

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Chairperson, the Members of the National Assembly should be conferred with the honour of MGH, because they are lower by just one rank; or we go to CBS so that the ranking is so clear so that we can distinguish them even by seeing the type of medal each one of them is putting on.

**Sen. Wako:** Madam Temporary Chairperson, I do support the spirit behind this amendment. But also taking into account what Sen. (Prof.) Lonyangapuo has stated and also taking into account the way the whole thing has been drafted, nowhere in these regulations have we said that the Minister should be conferred with EGH or that somebody should be conferred with a particular or specific honour. It is not in the spirit of these regulations that we have that. Therefore, as much as I agree with your sentiments, I would prefer that you leave whether it is CGH or whatever else it is, do not mention it. Just say they will be conferred with a specific honour befitting their status. I know that Ministers---

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

**The Temporary Chairperson** (Sen. Ongoro): What is your point of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Madam Temporary Chairperson, I really do not like interfering with my elder brother, but is he in order to mislead the House, when he knows very well that the tradition in this country has been that as soon as one became a Minister, there was no further assessment? Automatically, all Ministers received the medal and, actually, it was courtesy of the same that the Attorney-General *Emeritus* got his EGH, because he was assumed to be a Minister. Is he in order to mislead the House?

**Sen. Wako:** Madam Temporary Chairperson, I am not misleading the House. All I am saying is that the way the regulations are drafted, nowhere are we saying that a Minister should get the EGH. Nowhere in these regulations are we saying that a Member of Parliament should get these bigger titles. That is left to tradition.

Madam Temporary Chairperson, I do have an EGH, but let me guide my brother. Before I got the EGH, I was an Elder of the Burning Spear (EBS). I am one of the few people in this country who has got both EBS – which was conferred to me before I became the Attorney-General. That means that I was already working before I became a Minister.

*(Laughter)*

Madam Temporary Chairperson, what I am saying is that this will develop as a tradition. I am quite sure that the Advisory Committee will take into account the

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traditions that have been established. I am quite sure that a tradition will emerge that the Senator should get this particular title and a Member of National Assembly (MNA) should get that particular title. What you require in these rules is what Sen. Billow has stated; that a Senator or a MNA who has served at least one term should be given a befitting title. Let us leave it to the Advisory Committee. That also will now answer Sen. (Prof.) Lonyangapuo's question, where we are now saying that we should get a higher title than others. Therefore, we do not have to put it in the regulations because it will come through the Committee in the natural way.

**The Temporary Chairperson** (Sen. Ongoro): I want to draw your attention to Regulation 3 which talks about the categories of national honours. Regulation 4 talks about the persons on whom national honours may be conferred. So, I find that the proposed further amendment is properly before the House and we can just proceed to interrogate it. I do not think there is anything out of order, because we are still going to even call upon the main Mover, the Senate Leader of Majority, to give his final opinion before we move.

**Sen. Haji:** Madam Temporary Chairperson, I also want to propose an amendment. If you look at Section 3---

**The Temporary Chairperson** (Sen. Ongoro): Sen. Haji, I want to rule you out of order because we are already debating a further amendment, which we have to dispose of before we receive any other further amendment. Otherwise, we are going to be completely confused.

**Sen. Haji:** Okay, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Ongoro): So, I want us to deliberate on the further amendment as proposed by Sen. Billow Kerrow.

So, we will proceed. Sen. Zipporah.

**Sen. Kittony:** Madam Temporary Chairperson, I may be out of order, but I still think that the work of our Committee has been hijacked because we did not deliberate on this and yet it is our mandate. I said yesterday and I am still saying it again that even if it is passed, I would like to be on record as having stated that our mandate has been hijacked. We needed to deliberate on it, work on it and bring it to the House for approval. I feel very uncomfortable although my Committee Chair is not here. I would like to get that clarification because I am the Vice Chair. I am still very clear that we did not deliberate on that mandate.

**The Temporary Chairperson** (Sen. Ongoro): Sen. Kittony, before I give the Senate Majority Leader the opportunity to say something, I want you to know that we, as a House, cannot be stopped from deliberating simply before a committee has not given a report. So, I think we are properly in procedure and we will continue to deliberate on it though your sentiments have been noted.

**Sen. Kittony:** Madam Temporary Chairperson, I would like to be on record because I think our mandate has been hijacked. I would like the Committee to know that--

**The Senate Majority Leader** (Sen. (Prof. Kindiki): On a point of order, Madam Temporary Chairperson. Is Sen. Kittony in order to challenge, not once, not twice, but three times, the ruling and direction of the Chair to the fact that if a committee has not discussed something, it cannot stop this House from discussing it?

**Sen. Elachi:** On a point of information, Madam Temporary Chairperson.

**The Senate Majority Leader** (Sen. (Prof. Kindiki): Agreed.

**Sen. Elachi:** Madam Temporary Chairperson, I would like to inform the Committee that yesterday the Speaker had ordered that they meet and ensure that they bring us the amendments. Since they have not done so, I will request that they leave us to finish the work.

**The Temporary Chairperson** (Sen. Ongoro): Further to that, I just want us to be all reminded that the Senate is superior to its organs and committees are organs of the Senate. So, if an organ does not execute its mandate, we cannot be stopped from deliberating on a matter. Therefore, let us proceed.

**Sen. Ndiema:** Madam Temporary Chairperson, I am on the amendment which states that a Senator shall be considered after they have attained one term. I am proposing that a Senator by virtue of being elected should automatically earn that honour without subjecting it to waiting the same way Ministers earn those honours immediately they are appointed Ministers. So, the caveat of one term may not add any value.

**The Temporary Chairperson** (Sen. Ongoro): I want to remind hon. Senators that this matter does not affect counties. So, I will proceed to propose the Question.

*(Question of the further amendment  
to the amendment proposed)*

*(Question of the further amendment to  
the amendment put and agreed to)*

**The Temporary Chairperson** (Sen. Ongoro): We will now revert to the original amendments by the Senate Majority Leader. Sen. Haji had been on the Floor before and we told him to bid his time. So, I will give you the Floor first.

### *Regulation 3*

**Sen. Haji:** Madam Temporary Chairperson, it appears that Regulation 3 is restricting the Head of State from conferring an honour to a visiting Head of State. Therefore, I propose that there should be a provision where the Head of State can confer an honour to a visiting Head of State or Head of Government.

