

THE SENATE



COMMUNICATIONS AND RULINGS FROM THE CHAIR - 2013

Thursday, 28th March, 2013

COMMUNICATIONS FROM THE CHAIR

SUBMISSION OF THE SPEAKER TO THE WILL OF THE HOUSE

The Speaker (Hon. Ethuro): Hon. Senators, I feel greatly honoured and highly privileged today to have been elected to this esteemed position of the Speaker of the Senate. I am humbled by the immense confidence and the trust that you have demonstrated and bestowed on me. I also wish to salute and to thank my able opponents for upholding a high degree of democracy.

Allow me, hon. Senators, from the very beginning to convey my sincere congratulations to the entire membership of this House for your successful election. I also want to salute you, my Senators, for giving me this onerous mandate of the Office of the Speaker and for entrusting me with this task and noble duty to serve you.

As you assemble here this morning, it is important to visualize the re-establishment of the Senate with a sense of history. The first Senate existed in the immediate post-independence period from 1963 until 1966 when the Provincial Assemblies were scrapped and the Senate itself got dissolved. The Members of the Senate then were combined with those of the House of Representatives into a unicameral National Assembly. The independence Senate was conceived as a model of governance that would ensure balanced, equitable and just development within the various regions of Kenya.

Hon. Senators, today we have the greatest honour to have with us Members of the first Senate of the Republic of Kenya. May I take this singular privilege and honour to recognize these pioneer citizens and I would like to recognize them by name. We have the hon. Sen. Henry Malingi from Kilifi, Hon. Sen. Omar Abdi Adulahi from Wajir, Hon. Sen. Philip Toikam Lemein from Narok, Hon. Sen. Mohammed Noor Hussein from Mandera, Hon. Sen. Mohammed A. Msalaam from Lamu, the Hon. Sen. Nathan W. Munoko from Bungoma, Hon. Sen. P. N. Munyasya from Kitui, Hon. Sen. Julius Muthamia from Meru, Hon. Sen. J. M. Nthula from

Machakos. Hon. Sen. William Rotich from Baringo, Hon. Sen. G.N. Kalya from Nandi, Hon. Sen. Ondiek Chillo from Central Nyanza, Hon. Sen. Lawi Nkubitu from Isiolo, Hon. Sen. Shadrack Nyaga from Embu and the Hon. Sen. Philip Chemjor from Elgeyo Marakwet.

Hon. Senators, we wish to pay great tribute to these gentlemen and to accord them our sincere gratitude as great sons of Kenya for their patriotism and foresight. For those present here who have spared their time to grace this occasion we commend them for heeding our call to grace this historic occasion of another Senate. We wish them great health and long life. We will always look upon you for inspiration, guidance and encouragement to actualize the long held dream of devolution. We also want to promise you that this time round, we will get it right.

Hon. Senators, as I take the mantle of leadership of the Senate, I am not under any illusion. The task and responsibilities ahead of me and the other leadership that will be elected to various offices are enormous and challenging. The task before us will require exceptional commitment, focus and harmony and the unity of purpose in the performance of our constitutional mandate. Given the high expectations that the Kenyan people have in the devolved system of governance, there is little or no option for us but really to succeed. Devolution is envisioned to be the onerous challenge to take power and resources to the people.

The primary mandate of the Senate as per Article 96 of the Constitution will be to represent the counties and serve and protect the interests of the counties and their governments. The Senate has therefore the constitutional mandate to ensure successful implementation of the devolution process. The Constitution also provides that the Senate will participate in law making by considering, debating and approving Bills concerning our counties. Further, the Senate has the mandate to determine the allocation of revenue among counties as provided for in Article 217 and to exercise due oversight over the national revenue allocated to county governments. In addition, the Senate will participate in the oversight of State officers by considering and determining any resolution to remove the President and the Deputy President from office in accordance with Article 145. Hon. Senators, you will therefore appreciate that for us to be able to execute the mandate that the Constitution has given to the Senate, it is important that we conduct our business in this House in a serious manner that will unlock the massive potential of Kenyans and harness it with the various counties for the well being and welfare of the people of Kenya, for faster growth, more equitable development and of the less developed and marginalized counties of the Republic of Kenya.

We invite, therefore, the people of Kenya, all our friends and development partners to work closely with and to support the work of our nascent Senate. I want to assure them that they will find a worthy partner in the Senate leadership and Secretariat.

We are cognizant of the need to develop and nurture strong collaboration with our Government and friends of Parliament in the effort to promote development in our counties in particular and Kenya as a whole. Hon. Senators, you may also wish to recall that the Kenyan Vision 2030 which is the country's development blueprint aims at transforming Kenya into a new industrializing middle income country providing high quality of life.

We have an obligation as an institution and a duty to ensure that we make a contribution to this particular vision, especially in realizing the potential to promote growth and development at the grassroots levels and to stir rural economies.

The key challenges of development in Kenya remain poverty, unemployment and inequality. Highly developed countries like the United States of America (USA), Japan and China have been able to surmount these challenges by attaining the current levels of development mainly because they have given special attention to empowering their local entities

to have increased both quality and volumes of trade especially international exports. This has been made possible by deliberate intensified and focused promotion of effective legislation, representation and oversight over revenues collected and allocated to various levels of governance. Kenyans will, therefore, expect nothing from us but the same so that our Senate can deliver on the promise of devolution.

As your Speaker, I wish to adopt and nurture collegiate leadership that will transform our Parliament by ensuring the following:-

(i) That Senators perform their constitutional mandate through work systems that are properly organized, facilitated and functional to enable them deliver timely, efficient and quality services;

(ii) We will ensure that the programmes and activities of the Senate are guided by the need to respond to the key priorities of the counties as well as the many challenges that they may face.

(iii) We will prioritize and strengthen the partnership between the Senate, Government Ministries, regional and international development partners so as to enhance the growth and development potential and abilities of the county assemblies and government.

We will strive to strengthen the capacity of the Senators and the Secretariat so that they can constantly update their skills and expertise and to acquire the requisite exposure to handle complex and new frontiers of legislative and public affairs.

Hon. Senators, in conclusion, Kenyans in particular and indeed the East African region and the entire world will be keenly watching us as a Senate. We will be expected to engage in objective, constructive and value adding deliberations. Therefore, we have to prioritize matters of national interests especially the promotion of peace and democratic ideals as we undertake our duties. It is, therefore, important that we make credible contributions to advance the image and the overall development of our country. Therefore, as a model legislative House for the country, we will be expected to offer the requisite inspiration, guidance and confidence to them. Hence, we have a duty to conduct ourselves with decorum, consistently observe the due process and to uphold the rule of law, legality and the culture of constitutionalism.

On my part, hon. Senators, I want to promise that under my stewardship, my commitment to the people and to you, is to be a faithful servant and diligently discharge my duties. I shall respect and uphold the rule of law and nurture the culture of constitutionalism, protect and defend our Constitution and always safeguard the role of the senate. Therefore, I call for your support and co-operation and welcome all of you to work with and the entire Senate leadership for the success of our country and prosperity.

Thank you all and God Bless Kenya.

(Applause)

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir, allow me to congratulate you and inform you that I wish to withdraw my candidature for the election to the Office of the Deputy Speaker of the Senate before the commencement of the ballot. Will I therefore be in order to proceed and table my withdrawal letter?

The Speaker (Hon. Ethuro): Hon. Senators, you will just appreciate that I have just assumed office. So, we are still learning.

Sen. (Dr.) Machage, you are at liberty to do so and you may come forward to the Clerk.

(Sen. (Dr.) Machage laid the letter on the Table)

PROCEDURE TO BE FOLLOWED IN ELECTING THE DEPUTY SPEAKER

The Speaker (Hon. Ethuro): Hon. Senators, Standing Order No.13 (1) provides that as soon as practicable after the election of a Speaker following a general election, a deputy speaker shall be elected. Standing Order No.13 (3) further provides that a procedure for electing a deputy speaker shall, with necessary modifications be the same as that prescribed for the election of the Speaker.

Hon. Senators, for the position of the Deputy Speaker, the following candidates were validly nominated as at the close of the nomination period:-

1. Wilfred Gisuka Machage, who has withdrawn his candidature;
2. James Kembi Gitura;
3. Peter Korinko Mositet;
4. George Munyasa Khaniri.

Hon. Senators, pursuant to Standing Order No.8, a candidate may withdraw his/her candidature before a ballot is started. In this regard, I wish to bring to your attention that yesterday Wednesday, 27th March, 2013 at 6.42 p.m. Sen. Peter Korinko Mositet by notice to the Clerk withdrew his candidature for the position of Deputy Speaker of the Senate and his name will accordingly not appear on the ballot paper.

Tuesday, 16th April, 2013 – Joint Sitting of the Senate and National Assembly

COMMUNICATIONS FROM THE CHAIRS

WELCOME TO HIS EXCELLENCY THE PRESIDENT BY
THE SPEAKER OF THE SENATE

The Speaker of the National Assembly (Hon. Muturi): Order! Order, hon. Senators and hon. Members! Your Excellency, it is now my time to invite the Speaker of the Senate, the hon. Ekwee Ethuro, to make his remarks.

(Applause)

The Speaker of the Senate (Hon. Ethuro): Your Excellency the President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces, hon. Uhuru Muigai Kenyatta, His Excellency the Deputy President, hon. William Ruto, the Speaker of the National Assembly, my good friend and counterpart, hon. Justin Muturi, Deputy Speakers of the Senate and the National Assembly, hon. Senators and Members of the National Assembly, ladies and gentlemen, I feel greatly honoured and privileged to stand before you as Speaker of the Senate to welcome His Excellency the President, all our hon. Senators and hon. Members of the National Assembly of the Eleventh Parliament of the Republic, to this auspicious occasion in which we are holding the first joint sitting of the Houses of Parliament for purposes of the Presidential Address.

Before I make my welcoming remarks, you will indulge me to congratulate all of you as this is a newly elected Parliament, and through you, to congratulate all the people of Kenya for exercising their democratic right and civic duty of electing representatives of their choice. The prophets of doom were predicting chaos and violence. Kenyans demonstrated a rare sense of confidence and commitment in the electoral process by rising early in large numbers and queuing for long hours to give you their votes. This resulted not only in preferred candidates that now sit in Parliament, but also in the county governments; they did this in style and conducted themselves peacefully before, during and after the elections.

Permit me also to congratulate you as the fourth President of the Republic of Kenya and your able first Deputy President of the Republic on your election, inauguration, and assumption to the highest calling in the land.

Your Excellency, the reconciliatory tone of your leadership so far is a clear indication that this country will do well under your leadership and that of your deputy.

(Applause)

I also wish to congratulate all hon. Senators and hon. Members of the Eleventh Parliament for their successful election. Let me also take this opportunity to convey my sincere salutations to the newly elected governors and their deputies and the county representatives in the 47 counties throughout our Republic. Of course, I cannot conclude these particular preliminary remarks without congratulating my counterpart, the Speaker of the National Assembly and his deputy, hon. Dr. Joyce Laboso, who actually got it all in round one.

On my own behalf and that of my Deputy Speaker, hon. Senator Kembi-Gitura and the entire leadership of the Senate and staff, we look forward to a fruitful engagement during this Eleventh Parliament of Kenya which has two Houses.

Your Excellency, hon. Senators and hon. Members of the National Assembly, in my native county of Turkana we have the *Ekicholo*, a two legged stool, which serves multiple functions. It is used as a seat when you sit down, a pillow when you sleep, a head rest when you take a siesta, and an arm chair when you relax. This two legged stool, the *Ekicholo*, reminds me of a symbolic representative of the nexus role played by parliaments in a democracy within itself and as a branch of Government.

Before the promulgation of the Constitution in 2010, the two legs depicted the Kenya National Assembly and the President, both of which constituted the Parliament of the Republic of Kenya. Then, however, one leg of the House was outside these precincts; it was specifically in State House. Once again, the stool is still two legged, but symbolises a new order where the National Assembly and the Senate constitute our Parliament. Both legs of the *Ekicholo* are now within the precincts of Parliament itself.

(Applause)

The Kenya Parliament has, therefore, come full circle; it has truly become a cornerstone of democracy. It remains central in the promotion and protection of democracy, manifests the diversity of the nation, represents the will of the people and exercises their sovereignty.

Your Excellency, hon. Senators and Members of the National Assembly, Article 1(1)(2) and (3) stipulates that all sovereign power belongs to the people of Kenya and shall only be exercised either directly or through their democratically elected representatives. We are the ones who are assembled here today. This provision reflects the division of roles in our Government in our governance structures and gives us the constitutional obligation. It will require co-operation and harmonious engagement between Parliament and the Executive and by extension the Judiciary.

Your Excellency, allow me to comment on the Kenyan situation that I believe your Government will be addressing itself to shortly, and bring this to Parliament for both Houses to legislate. The key challenges to development in Kenya still remain the same as at Independence when we had our first Senate. This is about poverty, disease, illiteracy and poor infrastructure. These have now been compounded by insecurity, rising unemployment, especially among the youth, negative ethnicity, corruption and poor service delivery. These have resulted into an unequal society and chronic underdevelopment in some parts of the Republic to the extent that some of these areas feel less Kenyan, and expressions like “*hapa na pale si Kenya*” or “I am going to Kenya” have, unfortunately, become part of our national discourse.

As Kenyans usher in new leadership, the country is pregnant with expectations. We want our country back to where it will not matter where one is born, what your surname is, and every Kenyan will be entitled to certain rights, especially the social and economic rights, as provided for in Article 43 of the Constitution; these are the right to food, education, medicine and shelter. These are just basic things for survival.

I note with gratitude Your Excellency that your address to the nation during the inauguration day on 9th April, 2013 captured the key policy guidelines that will address most of these challenges. Further, we are lucky as a nation to have a blueprint for development that is, Vision 2030. Thus, one of our principal duties in leadership will be to manage the delivery of the programmes set out in

Vision 2030, which set out the process of Kenya's modernization and realization of faster economic growth.

Once in a while, as in all democratic jurisdictions, tensions and even conflict may occur among the various arms of the Government, and even within each arm of the Government. The propensity for implosion cannot be underestimated. It will take all of us, both in Parliament and the Executive, the highest form of statesmanship and quality leadership to rise to the occasion and succeed as a nation.

To a large measure, the role of the Opposition in Parliament seems to have been limited, given the architecture, the spirit and the letter of the Grand Coalition during the Tenth Parliament. This role was left to a few Backbenchers, who often questioned certain aspects of impropriety and Government inaction. The full force of the Opposition was missing. Indeed, in the Eleventh Parliament, we expect to see a more robust and vibrant Opposition facing the Government Benches. Indeed, the Constitution has very deliberate provisions under Article 108(3) for the Leaders of the Minority Parties in Parliament to offer the much needed and legitimate Opposition within Parliament.

As the Speaker of the Senate, I promise to be true to the Oath of Office, which I recently took, and to observe the cardinal democratic principle that the minority will have their say as the majority have their way. I am conscious that Kenyans expect to see balanced, informed and robust debating chambers in both the plenary and the committee stages. For Parliament and the Executive, we have no choice but to co-exist as a matter of necessity. We have to collaborate and work together. The theory of government in our case has put us together to complement each other, accomplish the development tasks that we have given ourselves as a nation and provide quality and reliable services to fellow countrymen and countrywomen. Indeed, we do not have to look very far. The third stanza of our National Anthem states:-

“Let all with one accord
in common bond united
build this our nation together;
and the glory of Kenya,
the fruit of our labour
fill every heart with thanksgiving.”

On our part, as the Senate, we will play an integral role in the democratisation process as well as in safeguarding the devolution architecture, pursuant to our full mandate as set out in Article 96 of the Constitution. Chief among them is to represent the counties and to protect the interests of the counties and their governments.

May I also take this opportunity to assure Kenyans that the Senate they have given to themselves is here to stay, despite the unfortunate history of our first senate, which ceased to exist in 1966. The Senate now has been re-established in order to realise the aspirations of the Kenyan people to have a decent, balanced and equitable society. It will not die again; at least, not under my leadership.

Your Excellency, hon. Senators and hon. Members, in order for the Senate to assert itself and deliver on the promise of devolution, we will be calling on other stakeholders, especially the Executive and the development partners, to assist in mobilising the requisite financial, physical and human resources to adequately discharge this constitutional mandate. We will be responsible for the legislative mandate.

In conclusion, Your Excellency, I wish to sincerely welcome you to the Senate, which is part of this joint sitting. We will be able to give the force of law to the policies and programmes that you will be unveiling today. Article 94(5) states that no body other than Parliament has the power to make provisions having the force of law in Kenya.

From the above, it is very clear that the Executive and Parliament are, therefore, duty bound to work together in the common endeavour to serve the people of the Republic of Kenya. Therefore, there is a lot of work ahead of us. Kenyans want the promise of the new Constitution; equitable development and quality services like yesterday, and not tomorrow. We all need to play, and indeed must play, our respective roles in the fulfillment of those aspirations. I have no doubt in my mind that we will succeed as one nation; *Insha Allah!*

Thank you and God bless Kenya.

(Applause)

WELCOME TO HIS EXCELLENCY THE PRESIDENT BY
THE SPEAKER OF THE NATIONAL ASSEMBLY

The Speaker of the National Assembly (Hon. Muturi): Your Excellency the President and Commander-in-Chief of the Defence Forces of the Republic of Kenya, hon. Uhuru Kenyatta and hon. Members, it gives me pleasure to welcome His Excellency and all hon. Members of the Eleventh Parliament to the Official Opening of our Parliament, the citadel of our democracy.