**The Temporary Chairperson** (Sen. Ongoro): State it clearly for purposes of the HANSARD.



**Sen. Haji:** Madam Temporary Chairperson, I propose that category (j) the Head of State can confer---

**The Temporary Chairperson** (Sen. Ongoro): Sen. Haji, are you not repeating what has been provided for under Regulation 3 where it says:-

“The following categories of national honours may be conferred by the President”

**Sen. Haji:** Madam Temporary Chairperson, a conferment to a Head of State cannot be an EGH or EBS. It is a different kind.

**The Temporary Chairperson** (Sen. Ongoro): Are you proposing that the President be conferred?

**Sen. Haji:** Madam Temporary Chairperson, he can confer to another Head of State who is visiting. That is what happens all over the world.

**The Temporary Chairperson** (Sen. Ongoro): To a visiting Head of State?

**Sen. Haji:** Yes, a visiting Head of State or head of Government.

**The Temporary Chairperson** (Sen. Ongoro): That the President may confer to a visiting Head of State or Government.

**Sen. Haji:** Yes, Madam Temporary Chairperson. Also sub-section 17---

**The Temporary Chairperson** (Sen. Ongoro): So category (j) should read:-

“A visiting Head of State or Government”

**Sen. Haji:** I also propose that this section which says that the Committee which is to recommend an honour should give a notice of three months. I feel that three months is too long.

**The Temporary Chairperson** (Sen. Ongoro): Sen. Haji, your proposal is in order, but where you want to fix it makes it out of context because we are talking of the kind of awards that can be conferred upon somebody and we do not know what particular category of a word could be conferred on a visiting Head of State. So, your request is valid, but we have to find a place to fix it because where you want to fix it is not in order. These ones are making reference to the various awards that can be conferred. So, just give us a minute to find the right place to affix it. Meanwhile we could proceed.

**Sen. Haji:** Madam Temporary Chairperson, I have another one.

**The Temporary Chairperson** (Sen. Ongoro): We are putting the first proposal under category (j). We will find a place and they are working on it.

#### *Regulation 6*

**Sen. Haji:** Madam Temporary Chairperson this is on 6(1) where it says:-

“A person may recommend a nominee for conferment of a national honour at any time, but not later than three months prior to the proposed date of conferment”.

I consider three months too long. If somebody has done something very good, it should be done immediately. Why should they wait for three months?

**The Temporary Chairperson** (Sen. Ongoro): I think the reason is because when you have proposed somebody for conferment of an award, the various State organs are

supposed to be given adequate time to investigate and to confirm that that person is actually deserving. So, I think 90 days is still okay. So, we proceed with debates on the original amendments.

**Sen. (Prof.) Lesan:** Madam Temporary Chairperson, I would like to reiterate what Sen. Haji has been talking about. It is catered for in Regulation 17 where it actually gives the discretion to the Advisory Committee to propose and recommend a citizen of another country. So, that really should take care of what Sen. Haji is proposing, but it is to the discretion of the Committee to actually suggest which of the category of honours is going to be awarded.

**The Temporary Chairperson** (Sen. Ongoro): So, you mean that the suggestion by Sen. Haji is taken care of by this Article.

**Sen. (Prof.) Lesan:** Yes, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Ongoro): While you could be correct, Sen. Haji made specific reference to a visiting Head of State or head of Government. Under those circumstances, there may not be a body with a mandate to investigate or to recommend that kind of conferment. This is a decision between two Heads of States and I think his request is in order. It is only that it was out of place, but it was valid. This takes care of it partially, but not fully. So, we will still sustain his earlier request. Are there any further contributions to the amendments?

#### *Regulation 5*

**Sen. (Prof.) Lesan:** Madam Temporary Chairperson, still on Regulation 5 which refers to recommendations to be made on medals in stock; I am looking at this recommendation as taking away the responsibility of the Advisory Committee to make recommendations openly, because if we allow the number of medals to determine the number of recipients, we are curtailed and yet we have no role in actually determining how many medals are in stock. So, I think Regulation 5 is curtailing the ability of the Advisory Committee to give as many meritorious medals as possible without resorting to numbers. This is an office matter and as many medals as is required should be provided.

So, I think Regulation 5 should be deleted. I am proposing that Regulation 5 be deleted.

#### *Regulation 4*

**The Temporary Chairperson** (Sen. Ongoro): Before we debate on that proposed amendment, I want to make a ruling on the proposal by Sen. Haji and we have found a place for it. We will put it under Regulation 4 as category (f) which will then read:-

“A visiting Head of State or Government of another country”

I think that sorts out the issue. Sen. Haji, are you in agreement that our proposal captures the spirit of your proposed amendment?

**Sen. Haji:** Yes, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Ongoro): Sen. (Prof.) Lesan was given the Floor and proposed the deletion of Regulation 5.

The Senate Majority Leader, before you proceed, I want to propose the question on that one first.

We are debating the deletion of an entire Regulation.

*(Question, that the words to be left out  
be left out, proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Regulation 5 deleted)*

Hon. Senators, I will now put the question because I do not see any further interest.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Regulations 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16  
17, 18, and 19 as amended put and agreed to)*

*(Title agreed to)*

#### *Regulation 1*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Chairperson, I beg to move:

THAT, Regulation 1 of the Regulations be amended by deleting the words “come into operation” appearing immediately after the words “and shall” and substituting therefor the words “be deemed to have come into operation”.

Madam Temporary Chairperson, Regulation 1 is very clear. The amendment is very clear that we want to delete the words come into operation appearing immediately after the words “and shall and substituting thereof the words “be deemed to have come into operation.” This is just a matter of usage of English to make the regulation more elegant.

I beg to move and request Sen. Murkomen to second.

**Sen. Murkomen:** I second.

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*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Regulation 1 as amended agreed to)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Chairperson, I beg to move that the Committee doth report to the House its consideration of the National Honours Regulations, 2013, and their approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE PUBLIC FINANCE MANAGEMENT  
(UWEZO FUND) REGULATIONS, 2013

**The Temporary Chairperson** (Sen. Ongoro): We will now proceed to the next set of amendments which are on the Public Finance Management (Uwezo Fund) Regulations, 2013.

*(Regulations 3 and 4 agreed to)*

*Regulation 5*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move:-

- THAT, Regulation 5 of the Regulations be amended in paragraph (2) by-
- (a) deleting sub-paragraph (d) and substituting therefor the following new subparagraph-
  - (d) two persons appointed by the Cabinet Secretary;
  - (b) deleting sub-paragraph (e) and substituting therefor the following new subparagraph-
  - (e) one person representing women appointed by the Cabinet Secretary;

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The effect of this amendment is to allow the Cabinet Secretary to appoint two persons and one person to represent women directly without going through what is already there. We explained this decision yesterday to Members. If we take it to the National Youth Council or the Gender and Equality Commission, it will take a long time. We thought that it would be easier that it be left the way it is.