I wish to take this earliest opportunity to congratulate Your Excellency for being elected the fourth president of the Republic of Kenya. I also wish to congratulate the Deputy President, hon. William Ruto, who is seated on the Speaker's Row, and, indeed, all hon. Members of Parliament. To you all, congratulations!

First and foremost, I wish to thank all Kenyans for participating peacefully in the just concluded general election. That exercise showed maturity and the deepening of our democratic culture. This has, indeed, restored and redeemed our standing in the community of nations.

Your Excellency, I also wish to congratulate your foremost competitor, the former Prime Minister, the Rt. Hon. Raila Odinga, and the former Vice-President, hon. Kalonzo Musyoka, for providing the opportunity for political competition and being worthy competitors in the just concluded Presidential election.

Today's sitting is historic in many ways. It is the first time we are having a joint sitting of the National Assembly and the Senate, under the bicameral system re-introduced by the Constitution of Kenya, 2010. Today's sitting is also significant because we are together assembled as two Houses and as legislators from diverse backgrounds, representing the various sectors of our society. Today, we demonstrate that we are operating under our new Constitution. It is truly a day to celebrate.

Your Excellency, it is a moment of great inspiration for us to have you in this House to address the nation on the Government's policies and the legislative agenda for the Eleventh Parliament. We are very eager to listen to you, because from your Address, Kenyans will know the political philosophy and the economic strategy of the new Government of the Republic of Kenya, which you lead. Before I invite you to talk to us, allow me to make some brief remarks.

Hon. Members, there is no doubt that Kenya and all our institutions, Parliament included, are at the threshold of a new dispensation – indeed a new chapter. I would like to borrow words

from hon. Mwai Kibaki, your predecessor, in his inaugural speech on 30th December, 2002, as follows:-

“Our country is going through a critical moment. The task ahead is enormous. The expectations are high, and the challenges are intimidating.”

However, I want to assure you that the encouraging thing is that Kenyans are fully behind the Government in its effort to change things for the better. We are aware that for the first time, the Executive is not part of the Legislature. We are separated in a new system of checks and balances. It is my hope that we shall all work together in the Committees with mutual respect and co-operation among the three arms of the Government, and with all the oversight institutions established by the Constitution.

Hon. Members, know that this is a new legislature with new structures and new ways of working. Our Legislature is now bicameral. Our committee system has changed. The Budget-making role of Parliament has been strengthened. The role of Parliament in international relations and security is larger. The systems of oversight have been overhauled to bring on board the participation of the citizenry. It is in our interest to understand and get used to these new ways of working.

Therefore, as a Parliament, we must use this opportunity in our history to play our rightful roles in renewal of our country. I urge you all to approach your responsibilities with dedication and a sense of purpose for the common good of the Kenyan people. Failing this, our relevance will be called to question.

Your Excellency, a quick glance at the membership of the Eleventh Parliament gives me pleasure to report that there is an increase in the number of professionals from various backgrounds. There are Members with impressive track records in public and private life, who have voluntarily abandoned their careers to join this august House. In addition, there are more women and youth in this Parliament than ever before in the history of our country.

(Applause)

Equally, there are more persons with disabilities and minorities who are represented now. Given this scenario, we should look forward to more robust and informed debates. As a Parliament, we shall endeavor to foster good working relations with your Cabinet Secretaries in their new roles as we shall ensure they are constantly held to account in the running of their Ministries, departments and agencies.

(Applause)

The Government shall be held to account from your commitment to implement the Constitution, your support to the devolved system of Government and in the fulfillment of your undertakings to the people of Kenya in the elections concluded recently. You can count on the support of these two Houses to help realize these two goals.

Your Excellency, I need to observe here that we must all strive to strengthen our political parties and to instill party discipline. Strong political parties mean strong democracies; strong democracies mean good governance. Good governance is essential for the development of our nation. It is for this reason that our Constitution has firmly anchored political parties as key institutions in our public governance structures; specifically in Part 3 of Chapter 7, Articles 91 and 92.

Last, but not least, Your Excellency, I would like to thank the former Government headed by the now retired President Mwai Kibaki for the support it continually gave the Parliamentary Service Commission (PSC). We are all hopeful and actually trust that your Government will continue to give support to the PSC to enable it fulfill its mandate of providing facilities to the hon. Members for the efficient and effective functioning of Parliament.

(Applause)

Your Excellency, we shall expect your Government and this House to be the glue that holds the people of Kenya together; to constantly work on a long term national cohesion project and to see to it that the marginalized, the minority groups and the vulnerable of our society can seek hope in our governance.

Finally, it is now my great pleasure and privilege to invite His Excellency the President to address the House.

(Applause)

Thursday, 25th April, 2013

COMMUNICATION FROM THE CHAIR

PROCEDURE TO BE FOLLOWED ON CONCLUSION OF DEBATE
ON MOTION ON PRESIDENTIAL ADDRESS

The Speaker (Hon. Ethuro): Order, hon. Senators. I have a Communication to make with regard to the Motion on the Presidential Address, this being the third and final day.

Before we conclude the Motion, I wish to draw your attention to the provisions of Standing Order No.69(1), which states as follows:-

“When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.

(2) The Speaker’s ruling under paragraph (1) shall be made after conclusion of debate on the matter but before the question is put.

(3) When the Senate votes on a matter that does not affect counties, each Senator has one vote.”

Hon. Senators, I, therefore, rule that the subject matter of the Motion being proposed is one of general interest and application. It is, therefore, not affecting counties within the meaning of Article 123 of the Constitution. It, therefore, follows that to the question on this Motion, each Senator is entitled to one vote.

Tuesday, 30th April, 2013

COMMUNICATION FROM THE CHAIR

DEMISE OF SENATOR FOR MAKUENI
COUNTY, SEN. MUTULA KILONZO

The Speaker (Hon. Ethuro): Hon. Senators, it is with a very heavy heart that I regret to announce the demise of our dear colleague, Sen. Mutula Kilonzo, who passed away on Saturday, 27th April, 2013, at his rural home in Maanzoni, Machakos County.

Sen. Kilonzo was born on 22nd July, 1948 in Woyani Village in Mbooni, Makueni County. The late Senator was educated at Mbooni DEB Intermediate School and Machakos High School before joining the University of Dar-es-Salaam in 1969 where he graduated with a first class honors degree in Law in 1974. He became an advocate of the High Court of Kenya in 1975 after which he established Kilonzo and Company Advocates in 1976. In 1983, he was elected Chairman of the Law Society of Kenya, a position he held until 1985. He was appointed Senior Counsel of Kenya in 2003.

Hon. Senators, the late Sen. Kilonzo made his debut in Parliament as a Nominated hon. Member in 2003 and served in that position until December, 2007. During the December, 2007 General Elections, the late Sen. Kilonzo was elected hon. Member for Mbooni Constituency and served in that position until January, 2013 when the term of the Tenth Parliament came to an end.

The late Senator Kilonzo was appointed Minister for Nairobi Metropolitan Development in April, 2008, a position he held until 4th May, 2009, when he was appointed Minister for Justice, National Cohesion and Constitutional Affairs. On 27th March, 2012, he was appointed Minister for Education where he served until he was sworn into office following his election as Senator for Makueni County on 28th March, 2013. As an hon. Member of Parliament, he served in various parliamentary committees including the Powers and Privileges Committee and the House Business Committee from 2008 to 2012.

The late Sen. Kilonzo was a key member of the Implementation Committee of the National Accord process of 2008 and served in the Panel of Mediators in the National Dialogue and Reconciliation process following the disputed December, 2007 General Elections. At the time of his demise, he was a member of the Coalition for Reforms and Democracy (CORD) and the Secretary-General of the Wiper Democratic Movement and Senator for Makueni County.

Hon. Senators, in recognition of his exemplary service, he received several Head of State decorations including being awarded the Elder of the Burning Spear (EBS) of Kenya in 1994 and Elder of the Order of the Golden Heart (EGH) of Kenya in December, 2008.

Hon. Senators, the country has lost a great son, a gallant politician and an astute lawyer whose contribution in the respective fields, I am sure, will greatly be missed.

On behalf of all hon. Senators and the staff of the Senate, and on my own behalf, I wish to convey our deepest condolences and heartfelt sense of loss following the death of Sen. Mutula Kilonzo.

Hon. Senators, in solidarity with the family of our late colleague, the Rules and Business Committee has appointed the following to constitute a funeral committee to assist the family in burial arrangements:-

1. Sen.(Prof.) Kithure Kindiki - Senate Majority Leader
2. Sen. Moses Wetangula - Senate Minority Leader
3. Sen. David Musila
4. Sen. Johnson Muthama
5. Sen. Beatrice Elachi
6. Sen. Janet Ong'era
7. Sen. Amos Wako
8. Sen. James Orengo
9. Sen. Kiraitu Murungi

May the Almighty God grant comfort to his family, friends, relatives and the good people of Makueni County during this very painful and sorrowful period. May the good Lord give them the strength to bear the tragic loss of their loved one. May the Lord God, rest his soul in eternal peace.