That is the amendment and I request Members to approve it.

*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Regulation 5 as amended agreed to)*

*(Regulations 6, 7, 8, 9, 10, 11, 12 and 13 agreed to)*

#### *Regulation 14*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move:

THAT, Regulation 14 of the Regulations be amended-

(a) in sub-paragraph (c), by deleting the words “and in consultation with Constituency Uwezo Fund Management Committee” appearing immediately after the words “local offices”;

(b) in sub-paragraph (d), by deleting the words “in consultation with Constituency Uwezo Fund Management Committee” appearing immediately before the words “be responsible”;

The import of this is that there was an amendment that was proposed to the effect that the Ministry responsible for Youth shall facilitate and oversee the operations of the Board. However, this was amended to say that this would be done “with consultation with the Constituency.”

We thought that consultation with the Ministry would be onerous and we made those amendments.

*(Question of the amendment proposed)*

*(Question that the words to be left out be  
left out, put and agreed to)*

*(Regulation 14 as amended agreed to)*

*Regulation 15*

**Mr. Billow:** Madam Temporary Chairperson, I beg to move:

THAT, Regulation 15 of the Regulations be amended in paragraph (2)-

(a) by deleting the words “who shall be an *ex-officio* member” appearing immediately after the words “his representative”, in sub-paragraph (a);

(b) by inserting the following new sub-paragraphs immediately after sub-paragraph (a)-

(aa) the sub-county development officer or his representative;

(ab) a sub-county accountant responsible for national government operations within that constituency;

The reason for this is that this Fund is a national Government Fund. It is important that representation of the national Government in the Uwezo Management Committee at the Constituency level be maintained. The effect of this is to ensure that the Sub-County Commissioner, the District Development Officer and the District Accountant remain members. The reason for this is because they are signatories. So, the remaining members are members of the constituencies. The rest of the eight or nine members are the ones to be appointed by Members of the National Assembly or the Members of County Assemblies.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agree to)*

*(Regulation 15 as amended agreed to)*

*Regulation 16*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move:-

THAT, Regulation 16 be amended by deleting sub-paragraph (k).

Madam Temporary Chairperson, sub-paragraph (k) says that the functions of the constituency management committee will, among others, include responsibility for the execution of capacity building to fund recipients on table banking, business entrepreneurship, public procurement and other business development areas.

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Madam Temporary Chairperson, the Committees that looked at the Regulations are of the view that capacity building be conducted by the National Oversight Board at the national level, to allow certain standards, uniforms and contents to be applied across the country. Because of that, we are proposing that this particular sub-paragraph (k) be deleted.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Regulation 16 as amended agreed to)*

*(Regulation 17 agreed to)*

### *Regulation 18*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move:-

THAT, Regulation 18 be amended by deleting sub-paragraph (b) of paragraph (1).

Madam Temporary Chairperson, paragraph 1 says:-

“The initial capital of the fund shall be allocated as follows- b) an amount not exceeding 8 per cent shall be earmarked for capacity building of the fund beneficiary groups, which amount shall be divided equally among all constituencies.”

Madam Temporary Chairperson, the amendment here is to remove “which amount shall be divided.” This is because the capacity building will be done at the national level and in clusters of counties. So, it will not be possible to divide it equally among constituencies. That is the amendment that is being proposed.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Regulation 18 as amended agreed to)*

*(Regulations 19, 20, 21, 22 and 23 agreed to)*

*(Regulation 2 agreed to)*

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*Title*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move:-

THAT, the title to the Regulations be amended by inserting the words “and Section 205” immediately after the words “Section 24 (4) and (11).”

Madam Temporary Chairperson, Section 205 of the Public Finance Management Act is the one under which these Regulations are made and it is important that, that reference is made.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Title as amended agreed to)*

*(Regulation 1 agreed to)*

**Sen. Billow:** Madam Temporary Chairperson, I beg to move that the Committee doth report to the House its consideration of The Public Finance Management (Uwezo Fund) Regulations, 2013 and their approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORTS AND CONSIDERATION OF REPORTS**

### **THE NATIONAL HONOURS REGULATIONS, 2013**

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole has considered The National Honours Regulations, 2013 and approved the same with amendments.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

**Sen. (Eng.) Muriuki** seconded.

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*(Question proposed)*

**Sen. Billow:** Mr. Deputy Speaker, Sir, we made some very important amendments to those Regulations, and their effect, if they are implemented, will actually be felt by all Members of this House, among others. So, I would urge that once passage is concluded, that they are implemented.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! Seeing that there is no debate and swing, I will put the question.

*(Question put and agreed to)*

Madam Chairperson? We are now in the Public Finance Management (Uwezo Fund). You can, please, report.

THE PUBLIC FINANCE MANAGEMENT  
(UWEZO FUND) REGULATIONS, 2013

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole has considered The Public Finance Management (Uwezo Fund) Regulations, 2013, and approved the same with amendments.

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

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I beg to move that the House doth agree with the Committee in the said Report.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is somebody seconding you?

**Sen. Billow:** Yes, Sen. Murkomen.

**Sen. Murkomen** Seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Next Order, Sen. Obure.

**MOTIONS**

EXTENSION OF TERM OF *AD HOC* COMMITTEE ON  
PUBLIC COMPENSATION CLAIMS BUREAU

**Sen. Obure:** Thank you, “Mr. Chairman”, Sir. I beg to move---

**The Deputy Speaker** (Sen. Kembi-Gitura): I think for the HANSARD purposes, it is good to record that it is the “Speaker” and not the “Chairman.” You had used the

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word “Chairman,” but it is the “Speaker.” We are out of the Committee of the Whole now.

**Sen. Obure:** Thank you, Mr. Deputy Speaker, Sir. I beg your pardon.

Mr. Deputy Speaker, Sir, I beg to move:

THAT, in view of the various constraints the *ad hoc* Committee on Public Compensation Claims Bureau, constituted on 9th July 2013, has experienced in carrying out its mandate in accordance with its terms of reference within the stipulated time frame approved by the Senate of three months; appreciating the Senate in establishing the Committee; recognizing the determination of the Committee to have a comprehensive report and legislative proposal for the enactment of a Bill to establish a one stop Public Compensation Claims Bureau in all counties to process outstanding claims and ensure claimants are paid within three months of retiring; this Senate do grant leave to extend the term of the *ad hoc* Committee for three more months to enable the Committee accomplish its mandate.