Hon. colleagues, in our usual parliamentary tradition, may we stand for a minute of silence in honour of our late colleague and friend, Sen. Mutula Kilonzo.

*(Hon. Senators stood up in their places and
observed a minute of silence)*

Thank you, hon. Senators. You may take your seats.

Tuesday, 7th May, 2013

COMMUNICATION FROM THE CHAIR

COMMUNICATION ON WHETHER A MOTION AFFECTS COUNTIES AND HOW TO PROCEED WITH THE VOTE

The Speaker (Hon. Ethuro): Hon. Senators, I wish to draw to your attention the provisions of Standing Order No.69, which states as follows and I quote:-

“(1) When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.

(2) The Speaker’s ruling under paragraph (1) shall be made after conclusion of debate on the matter but before the question is put.

(3) When the Senate votes on a matter that does not affect counties, each Senator has one vote.”

That is what you need to note.

Hon. Senators, the Motion on any matter that affects counties, if the decision of the Senate on the matter, either in the affirmative or in the negative, impacts or has the prospect of impacting on the counties in a positive manner. In the present case, I rule that this Motion affects counties within the meaning of Standing Order No.69 and Article 123 of the Constitution. And accordingly, when the Question will be put, each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation. So, if the head of your county delegation is not present, you need to look for that head or in the absence of the head of delegation, by another member of the delegation designated by the head of the delegation. You cannot purport to represent your head of delegation without the head of delegation designating you as the one to vote. So, pursuant to Article 123 (4)(c), this Motion will be carried only if it is supported by a majority of all the delegations. That is by at least 24 county delegations. Under Standing Order No.73(2), I would direct that when the roll will be taken, this being an instance where the Senate is to decide on a matter that requires voting by county delegations, for the benefit of the Senators, I want to go to Standing Order No.73, which states as follows:-

“(1) The Speaker shall direct a roll call vote to be taken, if a Senator claims a roll call division and –

(a) the Speaker considers that there is a reasonable doubt as to the outcome of any question in an electronic vote; or

(b) if, on a question other than a question of procedure, fifteen or more Senators rise in their places to support the Senator claiming the roll call division.

(2) The Speaker shall direct a roll call vote to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question and in instances where the Senate is to decide on a matter that requires voting by county delegations.”

So, be advised.

Wednesday, 8th May, 2013

COMMUNICATION FROM THE CHAIR

VOTE ON AMENDMENT TO MOTION ON ESTABLISHMENT OF PUBLIC UNIVERSITIES IN ALL COUNTIES

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make in relation to Sen.(Dr.) Khalwale's Motion as regards to the vote on the amended Motion, which we agreed to communicate before we put the vote on the substantive Motion.

This Communication was promised yesterday in response to a request by Sen. Wetangula, supported by a number of other hon. Senators seeking the guidance of the Chair on the appropriate procedure for disposing of a Motion affecting counties.

The issue arose when a proposed amendment to a Motion by Sen.(Dr.) Khalwale was lost despite the result being 23 in favour, none against and none abstaining. The argument was advanced by Sen. Wetangula with support from Sen.(Dr.) Khalwale, Sen. Murkomen and others, that from the result, it appeared that the proposed amendment could not have been passed from the onset, and that the Chair should not have allowed the vote to proceed because the delegations present were not enough to pass the Motion.

Sen. Wetangula argued that the Chair should have involved Standing Order No.68(1) of the Standing Orders of the National Assembly of the Tenth Parliament, which provided that:-

“In every instance where the Constitution lays down a fixed majority, it is necessary to decide on any question, the House shall not proceed to a division on that question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division.”

It is important to note, and I emphasise this, that this procedure was not carried over into the Standing Orders of the Senate. For better or for worse, there is no similar provision in the Standing Orders of the Senate under which we are operating. Our nearest equivalent to the Standing Orders cited by Sen. Wetangula is Standing Order No.60(1), which provides that, and I quote:-

“Instances where the Constitution requires a fixed majority

(1) In every instance where the Constitution lays down that a fixed number of Senators is necessary to support the moving of, or to decide any question on a Motion, any amendment motion to such motion shall not be passed unless supported by the fixed number of Senators required to pass the original motion.”

It is clear, therefore, that that the amended Motion moved by Sen.(Dr.) Kuti, to Sen.(Dr.) Khalwale's Motion required the fixed number of 24 delegations, which the original Motion required to pass. It is also clear that no express provision of the Standing Orders of the kind was Standing Order No.68 of the National Assembly exists to require the Speaker to first ascertain that there are at least 24 delegations present before proceeding to a division.

The Speaker was, however, urged to invoke Standing Order No.1 and exercise the powers provided there under to rescind the decision that the amended Motion by Sen.(Dr.) Kuti had been negated and to further, for the future, order that the necessary threshold of 24 delegations, be first established before proceeding to a division on a matter affecting counties.

The issues which the Speaker was asked to determine using Standing Order No.1 are as follows:-

One, whether to rescind his finding that the amendment Motion by Sen.(Dr.) Kuti had been negatived and, therefore, order a fresh division only when there are at least 24 delegations present in the Senate.

Two, whether for the future, the Speaker must first ascertain whether there are at least 24 delegations present in the Senate before calling a roll call vote on a matter affecting counties.

Hon. Senators, Standing Order No.1(1) provides as follows, and I quote:-

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.

(2) The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

Standing Order No.1 must be invoked sparingly and judiciously. It is used to complement the Standing Orders and to fill in the gaps, not to substitute existing Standing Orders, or to rewrite them. In particular, Standing Order No.1 comes into play where matters are not expressly provided for by the Standing Orders.

Before ruling on the request to rescind the decision of Sen.(Dr.) Kuti’s amendment Motion, I wish to draw the attention of the Senate to Standing Order Nos.47 and 51. Standing Order No.51(1) provides that:-

“When a Motion has been moved and if necessary seconded, the Speaker shall propose the question thereon in the same terms as the Motion, and debate may then take place upon that question.

(2) At the conclusion of the debate, the Speaker shall put the question.

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

That is definitely what was done to the substantive Motion at the request of Sen.(Dr.) Khalwale. Indeed, Sen.(Dr.) Khalwale made this request for deferral of his Motion yesterday. The conduct and disposal of business of the Senate is the collective responsibility of not just the Speaker, but also of all the hon. Senators. The Mover of a Motion must be presumed to be the best judge of his or her own interests. Therefore, where he or she feels to invoke an available mechanism for deferral of putting the question, he or she must be presumed to know and to intend the consequences of the ensuing decision of the Senate.

Hon. Senators, Standing Order No.47 too permits a Motion to be moved to rescind the decision of the Senate on the question on another Motion. Such a Motion can be moved with the permission of the Speaker. There are remedies for a Senator who wishes to have the Senate rescind his decision on the question of a Motion. That is provided for in Standing Order No.47(2).

I, therefore, rule that where an express remedy is available in the Standing Orders, the Speaker will not invoke the extraordinary powers conferred by Standing Order No.1 *in lieu* of the ordinary remedy available. The request to rescind the decision that the amended Motion by Sen.(Dr.) Kuti was negatived is, therefore, disallowed.

Hon. Senators, that leaves us with only one other matter to sort, namely whether the Speaker can rule, that in the future, the threshold of 24 hon. Senators be first established before a division can be proceeded with and a roll call vote taken on a matter affecting counties. There are

no easy answers. We engaged ourselves almost for the better part of last night. One thing is certain though, this is not a requirement of the Standing Orders in this Senate. However, I recognize that is hardly the end of the matter as the Speaker will be called upon to advance the jurisprudence, extend the horizons and promote good practise. Different arguments can be made. The argument that the Senate should not act in futility when the outcome of a vote is predetermined and known by all is a good one. But it is also countered by the argument that matters affecting counties are so important that when put to a vote, every county has the right to go on record, voting for or against, whether the Motion will be won or lost. The argument can be made further that invoking Standing Order No.36, which requires the Speaker on his own motion to stop a vote or division if there is no quorum, that the Speaker should similarly stop a roll call vote, which will obviously result in a negative of the question. But this argument can be countered on the basis that Standing Order No.36 had been intended to extend to the failure to attain a threshold of 24 delegations. Nothing would have been easier than for that to be expressly provided for at the Standing Order. Further, it can be argued that when a question is put, no particular outcome is desired or expected and that both an affirmative vote and a negative one are legitimate outcomes with winners and losers. It can, therefore, be argued that the time of the Senate is valuable and should not be spent on predetermined outcomes and that the Speaker owes it to the House to ensure that this is so. But it can also be countered as the Speaker is not one of the players on the Floor of the Senate, but a neutral arbiter.

From this perspective, hon. Senators, the Speaker owes neither side of any question any deed of care to safeguard his interest. His argument will be that the Mover of a Motion must exercise due diligence and defer a vote until he or she has established the necessary support. Similarly, of course, it is a legitimate political devise for those opposing a Motion to keep away from a roll call vote and deny the necessary threshold, so that the question is automatically negated should it be the role of the Speaker to stop or avert a legitimate political process. The arguments are many and the debate must continue. It is good that these questions are coming up at this particular time when the Rules and Business Committee has commenced a review of the Standing Orders of the Senate. This is where these matters will be settled.

The proposal by Sen. Wetangula that a day be designated for putting the question on all Motions debated during the week will be one that the Senate may wish to consider. So also, of course, is the proposal that there will be a rule that the Speaker must confirm the threshold of 24 delegations present before allowing a division. These will remain grey areas for debate and determination as we go along.

Finally, hon. Senators, this matter needs to serve as a wakeup call to all Senators to study carefully the Standing Orders of the Senate. The procedures of the Senate are new and are in many respects totally different from those applicable in the National Assembly in the Tenth Parliament or, indeed, at any time in the history of the Parliament of Kenya. You are also aware that even the Tenth Parliament changed its own Standing Orders. The Business of the Senate will be much assisted if hon. Senators carefully consider the Senate Standing Orders and their ramifications on each action or inaction. For now, as determined yesterday, I direct that the Question on the Motion by Sen. (Dr.) Khalwale will be put this morning and I will proceed to put the question.

Wednesday, 15th May, 2013

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM VIHIGA COUNTY ASSEMBLY

Hon. Senators, before we continue with our Business, I wish to acknowledge the presence of some visitors who are visiting us today. Allow me, hon. Senators, to introduce to you, a delegation of the County Assembly Members from the County Assembly of Vihiga who are seated at the gallery.

The delegation is led by the Vihiga County Assembly Speaker, hon. Daniel Chitwa. I will proceed to invite the rest. I request that if an hon. Member is called, that he or she stands up and they will be acknowledged in the normal tradition of Parliament especially because this is our first official delegation from the county assemblies.

They are as follows:-

Hon. Chogo Abdalla Otiende, Chief Whip;
Hon. Jenipher Ekhuya, Leader of Minority, Vihiga County;
Hon. Jackson Musoga Lung'aho;
Hon. Wycliffe Ombajo Masini;
Hon. James Shairo;
Hon. Andrew Ahuga, Leader of Majority, Vihiga County;
Hon. Zakayo Manyasa;
Hon. Wilberforce Kiteso;
Hon. Zacharia Murefu;
Hon. Stephen Mugalizi; and,
Hon. Benedict Kiwanuka.

We want to thank you for visiting us at the Senate. Feel most welcome as you watch our proceedings. I hope that you will borrow one or two things which you will use when you go back to Vihiga. Your Senator is present to represent the county interests and welcomes you to the Senate.

Thursday, 16th May, 2013

PETITION

REPORT FROM THE SPEAKER: PETITION ON THE ENACTMENT OF THE LICENSING ACT, 2013

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make on a Petition that has been presented through the Clerk pursuant to Standing Order No.222(2)(b).

As hon. Senators are aware, under Article 119(1) of the Constitution, and I quote:-

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

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

“A petition to the Senate shall be-

(a) Submitted to the Clerk by the petitioner and reported to the Senate by the Speaker; or”

Standing Order No.222(2)(b) further provides that:-

“When the Order “Petitions” is read, the Speaker shall-

(b) in the case of a petition presented by a Senator, direct the Senators to present the petition to the Senate or;”

Let me stop there to allow hon. Senators at the Door to enter the Chamber.

(The Speaker (Hon. Ethuro) paused as hon. Senators entered the Chamber)

Order, hon. Senators, let me now proceed.

Hon. Senators, pursuant to Standing Order No.222(2)(b), I hereby report to the Senate that a petition on the enactment of the Licensing Act, 2013 has been submitted by a Mr. Humphreys Khaunya through the Office of the Clerk.

Mr. Khaunya, the petitioner, is a citizen of Kenya and a resident of Busia County who works as a small scale business entrepreneur. In his Petition, he draws the attention of the Senate to the powers of county governments to collect and charge taxes. He argues that the parameters of these powers are not set out in law. He is, therefore, of the view that there is a possibility that Kenyans will be required to pay more for licences and fees in some counties as opposed to others and that there will be discrimination on the basis of ethnicity.

To ensure that Kenyans are not marginalized, overcharged or treated inequitably as they seek to invest in various counties, he proposes the enactment of an Act of Parliament to harmonise licensing operations throughout the Republic of Kenya which would minimize disparity in licenses and fees charged as between the national Government and county governments and as between the county governments.

He includes a draft “County Governments Licensing Bill, 2013”. The objects and purposes of the proposed Bill as stated in the Petition include:-

(a) promoting investments in rural areas;

(b) harmonizing the license fees and all other charges in Kenya so as to avoid disparity in the course of doing business from county to county;

- (c) curbing possible corruption in the country governments;
- (d) promoting equal investment opportunities for all Kenyans in all counties; and,
- (e) improving county service delivery, transparency and accountability in revenue collection by county governments.

The Petition is signed by the Petitioner, Mr. Humphreys Khaunya.

Hon. Senators, pursuant to Standing Order No.223, I shall now allow comments, observations or clarifications in relation to the Petition, for not more than 30 minutes.

Tuesday, 21st May, 2013

COMMUNICATION FROM THE CHAIR

CRITERIA FOR IDENTIFYING MARGINALIZED AREAS FOR PURPOSES OF THE EQUALISATION FUND

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make on the criteria for identifying marginalized areas for purposes of the Equalisation Fund.

At the sitting of the Senate held on Tuesday 14th May, 2013, Sen. Musila rose on a point of order seeking a ruling of the Chair on matters concerning the Equalisation Fund. As hon. Senators are aware, the Equalisation Fund is established under Article 204 (1) of the Constitution. It says:-

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

Article 204(2) further provides that:-

“The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.”

Hon. Senators, as Sen. Musila observed, the Commission on Revenue Allocation (CRA) is mandated under Article 216(1) of the Constitution to make recommendations concerning the basis for the equitable sharing of revenue raised by national Government between the national and county governments; and among county governments.

In his point of order, he informed the Senate that the CRA had made some recommendations on the matter of the Equalisation Fund. However, these recommendations had not been received in the Senate. Sen. Musila further stated that the recommendations made related to the identification of the marginalized areas and amounts of money to be disbursed from the Equalisation Fund to each of the identified areas.

Hon. Senators, Article 216(4) of the Constitution says:-

“The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204 (2).”

In exercise of this mandate, on the 22nd February, 2013, the Commission published the criteria for identifying marginalized areas and sharing of the Equalisation Fund for the Financial Years 2011-2014.

Hon. Senators, it is important to distinguish the specific constitutional mandate of the Commission under Article 216(4) of the Constitution. Under this article, it sets out the criteria for determination as opposed to the general mandate of the Commission under Article 216(1) of the Constitution. Here, they make recommendations. Where the mandate extends to making recommendations pursuant to Article 216(5) of the Constitution, the Commission is required to submit their recommendations to the Senate as well as to the National Assembly, the national

Executive, county assemblies and county executives. However, where the mandate is one of making a determination, the Commission is not required to submit its determination to any person or body for ratification. The determination as made by the Commission is, therefore, final.

Hon. Senators, it is, however, important to observe that although the mandate of the Commission under Article 216(5) of the Constitution extends to determining the criteria by which to identify the marginalized areas for purposes of Article 204(2) of the Constitution, the Senate, by its oversight role and, more so, as the institution charged with the mandate of protecting the interest of the counties, will be required to ensure and satisfy itself that, in making the determination, the Commission observed and remained faithful to the letter and spirit of the Constitution, including the requirements of the Constitution as to public participation. This oversight mandate may be exercised by the Senate in Plenary and also through its Committees, which are the more appropriate forum for detailed interrogation of such matters.

I would also wish to add that if Senators wanted further interrogation, it would have been easier if this Question was posed to the Chairs of the relevant Committees. But when you rise on a point of order to ask for the Speaker's Communication, unfortunately, you know the fate. Once the Speaker communicates, he may not entertain any other issues. So, you are at liberty to proceed if you needed further interrogation, but that is my finding.

Thank you.

Wednesday, 22nd May, 2013

COMMUNICATION FROM THE CHAIR

INVITATION OF HON. SENATORS TO THE NATIONAL PRAYER BREAKFAST MEETING

The Speaker (Hon. Ethuro): Hon, Senators, I have a communication on the subject of the National Prayer Breakfast.

Hon. Senators, as you may be aware, Parliament, through the Parliamentary Prayer Group, has been hosting an annual National Prayer Breakfast. This year's National Prayer Breakfast is scheduled to take place on Thursday, 20th June, 2013, at the Safari Park Hotel beginning at 8.00 a.m. His Excellency the President, hon. Uhuru Kenyatta, C.G.H., is expected to be the guest speaker. This is a function for all Senators, Members of the National Assembly, the private and public service sectors, governors and county assembly speakers. The event is funded by hon. Members through voluntary contributions. I, therefore, appeal to those willing to make their contributions to do so by signing their names on forms to be made available in due course.