Mr. Chairman, Sir, you will realize---

I am sorry; Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is okay; proceed. I have given up on you!

(Laughter)

**Sen. Obure:** Mr. Deputy Speaker, Sir, you will recall that this Committee was appointed on 9<sup>th</sup> of July, 2013, to look at ways of proposing a Bill to establish a one-stop public compensation bureau in each county to facilitate payment of claims by citizens against various organizations and institutions.

Mr. Deputy Speaker, Sir, the Committee has embarked on its work in earnest and it has made considerable achievements. However, there are challenges; one of the challenges we have had to face is the conflicting schedules with other Committees of the Senate to the extent that our sittings have been adversely affected and we have lost some time because of that. There has also been the need to examine previous legislation, together with existing legislation, which might be relevant to our work. This process takes a lot of time. We are also awaiting the participation of the Office of the Commission on Administrative Justice to ensure that all stakeholders are involved in the preparation of this Draft Bill.

Mr. Deputy Speaker, Sir, in light of all that and taking into consideration the need to involve other stakeholders, including the counties, the essence of this Motion is really to request for a further three months to enable this Committee to accomplish its mandate. I appeal to colleague Senators, in considering this Motion, to be understanding and to grant the time requested.

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Mr. Deputy Speaker, Sir, I beg to move and request the Senate Majority Leader to second.

**The Senate Leader of Majority** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I second the Motion by Sen. Chris Obure. The reasons that have been given are valid. There is need for public participation and involvement of more stakeholders. Finally, I think we should encourage in this House more of quality and not quantity. It is not about how many reports or how fast you do a job, but how well a job is done.

For those reasons, Mr. Deputy Speaker, Sir, I beg to second this Motion.

Thank you.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is a Motion for the extension of time, so I will rule that, under Standing Order No.69, it is not strictly speaking a matter affecting counties and, therefore, we are going to vote as provided for in Standing Order No.69. So, I will now put the question.

*(Question put and agreed to)*

Next Order, Sen. (Prof.) Kindiki.

DEVELOPMENT OF OFFICES AND DEBATING  
CHAMBERS FOR TANA RIVER, NYANDARUA  
AND THARAKA-NITHI COUNTIES

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, aware that pursuant to Article 6 (2) of the Constitution, the Governments at the National and County levels are distinct and inter-dependent; also aware that one of the key objects of devolution pursuant to Article 174 is to facilitate the decentralization of state organs, their functions and services, from the capital of Kenya; noting with concern that three counties namely; Tana River, Nyandarua and Tharaka-Nithi, have no appropriate offices or debating chambers for the County Executives and County Assemblies, respectively, as they lack buildings and other infrastructure as their headquarters are located away from major urban centres, impeding the performance of their constitutional and statutory functions and negating the purposes and principles of devolution; the Senate calls on the national Government, in line with section 15 (2) of the

Sixth Schedule of the Constitution, to take immediate measures to develop office facilities and debating chambers for the three counties.

Mr. Deputy Speaker, Sir, just before the general elections, during the time that Sen. Chris Obure was the Minister for Public Works and Sen. (Prof.) Lonyangapuo was the Permanent Secretary for Public Works – and I am happy that the two are today Members of this House – they initiated an assessment where they realized that a number of counties did not have adequate facilities in terms of giving counties an opportunity to start off their functions. Among these, they identified three counties which had no facilities at all on the basis of where their headquarters – which were decided through a public participation process – were located.

One of those counties is Nyandarua; another county is Tana River and the other county is Tharaka-Nithi. In fact, the Tharaka-Nithi case was even highlighted in newspapers a few months after we were elected into office this year, where it was reported – and it is true – that the county assembly was conducting its activities under a tent, which was donated by the Senator for Tharaka Nithi. The situation in the three counties is so grave that Tana River, Nyandarua and Tharaka Nithi would require the national Government to give them a bit of support so that they can have basic facilities to allow the Governor and the county executive to have some offices, as well as the county assembly, to shield them from the elements of the weather.

Mr. Deputy Speaker, Sir, I am giving this background so as to answer the question “why the three counties?” But on a general perspective of this matter, I think going forward as this House, when we are doing the horizontal allocation of national revenue, the infrastructural capacities of each and every county should always be considered before we determine how much counties get. Because the physical infrastructure, as been the case in several instances now, depends on the needs of counties. So, these three counties – it is in the public knowledge – are counties that require the input of the national Government so that they can have the basic infrastructure, for example, a debating chamber for the county assembly, an office for the Governor and members of the executive committee so that they can at least start off on the same level as other counties in the Republic.

Mr. Temporary Speaker, Sir, I just want to say that the language used in this Motion is straight forward. First of all, the constitutional basis has been established and it is also there in the Sixth Schedule, Section 15 (2), but more importantly, it is also in Article 174 of the Constitution that says that some of the reasons for devolution is to make sure that people access services. Now, one may ask, how come the choice of places for these headquarters is such that there were no facilities at all? It is for the same reasons that are stated in Article 174.

For example, in Tharaka-Nithi County, there were one or two urban centres which could have been considered to be headquarters but they were on the periphery. A good example is Chuka Town which is nearly 198 kilometres from some of the villages on the other parts of Tharaka-Nithi County. The means of transport and the roads there are not

proper. People use bicycles and other very unreliable public means. So, it was deemed that if you put the headquarters and the Governor and the county assembly at Chuka Town, many residents in that county will never access the services of their county government. So, it was agreed to have a place which is neutral so that people can access services. The downside of this is that some of these places did not have adequate facilities or no facilities at all.

Without belabouring this matter because I think some of these things are in the public knowledge, I beg to move this Motion and request my colleague Senators to support this Motion and I would ask one of the affected counties whose Senator is here to second this Motion and that is Sen. (Eng) Muriuki, the Senator for Nyandarua County.

Thank you.

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

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

**Sen. (Eng.) Muriuki:** Mr. Temporary Speaker, Sir, I stand to second this Motion. As we all know, the Constitution came with quite a big overhaul of the way we knew things before and among them the creation of devolved governments in the name of the 47 counties. In their wisdom, the Committee of Experts in establishing the boundaries of the 47 counties followed the boundaries of the districts as they were in 1991. In their wisdom, Kenyans also accepted that position. After that, the position is that the counties which were districts by then had their normal establishment. They had the Provincial Administration, the Municipal Council and the County Councils. When the county government system came in, they inherited those facilities all except three counties as the Mover has said.