In addition, hon. Senators who may wish to join the inter-denominational Parliamentary Prayer Group are invited to attend the group's weekly prayer meetings held every Wednesday, beginning at 7.00 a.m. in the Committee Room on the Second Floor of Continental House. For further information on the prayer breakfast and the weekly prayer meetings, hon. Senators are kindly asked to contact Sen. David Musila.

Thank you.

Tuesday, 11th June, 2013

COMMUNICATIONS FROM THE CHAIR

NATIONAL ASSEMBLY REJECTION OF SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL, 2013

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make on the Division of Revenue Bill, 2013. This is just an update.

As hon. Senators are aware, on the 13th May, 2013, a Message was received from the National Assembly seeking the concurrence of the Senate to the Division---

What is it?

(Loud consultations)

Sergeant-at-Arms, can you find out? In the meantime, I will try to be a bit louder.

As hon. Senators are aware, on the 13th May, 2013, a Message was received from the National Assembly seeking the concurrence of the Senate on the Division of Revenue Bill, 2013, as passed by the National Assembly on 9th May, 2013. This Bill was passed by the Senate with amendments on 23rd May, 2013. Following the passage of the Bill by the Senate, by a letter dated 24th May, 2013, to the Clerk of the National Assembly, the Clerk of the Senate forwarded a Message from the Senate seeking the concurrence of the National Assembly on the amendments made by the Senate to the Bill. The National Assembly, at a sitting held on Thursday, 6th June, 2013, deliberated on the Senate amendments to the Division of Revenue Bill, 2013, and in the end, the Assembly resolved to refer the Bill to his Excellency the President for assent.

Hon. Senators, as you are aware, the action taken by the National Assembly on the Division of Revenue Bill, 2013, is unconstitutional and is not founded in any provision of law.

(Applause)

I, therefore, found it necessary and urgent to bring this matter to the attention of His Excellency the President which I did by a letter to the President dated 7th June, 2013. In the letter, I informed the President that the action taken by the National Assembly does not accord with Article 112 of the Constitution and part 19, Roman, of the Senate Standing Orders as well as Part XIX of the National Assembly's own Standing Orders which provide for the manner in which a Bill which originates in one House is to be dealt with by the other House, and how the originating House is to deal with the Bill once it is returned by the other House. But a reading of these provisions indicates that where the other House – in this case the Senate – passes the Bill in an amended form, the originating House has the following two options.

(a) To pass the Bill as amended following which the Speaker of that House shall refer the Bill to the President within seven days for assent. That is if the National Assembly accepted our Bill as we sent it to them; that is the only way they can send it to the President for assent.

(b) To reject the Bill as amended following which the Bill shall be referred to a mediation Committee under Article 113 of the Constitution.

I further informed the President that the course of action chosen by the National Assembly is one that has the prospect of paralyzing the workings of Parliament of Kenya by

setting the dangerous precedent where one House, if it disagrees with the position taken by the other House on a Bill, can choose to ignore the provisions of the Constitution and to define its own extra-constitutional path of action. This action of the National Assembly, if allowed to proceed unchallenged, will bring the entire legislative process to a grinding halt.

Hon. Senators, I have, therefore, requested His Excellency the President to consider invoking the provisions of Article 115(1)(b) of the Constitution to refer the Bill back to Parliament for reconsideration by Parliament in the manner provided for in the Constitution, which is the Mediation Committee; and that both Houses are required to submit equal numbers to the Committee.

The Senate, therefore, remains prepared; if the National Assembly does not agree to all or, indeed, any of the amendments of the Senate to the Division of Revenue Bill, 2013, as passed by the National Assembly, to appoint its membership to the Mediation Committee in terms of the said Article 113 of the Constitution and to abide by the provisions of the Constitution in the mediation process.

I thank you.

(Applause)

Thursday, 13th June, 2013

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM GARISSA
COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Senators, before we continue, I wish to acknowledge the presence of our visitors who are visiting us today. Allow me to introduce to you a delegation of the Members of the County Assembly from the County of Garissa who are seated at the Gallery to my right. The delegation is led by the Garissa County Assembly Speaker, hon. Mohammed Abe. As I continue to introduce the rest, I request that when an hon. Member is called, he or she should stand up and be acknowledged in the normal tradition of Parliament. Arising from the inadequacy of space in our gallery in this temporary Senate Chamber, the delegation has divided itself into three groups. This will be the first group. They are as follows:- Hon. Abubakar Mohammed Shide, Deputy Speaker; hon. Abdi Ali, hon. Abdiwahab Suleiman Baraki, hon. Mohammed Abdullahi Abdi and hon. Siyat Abdikarim Salat. They are accompanied by staff. Please, feel welcome to the Senate.

Thank you.

(Applause)

Wednesday, 19th June, 2013 (Afternoon)

COMMUNICATIONS FROM THE CHAIR

INVITATION OF HON. SENATORS TO THE NATIONAL PRAYER BREAKFAST MEETING

The Speaker (Hon. Ethuro): The first Communication is just a reminder that tomorrow morning, we will have the National Prayer Breakfast Meeting for Parliament and the entire leadership of the country. As our usual tradition, this is an activity we conduct once a year and we had communicated earlier. It is just a reminder. We begin at 7.00 a.m. at Safari Park Hotel and we expect it to be done by lunch time. In that regard, all the Committees that were slated to hold meetings tomorrow morning will be suspended; you will proceed with the rest, but for tomorrow morning, there will be no Committee meetings. So, we are all invited and as the Senate, I will be leading you and I expect maximum support from the Senate as usual.

Thank you.

VISITING DELEGATION FROM LAIKIPIA COUNTY ASSEMBLY

Hon. Senators, I wish to acknowledge the presence of some visitors who are visiting us today. Allow me, therefore, to introduce to you a delegation of the County Assembly of Laikipia, who are seated at the Gallery to my right. The delegation is led by the Laikipia County Assembly Speaker, hon. Patrick Mariru. As I introduce the visitors, I request that if an hon. Member of the Laikipia County Assembly is called, he or she should stand up and be acknowledged in the normal tradition of Parliament. Arising from the inadequacy of space in our temporary Gallery – and we apologize – the delegation had to divide itself into three groups and, so, this is the first group, and I will introduce them as follows. Hon. Patrick Mariru, Speaker of the Assembly; hon. Peter Kimondo, Deputy Speaker; hon. Ephraim Mwangi, Leader of the Majority; I hope he is learning from the Senate Majority Leader, Sen. (Prof.) Kindiki. The others are hon. Paul Leponoiywo, Leader of Minority; hon. Chelubo Kaparo, Whip of the Majority; hon. Jacob Endom, Whip of the Minority; hon. Dan Ndegwa, hon. Wilson Waithaka, hon. Francis Mukirya, hon. Joseph Kabashi and, finally, hon. John Suge.

(Applause)

You are welcome to the Senate of Kenya.

Thank you

Tuesday, 2nd July, 2013

COMMUNICATION FROM THE CHAIR

RULING ON WHETHER THE SENATE SHOULD PROCEED WITH THE COUNTY ALLOCATION OF REVENUE BILL, 2013

The Speaker (Hon. Ethuro): Hon. Senators, as you will recall, on Thursday, 27th June, 2013, Sen. (Dr.) Khalwale rose on a point of order under Standing Order No.158(5) seeking the directions of the Chair on the disposal of the County Allocation of Revenue Bill, Senate Bill No.1 of 2013. Sen. (Dr.) Khalwale sought directions from the Chair on, among other things, the procedure and timelines for the introduction, consideration and passage of the County Allocation of Revenue Bill, 2013, by the Senate. He stated that his concern was necessitated by the contested process by which the Division of Revenue Bill, 2013, had been transacted, leading to the request by the Senate for an Advisory Opinion from the Supreme Court in Reference No.2 of 2013.

Sen. (Dr.) Khalwale sought direction from the Speaker on the following matters:-

1. Whether it was possible to proceed on the County Allocation of Revenue Bill, 2013, while the constitutionality of the Division of Revenue Act, 2013, on which it was predicated remains contested by the Senate in the Supreme Court; and, if so, whether proceeding in that manner on the County Allocation of Revenue Bill, 2013, would amount to *sub judice*.

2. If the Senate were to choose to proceed with the Bill, whether it should proceed on the basis of the figure of Kshs210 billion as passed by the National Assembly or Kshs258 billion as passed by the Senate.

3. The effect of not proceeding with the County Allocation of Revenue Bill, 2013.

Sen. Murkomen, supporting Dr. Khalwale's request for directions, observed that there was need for careful and consultative reflection on the matter so that if the Senate chose to proceed with the introduction and consideration of the County Allocation of Revenue Bill, 2013, then the Supreme Court would not interpret this as acquiescing to the actions of the National Assembly.