In the case of Nyandarua, the situation was as follows: The then district of Nyandarua had always had its headquarters at a place called Ol Kalou in name. There are no buildings there. It is just an empty ground to be built later on. When it came to the time of building the district headquarters sometimes in the 1960s, somehow the people who were in the Government went and built it in a town which was by then in Laikipia District but at the border between Nyandarua and Laikipia District, but on the side of Laikipia. All the facilities like the offices of the Provincial Administration, the hospital, the court and all the Ministry offices were put up in Nyahururu Town and all the time it was outside the Nyandarua District and, therefore, we inherited a situation where the town where we used to go and see the District Commissioner is now in another county. That means that we must build our headquarters at Ol Kalou Town from scratch. There are no Government offices there and the town does not have piped water and a sewerage system.

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Mr. Temporary Speaker, Sir, through this Motion, we are requesting that those counties which found themselves in a predicament like ours, each of them with a different story, they should be supported. You will recall that when the Division of Revenue Bill came into this House after it had been considered by the National Assembly, certain amendments were proposed by the Senate, among them that counties which could not manage the money allocated to them be given some extra consideration. Those of us who come from disadvantaged counties like Nyandarua also put in a case that if you only facilitate the ones which have a shortfall of money to run facilities which are already there, we will continue being in a situation where we shall never catch up. The formula which the Senate came up with, although the other House had difficulties with it, was such that some of these counties like Nyandarua, going by the formula which was given by the Senate, would have got an extra Kshs793 million which would have been a good start to build our offices for the headquarters and so on. At the moment, our Governor sits in some office above a shop and the county assembly sits in a church hall, courtesy of the Presbyterian Church of East Africa (PCEA). This kind of situation is completely unacceptable under the current circumstances.

When you have a nice home and so on, it is very difficult for you to understand that there are some people who are being rained on because they have no home. It is by the same token that I would like to urge the Senators to support those of us who have no houses and are being rained on. Some of you have very good infrastructure in your counties, but for us, we are begging for your support.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Is the Senator in order to suggest that just because we may have county headquarters existing in our counties, we are incapable of understanding the predicament that the three counties are undergoing and yet he expects that immediately he has seconded, we will contribute and support this Motion?

**Sen. (Eng.) Muriuki:** Mr. Temporary Speaker, Sir, maybe the Senator did not get me well. I am saying that the counties that have good facilities inherited from municipal or county councils found it easy going. So, it is not very easy for them to know that ours are out in the rain.

Last but not least, I would like to urge the House to support this Motion because a certain amount of discussion has been going on, where the Executive would consider - if there was a resolution of the Senate - within the Supplementary Budget to at least start us off. Without the resolution of the House, we do not know what will happen and we may continue in that predicament.

With these few remarks, I beg to second.

*(Question proposed)*

**Sen. Obure:** Thank you, Mr. Temporary Speaker, Sir. The essence of devolution is to improve service delivery to citizens. In so doing, it is hoped that the citizens will

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improve the quality of their lives. In the case of Nyandarua, Tharaka Nithi and Tana River counties, the citizens are clearly worse off today than they were at that time before devolution because they cannot access services. In fact, I cannot imagine what is happening in those counties. Where is the Governor working from?

As you know, I served as a Minister for Public Works in the previous constitutional dispensation. As the Senate Majority Leader says, I served there with the Senator for West Pokot, Sen. (Prof.) Lonyangapuo, who was then the Permanent Secretary and clearly, we foresaw this situation. In our view at the time, we wanted all the counties to start at the same level. After carrying out an assessment around the country, we found that there are counties which did not have these facilities and, therefore, they would not start at the same level as others and this would be a handicap to them which would take many years to overcome.

At that time, we took an initiative in a bid to be proactive. We negotiated with the Treasury and at that time His Excellency President Uhuru Kenyatta was the Finance Minister and he was very understanding. I recall that he helped us to identify funds particularly for Tharaka Nithi, Nyandarua, Lamu and Turkana which were not very well established. The funds were identified and we took steps to proceed with the construction of those facilities. We intended to construct the county assembly, executive offices for the county government as well as a House for the Governor. All this was agreed on, but unfortunately there was opposition from certain quarters who felt that we at the Ministry were trying to create an avenue to “eat”. That is in the Kenyan language. As a result, the project received a lot of opposition and was abandoned. However, it is regrettable that what we saw and what we are trying to avoid is what the citizens of this county are experiencing. This Motion should have been unnecessary had we done the right thing at the right time.

I, therefore, want to say that this is something that deserves to be handled with urgency. Tana River, Tharaka-Nithi and Nyandarua counties have Kenyan citizens who deserve to be assisted so that they are on the same level with other Kenyans. These funds should be identified on an emergency basis, perhaps, in the forthcoming supplementary budget. These facilities should be constructed at appropriate places, centrally, so that people in those counties can access services like other Kenyans.

I support this urgent Motion.

**Sen. Wamatangi:** Thank you, Mr. Temporary Speaker, Sir. I stand to support this Motion by the Senator for Tharaka-Nithi. I empathise with the situation in Tharaka-Nithi.

This House, the Senate, was created by the Constitution as an egalitarian House purposely and expressly to address the gap between the haves and the have-nots. This is needed today in matters of marginalization and to ensure that as we continue evolving and implementing the Constitution, that gap is continuously narrowed.

This House has not only debated but passed several Motions concerning the welfare and state of Members of County Assemblies and County Assemblies. I remember that recently this House passed a Motion urging the Government to install fibre optic

cables to county assemblies and other enhanced facilities. Think about the reality between the two situations, one; a group of MCAs debating and discussing issues affecting people of a county under a tree while others are agitating for modern facilities like the installation of Information Communication Technology (ICT) facilities. This House needs to rise to the occasion and act as per the Constitution.

As I support this Motion by the Senate Majority Leader, I want to pose a question. We should ask ourselves, for example, when the budgets were being looked at and when the County Assemblies brought in their budgets, was there a possibility that the three counties – as they did their budgets – probably set aside Kshs100 million for a Governor's office or other misplaced priorities? This will be noteworthy for us, as a House, so that this message spreads across. Priorities should be put right.

**Sen. (Eng.) Karue:** On a point of information, Mr. Temporary Speaker, Sir. I wish to inform the Senator for Kiambu that, in fact, in the case of Nyandarua, a serious attempt was made to include the aspect of the development of offices in Ol Kalau. However, the true position is that the Committee on Revenue Allocation (CRA) had already come up with a proposed formula on allocation of funds.

The same goes for the National Assembly which was sitting on behalf of the Senate because there was no Senate at that time. So, the amount that was going out is what was being assessed, both previously by the ones who worked on the MCA and the Transition Authority (TA) on the running of county governments, equally across the board. So, there is no extra money that was available except if you ate into your own salaries or other operational funds for the headquarters.

**Sen. Wamatangi:** The information is well accepted and acknowledged.

The reason I raised this issue is because I fully understand where the Senators for Tharaka-Nithi and Nyandarua are coming from. Senators do not sit in the boards that approve budgets at the county level. When the Senators come here and agitate for the shortcomings of the County Assemblies, it is important that those people who are mandated at the county level resonate with the same facts, feelings and understanding such that as we do what we have to do as Senators, we are reading from the same page.

As they come up with their priorities, we should support this Motion. This Motion will be acted upon. When structures are put in place in those three counties, we want to see a situation where the county governments of those counties take it up from there, enhance facilities and know that this is in the interest of the people of those counties for them to act accordingly and ensure that it is top priority to make sure that those facilities are in place and enhanced.

Needless to emphasize is the fact that County Assemblies in the entire country, save for a few like Nairobi and others, are in dire need of enhancement. I have been part of committees that have gone around in County Assemblies. There are very few that you can say are up to date. I also know and note that including ourselves, Senators, have been sitting in this makeshift Chamber. Thank God that from tomorrow, we will be sitting in our new Chamber. I want to raise the flag so that as we support the Motion, the County

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Governments become fully aware that they also have a role to play in seeing that this is carried and is realized.

With those few words, I support.

**Sen. Sang:** Thank you Mr. Temporary Speaker, Sir. I stand to support this Motion and to empathise with my colleagues, the Senate Majority Leader, Prof. Kithure Kindiki, Eng. Karue and Sen. Bule, for the challenges that their counties have gone through. They have had to survive in makeshift arrangements up to this point.

I think it is important, in this House, that we agree that we need a level playing field. We need to give the three counties more consideration in terms of providing them with these facilities so that they have a starting point. I want to note that besides the three counties that were singled out, all the other counties have challenges in terms of operating space. I think it is important, in terms of the evaluation and assessment of assets that is going on in the counties that this exercise is done with a view to ensuring that more space is provided to county governments.

I will single out my county, for example, where the county government operates from the offices of the District Commissioner. The County Government was given one floor of the entire three floors while the Provincial Administration still enjoys almost three quarters of the space. It is important that we have a needs assessment so that we give the Provincial Administration and the national Government coordination units at the county level the space they need but also look at the needs of county governments so that our counties can run and discharge services to *wananchi* as it was intended.

It may be important to request that county governments should have more innovative ways of utilizing space so that we do not necessarily have all the offices of the county governments in one town. What would be difficult in having an executive member of a particular docket reside in one town within the county but have other offices across the county so that we do not create another Nairobi within our counties? One challenge we have seen in this town, with regard to congestion, especially within Nairobi City is that all the Government Ministry headquarters lie here. We should not encourage this trend at the county level. We should ensure that the County Governor and the MCAs sit in one location. However, the various dockets and Ministries should be spread around the counties. That would go a long way in ensuring that services are taken much closer to *wananchi*.

I read in today's paper that one of the counties, Machakos County, has taken that direction. The County Executive Member in charge of Health is operating within the District Health facility within the county. That direction is encouraging so that we have offices and officers working where they are needed. In my county, we have three major centres. If we can agree that in Nandi Town, that is where our County Executive in charge of Tourism will be based and the County Executive Member in charge of Agriculture in Mosoriot, that would spread services across. We should not strain the little available space and resources at the county headquarters because everyone wants to be there.

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It is important that we look at the component of ensuring that services are taken closer to *wananchi*. Whereas devolution was intended to achieve that, it is important for county governments to consider better and innovative ways of taking services closer to our villages in the counties. When we are finally done with the assessment of assets and liabilities, let us also look at, for instance, how the services by the Ministry of Transport and Infrastructure are already devolved.

Why should the national Government continue to retain the Public Works offices in our constituencies? If, agricultural services have been devolved, the operating space for the Ministry of Agriculture should be handed over to the county governments so that the existing facilities are available to the county governments to discharge their responsibilities. However, in such isolated cases, it is important, as a House, that we express our voices in ensuring that the national Government provides resources to see that these three counties are brought to the same level we are all operating from.

With those few remarks, I support.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, this Motion is straightforward and I do not think that we need to spend a lot of time just talking about the same thing. It is likely that we will be accused of being repetitive in a small matter like this.

Mr. Temporary Speaker, Sir, but before the closure of the debate, I would like to say the following: This is not a very new matter, because provincial boundaries were created in 1962 and in any adjustment or management review, we must have some casualties. That is why we have this problem of Nyandarua, Tharaka-Nithi, Lamu, Tana River and many other places which have not been mentioned here. If a survey was conducted to find out whether all the county governments are happy with their headquarters, you will find that nearly every county government has a problem. Therefore, this problem cannot just be ended by this Motion alone.

Mr. Temporary Speaker, Sir, this Motion is asking for specific areas. Nyandarua, Tana River, Tharaka-Nithi and many other counties have problems. I support the case of Nyandarua very strongly because the Mover is not advocating for a change of the provincial boundaries, but to develop the area where he belongs, which I think is very wise. This is because if all the development is taken back to Ol Kalou, it would mean development for the good of the people of Nyandarua, Nakuru and part of Kiambu. So, it is very important that we try as much as possible to request and influence the system to give Ol Kalou, Tharaka-Nithi and Tana River some money with immediate effect, because it does not require a lot of money.

In fact, following what Sen. Obure was saying, the money was found and it was ready to be given, but because of suspicion--- In this county, when you want to start anything, people start suspecting what you are likely to get out of it, as if nothing shall ever be done in this country without “a cut”. In fact, Rumuruti Town was also in the list and we were going to be given money to develop it so that it would be the headquarters of the county government. But because of this usual character of Kenyans, that matter was left out.

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Mr. Temporary Speaker, Sir, this Motion should not stop here. We will pass a resolution, but if there was anyone here who is speaking for the Government, he should take this matter forward and try and investigate whether the county governments are really well placed. This will be very important.