For the record, hon. Senators, permit me to refresh your memory on how the present matter came to be. You will recall that:-

The Division of Revenue Bill, National Assembly Bill No.1 of 2013, was published by the National Assembly on 29th April, 2013, as a Bill originating in the National Assembly.

By a letter dated 3rd May, 2013, addressed to the Speaker of the Senate, the Speaker of the National Assembly forwarded a copy of the Bill to the Senate and observed in the letter that "by virtue of Standing Order 233(4) of the National Assembly Standing Orders and Standing Order 158(4) of the Senate Standing Orders, it would appear that both the National Assembly and the Senate have, in their own rules, already made a determination that the Division of Revenue Bill is, for purposes of Article 110(1)(c) and 2(b) of the Constitution, firstly a Bill concerning county governments and, secondly, an ordinary Bill. The question contemplated under Article 110(3) of the Constitution, therefore, need not arise in respect of the Bill.

Pursuant to Article 110(3) of the Constitution and Standing Orders No.16 and 122 of the Senate and National Assembly respectively, by a letter dated 9th May, 2013, to the Speaker of the

National Assembly, I concurred with the Speaker of the National Assembly that the Division of Revenue Bill, 2013, was a Bill concerning counties and further that it was an ordinary Bill within the meaning of Article 110(2) of the Constitution.

By a letter dated 13th May, 2013, the Clerk of the National Assembly forwarded to the Clerk of the Senate the following documents:-

(a) A certified copy of the Division of Revenue Bill, 2013, as passed by the National Assembly on 9th May, 2013, and;

(b) A message from the National Assembly to the Senate duly signed by the Speaker of the National Assembly seeking the concurrence of the Senate to the Bill as passed by the National Assembly.

Pursuant to Standing Order No.40(4), at the sitting of the Senate held on Tuesday, 14th May, 2013, I reported the message from the National Assembly to the Senate and at the morning sitting of the Senate held on Wednesday, 15th May, 2013, the Division of Revenue Bill was read a First Time in the Senate and committed to the Standing Committee on Finance, Commerce and Economic Affairs. The Bill was thereafter read a Second Time, considered in the Committee of the Whole and passed by the Senate, with amendments, on the 23rd May, 2013.

After the passage of the Bill by the Senate, by a letter dated 24th May, 2013, to the Clerk of the National Assembly, the Clerk of the Senate forwarded the following documents to the National Assembly:-

(a) A certified copy of the Division of Revenue Bill, 2013, as passed by the National Assembly on 9th May, 2013, and as further passed by the Senate on 23rd May, 2013.

(b) A Message from the Senate to the National Assembly requesting concurrence of the National Assembly to the amendments made by the Senate.

At its sitting held on Thursday, 6th June, 2013, the National Assembly purported to ignore or reject the amendments passed by the Senate and to resolve, in departure from the provisions of the Constitution, that the Bill be referred to the President for assent without reference to the mediation process.

By a letter dated 7th June, 2013, I brought to the attention of the President the unconstitutionality of the action taken by the National Assembly and requested the President, pursuant to Article 115(1)(b) of the Constitution, to refer the Bill back to Parliament for reconsideration by Parliament in the manner provided for by the Constitution.

The Bill as passed by the National Assembly was assented to and published on 11th June, 2013 and was stated as coming into force on the same day. However, on 17th June, 2013, a corrigenda was published in the Kenya Gazette by which the date of assent was amended to read "10th June, 2013" while the date of commencement was amended to read "25th June, 2013."

Hon. Senators, as you are aware, it is these events that led to the Senate seeking the advisory opinion of the Supreme Court in terms of Article 163(6) of the Constitution.

Hon. Senators, the importance of the matters canvassed by Sen. (Dr.) Khalwale cannot be gainsaid. The sharing of the revenues of the Republic of Kenya, both vertically and horizontally, is, as we have previously observed, at the core of the devolved government system that we have created. The implementation of the Constitution in this regard is, therefore, a matter not merely about outcomes, but also about processes. The outcomes speak to the amount of money to be allocated to the two levels of government while the processes speak to the procedure as set out in the Constitution.

The central point which must not be lost in this matter is that the objections which have led the Senate to seek an advisory opinion from the Supreme Court in relation to the Division of

Revenue Bill, 2013, are not only about the amount of money allocated to the counties as those bent on diverting public attention and misrepresenting the issues on this matter have contended. This is not about Kshs210 billion or Kshs258 billion; or for that matter, any other amount. Even more importantly, this is not and has never been, as has been misrepresented by a number of commentators, about ego trips and supremacy battles. These distortions need to stop.

Hon. Senators, the big question, the only question, is whether or not in accordance with our Constitution, the allocation of revenue as between the national Government and the county governments require the participation and agreement of the two Houses of Parliament; or whether, under the Constitution, it is a matter solely for one House. This is a fundamental constitutional question that must not be buried in subterfuge or conundrum. This is the basic question that the Senate has placed before the Supreme Court for its opinion. This is the basic question that the Supreme Court will advise upon.

Hon. Senators, when the National Assembly held a different view than our own and determined that the Division of Revenue Bill was a matter solely for the National Assembly to determine, the only recourse for the Senate as a law abiding organ of the Republic was to obtain a dispassionate arbitration from the legitimate constitutional body ordained for that purpose, namely, the Supreme Court.

The Questions raised by Sen. (Dr.) Khalwale are, therefore, of the first importance if the Senate is to remain on the right side of the Constitution. We must determine whether, when we believe the Constitution has been flouted and while we await the adjudication of the matter by the Supreme Court, we can legitimately proceed on the basis of the very instruments whose constitutionality we consent. Does proceeding in that matter prejudice our position? Is it *sub judice*?

Hon. Senators, pursuant to Standing Order No.90(2) a matter is *sub judice* when it refers to active criminal or civil proceedings and the discussion of such a matter is likely to prejudice its fair determination. However, the Standing Orders also provide at Standing Order No.90(5) that:-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”

In the instant matter, I think that our Legal Counsel on record at the Supreme Court has fairly framed the issues in respect to which the Supreme Court’s advice is being sought. The Supreme Court is also the highest court in our land. I think there would be no basis to form a view that at reading or not reading the County Allocation of Revenue Bill, 2013, a First Time or, indeed, proceeding with its transaction, would affect the fair determination by the Supreme Court as to the question as to whether or not the Division of Revenue Bill, 2013, is under the Constitution a matter for one or for both Houses to deal with.

Hon. Senators, I also do not think, in all fairness, by the fact that the Senate proceeds in one way or another, in this matter, because of the practical exigencies confronting us, can lead to any conclusion by the Supreme Court that we have abandoned the fundamental constitutional questions that we have placed before them; or that we have not acquiesced in the unconstitutional conduct we have reported to them. Therefore, the Senate must proceed in this matter in the fashion of what good lawyers like to call “on without prejudice basis.”

An important jurisprudential question that has been brought to the fore by the concerns of Sen. (Dr.) Khalwale relates to the status of unconstitutional law. What is a responsible organ of State or, for that matter, a citizen to do when he or she has to confront a law which they believe to be clearly unconstitutional? How is Article 3 of the Constitution obligating every person to

“respect, uphold and defend the Constitution” to be vindicated? What about Article 73 of the Constitution placing certain responsibilities of leadership on all State Officers?

In the present matter, I am clear that the course of action adopted by the Senate is the responsible one for a State organ like ourselves. We have proceeded to court and we are prepared for the outcome of the matter, such as it may be. Whatever may be our views on the Division of Revenue Bill, 2013, the moment that it was assented to, it became, regrettably, until the Supreme Court strikes it down, one of the fixtures of the Laws of Kenya, going by the name and style of the Division of Revenue Act, No.31 of 2013.

Sen. (Dr.) Khalwale suggested that to proceed, to the Supreme Court, having processed, or while seized of the County Allocation of Revenue Bill predicated on a Division of Revenue Act that we are contesting, is to go to court with unclean hands. On the contrary, it may be argued with justification that to go to court contesting conduct we claim to be unconstitutional and unlawful while, at the same time as the Senate ourselves, failing to abide by the provisions of Article 218 of the Constitution and our own Standing Order No.158(5), which requires that a County Allocation of Revenue Bill be introduced in the Senate not later than seven days following the enactment of the Annual Division of Revenue Bill, would be to proceed to court with unclean hands. Far from being complicit in the alleged unconstitutional conduct of the National Assembly, the Senate in proceeding with the County Allocation of Revenue Bill, 2013 will show that for its part, it has done everything in accordance with the law.