Mr. Temporary Speaker, Sir, I do not want to explain so much about all other factors, because nobody had planned to marginalize Ol Kalou, Tharaka-Nithi or Tana River. It just happened because of political adjustments which have taken place. With adjustments, things must change in one way or another.

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

**The Temporary Speaker** (Sen. Murkomen): Sen. G.G. Kariuki.

Sorry, Sen. G.G. Kariuki, you have been sitting so close to the Chair most of the time that we confuse you with Sen. Kivuti

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, Sen. G.G. Kariuki is my elder statesman and does not resemble Sen. Lenny Kivuti.

**The Temporary Speaker** (Sen. Murkomen): Sen. Lenny Kivuti, I think being compared to or mistaken for Sen. G.G. Kariuki is an honour.

*(Laughter)*

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I stand guided.

Mr. Temporary Speaker, Sir, I stand here to support the Motion. Embu County is a neighbour of Tharaka-Nithi County. Actually the headquarters of Tharaka-Nithi County is very close to where I live. I am so surprised that at this time, when we are thinking of such important things such as LAPSET and big things, Tharaka-Nithi County headquarters is actually in tents. Those tents are not electrified and do not have water. They have been operating in those tents for several months now. Although we may compare apples with grapes, I do not think that the equations are the same.

Mr. Temporary Speaker, Sir, I had occasion to work in Tana River. If Tana River and Tharaka-Nithi counties do not have offices and Embu County has offices, then we are not observing Article 56 (e) of the Constitution, where we should not marginalize any society, community or group in Kenya.

Mr. Temporary Speaker, Sir, since a lot has been said about this Motion, we need to take some actions, and I have some ideas of what actions we need to take. For example, we have the Equalization Fund in the Budget. It is unfortunate that the Supplementary Budget has already been concluded, but I would have suggested that these three headquarters be put in the Supplementary Estimates. But if that is now past---

**Hon. Senators:** *Bado!*

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, if the Supplementary Budget is not yet passed, I propose that we push for the Motion of having what we can call seed finance into the Supplementary Budget within this financial year. Even if they do not build storied buildings, they should be able to build habitable permanent buildings which can

be used even for other departments, once money is made available to build bigger infrastructure.

Mr. Temporary Speaker, Sir, I know of Tana River County and Tharaka-Nithi county headquarters which is next to me. They need not only just the building or office, but also piped water. I do not know if this was added. So, offices do not just go alone, but with other infrastructure, including water, sanitation, electricity, and so on. This is not a gift. We are not favouring Tharaka-Nithi because the Senate Majority Leader comes from there, but taking facts as they are in the face of Kenya.

Mr. Temporary Speaker, Sir, I am very happy that Sen. Sang is here and his Bill went through last week. When Senators become the Chairs of the development committees, in the next Budget, we should make sure that disparities, like the head offices are given priority. I do not think that anybody in that development committee will say no. We shall support, as the Senate, the directions and decisions of the development committees from the counties, because those committees will have the support right from the grassroots, that is, ward level, constituency level and county level.

Mr. Temporary Speaker, Sir, I do not want to put a lot of emphasis into what has already been said on this Motion, which we must resolve and push it to be part of the considerations for the budgetary provisions. I am very happy that the resolution by the Supreme Court put us in a good position to be taking matters of Budget a notch higher.

Mr. Temporary Speaker, Sir, there are many problems that have been pointed out, that face devolution and counties. For example, some of the offices of the departments which have been devolved do not have electricity, stationery and other facilities. The problems which are facing the devolution process are not only the infrastructural issues, but also management issues. All leaders need to get involved in these management issues, but for today, I would like to see Tharaka-Nithi, Tana River and Nyandarua getting offices before Easter next year.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to support.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. I rise to also support this Motion by the Senate Majority Leader, Sen. (Prof.) Kindiki. Coincidentally, Tharaka-Nithi County happens to be where he comes from.

Mr. Temporary Speaker, Sir, as has been described here, there are three peculiar counties that have no county assemblies at all. I was the Permanent Secretary then and can confirm this. As earlier mentioned by Sen. Obure, who was the Minister for Public Works, we did read the Constitution immediately it was promulgated on 27<sup>th</sup> August, 2010, at exactly 10.27 a.m. We read Section 15(2) of the Sixth Schedule of the Constitution, which declares that we need to have places where the 47 county assemblies will sit. We sent our officers to go round the entire country and look at the facilities that were available. We shared with the President who directed that we sit down with the Minister for Finance at that time, Hon. Uhuru Kenyatta, who happens now to be our President and he listened to the whole team. We took photographs of the whole buildings that were supposed to be used by officers. It was so interesting to know that there are

some places like Tana River where people were going to sit in makeshift structures and transact business. So, we categorized them into three.

Mr. Temporary Speaker, Sir, the first category was the ones with nothing and there are three of them. The second category has 17 such counties with facilities that do not resemble anything. The third category was made up of improved municipal offices, but also did not look like assemblies. What we had in mind was to build county assemblies that were a replica across the country so that when the Head of State moves from Nairobi, he would see tiny replicas of county assemblies which would give meaning to devolution. So, when we came up with this idea, we were even given money to go and do benchmarking in South Africa, India and Canada.

We were allocated money but the moment we called all the 300 consultants for a conference for one week, the Commission on the Implementation of the Constitution (CIC) came from nowhere with some rules that there must first exist a Governor and then a county assembly follows. I think we are very clear that county assemblies are not related to the Governors. The Governor is executive and the county assemblies are the legislature headed by a Speaker. So, when the people we had entrusted with this came up with very loud noise, we tried to explain to them what we were doing but we could not manage to convince them.

The Ministry of Local Government was of the view that the Ministry of Public Works had taken their work and that is how the whole drama went to the extent that we took out two pages of daily newspapers to explain that we intended to do this in good faith. We thought we could save the situation. I am surprised that today, three years later, we are talking about the problem of Tana River which we had considered at that time and the estimates had been done. We had designs of a brilliant county assembly which was to cost Kshs100 million. Four of them would cost Kshs400 million, but now I think the cost is higher, three years later.

Mr. Temporary Speaker, Sir, I support this Motion, but later on, we will need to modify even the Kiambu County Assembly to look like a serious legislative House. West Pokot County which has something resembling a meeting place also needs to be redone. It falls under category two which includes Lamu, Kwale, Garissa, Bomet, West Pokot and Elgeyo-Marakwet. The Elgeyo-Marakwet County Assembly is very peculiar because they are meeting in a very old *mzungu* house which used to be the District Commissioner's (DC) office in 1940. It is made of bricks without cement. So, you can imagine how it looks like. There is also Kajiado, Isiolo, Samburu, Wajir, Marsabit, Turkana, Mandera, Kitui, Nyamira, Migori and Vihiga counties. There are a total of 20 counties which need to be urgently considered. Laikipia County Assembly falls in the category that should be improved. They wanted to move to a place called Mutara which has nothing on site. We advised them that since they have a choice between Nyahururu and Nanyuki where they currently are, they at least have a luxury to sit there for a few more years.

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You can see the problems that are erupting right now. The Senate Majority Leader has pointed out something that is very key, and I hope that during the Supplementary Estimates, the Government factors in these funds and then in February when this House resumes, we have to look at the other details and the money which is required by the Nakuru County Assembly so that they can also meet in a good assembly. At the moment, they are currently meeting in the former county council hall except that we now have new people in the building. So, we wanted to make it look better.

Sometimes too much interference by Government Ministries can lead to stress. Suppose we had allowed the Minister with his team to proceed, we would have gone very far, but we wasted Kshs150 million going round to collect all these data instead of putting it on paper. I had sent for the drawings but now it is too late. I wanted to show you how beautiful they are because the Ministry of Public Works had now to put them in the shelves.

Mr. Temporary Speaker, Sir, Kenyans should be very keen. When an idea is brought, we should not always read bad motives in it. We always think of corruption in every little thing that we want to do. Sometimes we must allay these fears and start to implement some of these things. Some of the ideas that Kenyans have come up with do not come to pass because of our general fears and competition amongst us. I think it is time we shelved our ambitions so that ideas like this one can come to pass. If this is done, it should be the first place where the Senate should go and visit. The Senate can even have an inaugural visit to go and do business in one of the county assemblies and maybe these new ones that will be done.

I can attest to the fact that Nyandarua County has nothing in place. I want to thank the Mover of the Motion and congratulate him and tell him that we need more of such areas. Some of the Governors do not have offices and we are hoping that they can factor this in their budgets.

I support.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Deputy Speaker, Sir, I would like to profusely thank my colleagues who have supported this Motion. I feel privileged that this matter has been given the perspective that it required because earlier on when I came to move this Motion, I was feeling a bit hesitant because I am the Senator for Tharaka-Nithi and also the Senate Majority Leader. I thought that perhaps this should be seen as a national issue rather than a parochial issue because I come from Tharaka-Nithi. I want to agree and support what Sen. (Prof.) Lonyangapuo has said that going forward, this should be the business of the Senate to try and improve facilities and infrastructure and support counties as a continuous process, depending on what our audits bring on board.

I also want to support Sen. Obure. The two gentlemen were Minister and the Permanent Secretary and they did a good job for this country. It is very sad that some shortsighted person scuttled a process that would have saved this Senate the one hour that has been spent this afternoon trying to correct what should have been corrected much

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earlier through the foresight of two great Kenyans; Sen. Obure and Sen. (Prof.) Lonyangapuo of West Pokot. I want to thank each one of them and also Sen. Wamatangi and Sen. Kivuti, my neighbour. I think they were doing their job as national leaders. I also want to thank Sen. Sang, Sen. G.G. Kariuki and Sen. (Eng.) Muriuki.

With those remarks, I beg to reply.

**The Temporary Speaker** (Sen. Murkomen): Order, hon. Senators---

**The Senate Majority Leader** (Sen. (Prof) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I am not trying to pre-empt your determination on whether this Motion relates to counties or not. However, in my plain reading, I do not know whether I should proceed with this point of order.

The information I want to give is that, considering that this Motion touches on counties, I rise on Standing Order No.51(3) to request that you defer the putting of the Question to tomorrow at a time that you will determine so that we have a quorum for the purpose of voting.

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, the Senate Majority Leader is right. This is a Motion that affects counties. Whether you read it literally or deeply, you will see that it affects counties. For that reason, I have granted the request made by Sen.(Prof.) Kindiki that the putting of the question be deferred. The putting of the question is, therefore, deferred to tomorrow at 3.30 pm. That is the designated time as required by Standing Order No.51(3).

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

### COMMUNICATION FROM THE CHAIR

#### RELOCATION OF THE SENATE PLENARY SITTINGS FROM THE KICC TO COUNTY HALL

Hon. Senators, as you may be aware, the Senate will hold its sitting for tomorrow, Thursday, 5<sup>th</sup> December, 2013 in the County Hall Chamber, Parliament Buildings. I would like to remind Senators that there will be a rehearsal at 11.00 am at the County Hall.

I am reliably informed that the Chamber is more digitized than this one. Therefore, so as to avoid awkward situations, it is important that we be there for the rehearsals and briefs. Tomorrow, make your way to the County Hall and thereafter, we will have our sitting at 2.30 pm.

## MOTIONS

### COUNTRYWIDE CIVIC EDUCATION ON NEW DEVOLVED SYSTEM

THAT, noting that the Constitution of Kenya, 2010 fundamentally changed the architecture of Government in the country; aware that many people in Kenya including elected leaders are not conversant with the new structure and especially the devolved system, the Senate urges the national Executive to undertake comprehensive, well structured and systematic civic education countrywide on the new system so that the Kenyan people can understand and positively participate in its implementation. I know that you are used to this at the closure of the year.

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, this Motion is deferred because the Mover is not around. He requested that we defer it to another day.

*(Motion deferred)*

Let us move to the next order.

### IMPLEMENTATION OF THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT, 2011

THAT, noting that Article 25 of the Constitution recognizes freedom from torture and cruel, inhuman or degrading treatment or punishment as a fundamental right that may not be limited; also aware that Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected; further aware that the Prohibition of Female Genital Mutilation Act, 2011 was aimed at prohibiting the practice of female genital mutilation to, among others, safeguard against violation of a person's mental or physical integrity; concerned that the Act has not been fully operationalized; the Senate calls on the National Executive to take immediate measures to fully implement the Prohibition of Female Genital Mutilation Act, 2011, especially the creation and funding of the Anti-Female Genital Mutilation Board to lead and co-ordinate efforts against rights abuses particularly of children.

**The Temporary Speaker** (Sen. Murkomen): The same applies to this order.

*(Motion deferred)*



**ADJOURNMENT**

**The Temporary Speaker** (Sen. Murkomen): Hon. Members, there being no other business, the Senate stands adjourned until tomorrow, Thursday, 5<sup>th</sup> December, 2013 at 2.30 p.m., at the County Hall Chamber, Parliament Buildings.

The Senate rose at 6.00 p.m.