Hon. Senators, the upshot of the foregoing is that the responsible thing for the Senate to do is to proceed with the disposal of the County Allocation of Revenue Bill, 2013 in the manner set out in the Senate Standing Orders pending the decision of the Supreme Court. The question of the statutory instrument to be proceeded upon, whether it shall be that by the National Assembly or that by the Senate is an important, but not a fatal one. The County Allocation of Revenue Bill, 2013, as hon. Senators are aware, was first published on 7th May, 2013 in the name of Sen. (Prof.) Kithure Kindiki, the Senate Majority Leader. The figures in the Bill are neither those in the disputed Division of Revenue Act, 2013, nor those in the Division of Revenue Bill as passed by the Senate. The Bill will, therefore, be read a First Time in this form at the instance of the Chairman of the Standing Committee on Finance, Commerce and Economic Affairs.

Hon. Senators, after the First Reading, the Bill shall, in terms of Standing Order No.128(1) stand committed to the Standing Committee on Finance, Commerce and Economic Affairs. Following such committal, under Standing Order No.132(1), the Committee is required to present its report to the Senate within 30 calendar days of such committal. Thereafter, the Bill shall, in accordance with the Standing Orders, be processed through the Senate until the passage and subsequent referral of the Bill to the National Assembly for its concurrence.

Hon. Senators, as this legislative process runs, it is noted that the Supreme Court will give directions in the matter of the advisory opinion tomorrow, Wednesday, 3rd July, 2013, where our counsel on record, will no doubt impress on the court the urgency of this matter and the significance of an early determination of it. It is well known that the Bill is in its final form at the Third Reading, may, indeed, will, probably, be in a different form than that in which it was read and will accord with the Division of Revenue Act such as it will have been pronounced by the Supreme Court.

Hon. Senators, I have previously in this Communication stated that this dispute is not only about the quantum of money. It is also, and perhaps more importantly, about compliance with the Constitution, not just in this matter, but also going forward. Recent developments in the

National Assembly are underlying this point. As hon. Senators are aware, Article 110(3) of the Constitution provides as follows:-

“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 and, if it is, whether it is a special or an ordinary Bill.”

This provision was the cause of the present dispute. Since then, I am obliged to inform you that the following Bills have been introduced in the National Assembly and read a first time without recourse to the Speaker of the Senate and, therefore, the Senate and is in contravention of Article 110(3) of the Constitution.

The Bills are as follows:-

- (1) The Microfinance (Amendment) Bill, 2013 which was read a First Time on 27th June, 2013;
- (2) The Kenya Deposit Insurance (Amendment) Bill, 2013 which was read a First Time on 27th June, 2013;
- (3) The Insurance (Amendment) Bill, 2013, which was read a First Time on 27th June, 2013;
- (4) The Insurance Motor Vehicle Third Party Risks (Amendment) Bill 2013 which was read a First Time on 27th June, 2013;
- (5) The Tax Appeals Tribunal Bill, 2013 which was read a First Time on 27th June, 2013;
- (6) The Capital Markets (Amendment) Bill, 2013, which was read a First Time on 27th June, 2013;
- (7) The Supplementary Appropriation Bill (No.2) of 2013, which was read a First Time on 26th June, 2013; and
- (8) The Appropriation Bill, 2013 which was read a First Time on 22nd June, 2013.

Hon. Senators, we are staring at a constitutional crisis. The legislative process as contemplated by Article 110 of the Constitution has broken down. I have brought this matter to the attention of the Speaker of the National Assembly by a letter dated Thursday, 27th June, 2013, requesting his early response on the matter.

Hon. Senators, I also wish to confirm that I have written to him on the County Allocation of Revenue Bill and he has concurred. This is evidence, if any was wanting, that to approach this, as a matter of whether Kshs210 billion or Kshs258 billion is to accept to be thrown entirely off-track. What is at stake is a lot bigger. The question is, really whether we have a bicameral Parliament or not, whether the constitutional provisions in relation to the chapter on the Legislature are worth the paper on which they are written. Unless these matters are unequivocally resolved, it is quite clear that the legislative process will remain turbulent.

Hon. Senators, in answer to the request for directions by Sen.(Dr.) Khalwale, I, therefore, direct that the County Allocation of Revenue Bill, 2013 be read a First Time as listed in today's Order Paper and that pending the Supreme Court's advisory opinion, the Bill be proceeded upon in the manner provided for by the Constitution, the laws and Senate Standing Orders.

Let me conclude by reiterating that all the recent events notwithstanding, for our part as the Senate, we shall continue to be guided, and to abide by all the requirements of the Constitution, the laws and Standing Orders. It is the least that the Constitution as a whole and Article 3(1), in particular, demands of us all.

I thank you.

Thursday, 4th July, 2013

COMMUNICATION FROM THE CHAIR

DEMISE OF HON. JAMES NJIRU, FORMER MEMBER FOR
NDIA CONSTITUENCY

The Temporary Speaker (Sen. Murkomen): Hon. Senators, I have the following Communication from the Chair.

Hon. Senators, I wish to inform the Senate about the demise of a former Member of Parliament, hon. James Njiru, who represented Ndia Constituency in the late 1960s. He was an Assistant Minister for Health and later became Minister for Political Guidance in the Government of His Excellency Daniel Toroitich arap Moi. Hon. Njiru will be buried on Saturday 6th July, 2013, in Kirinyaga County.

Hon. Senators, the purpose of this Communication is to let the Senators be aware and also urge and encourage them to attend this burial on Saturday 6th July, 2013.

Thank you.

Thursday, 11th July, 2013

COMMUNICATION FROM THE CHAIR

RULING ON WHETHER OR NOT COMMITTEE CHAIRS FROM THE MINORITY SIDE CAN SPEAK ON BEHALF OF THE GOVERNMENT

The Speaker (Hon. Ethuro): Order, Senators! Do not be too angry at the Senate Majority Leader to the extent that you will also get the wrath of the Speaker. When the Speaker is on his feet, you know what to do. Both of us cannot be on our feet at the same time. You should resume your seat.

Let us conclude this, hon. Senators.

Apart from the passion and the excitement of the Senate Majority Leader, he is not the final authority on these matters. While I appreciate the arguments put forth, I said that these are issues that concern all of us and there are no clear cut answers. As we are looking at them, they are not even for me alone. We must also compare with the other House of Parliament in terms of how we engage as a legislature with the Executive in a Presidential system. At this infancy of an experiment, there are bound to be certain challenges or some differences in understanding, and everybody is entitled to an opinion. As far as I am concerned, the Senate Majority Leader has said his opinion while other Senators have their opinions. Some of these opinions are not in tandem, just like we have opinions between the two Houses. We know what we have done as a law abiding State organ. We have gone to the only institution that is mandated to do this kind of interpretations.

Issues addressed by Sen. Hassan in terms of how we could proceed with these issues and by Sen. Murkomen in terms of how we can ensure that responses are obtained and are relevant. There were issues and clarifications sought by Sen. Billow in terms of the procedures and whether Committees should constitute formally and invite the Minister. Sen. Murkomen also sought to know whether we can consider the Committee of the Whole. These are all issues that we need to look at. My interim position was that the Chair - I think I will be supported by Standing Order No. 182 – Duties of Committee Chairperson, which says:-

“Subject to the provisions of this Standing Orders and the direction of the Committee, a chairperson of a committee shall;

- (a) preside at the meetings of the Committee;
- (b) perform the functions and exercise the powers assigned to the office of the Chairperson by the Committee, resolutions of the Senate or legislation; and
- (c) be the spokesperson of the Committee.

I would find it very difficult as the head of this House to entertain extra measures of dealing with business in the House. We have the Constitution and we have our Standing Orders. These are things that guide the business of Parliament. So, sometimes even if you do not wish that way, and also Sen. Ongoro has expanded on this issue; that is why we go through an elaborate process. The minority party will nominate membership to the Committee and the majority party will nominate members of the Committee. These Committees are presented to the Rules and Business Committee where the Majority Leader, the Minority Leader and the Whips, by our

Standing Orders, again, sit in the Rules and Business Committee in order to approve these Motions. Then on the basis of that authority, committees go and appoint Chairs. Remember also the Standing Orders give us a formula on the membership of the committees. The majority party will have the majority of the membership and the minority will have a minority membership. So, when the majority decided to give the minority the leadership, I am sure, it was by consensus or election, but that was the will of the Committee. So, you cannot give the power to the chairperson and then you want to deny them by virtue of other considerations which existed all along when you made that particular decision.

So, these are some arguments that inform me for now. Of course, I am willing to be challenged by the Majority Leader and others for future reference and further consultations. As I said, this is not just for this House, it will also involve how we interact with the other House so that we can all come and agree on a formulation as a Parliament.

So, for the time being, it is my considered opinion and I direct that Statements will be directed, as per the standing orders, to the chairs of the committees. The chairs of the committees and the committees will deliberate on the matter in the best way they understand by consulting the Cabinet Secretary, either by summon him or her to appear or even getting a Statement from the Cabinet Secretary which you will come and read on the Floor. Those are all options available to the committees and that is the position for now.

The leadership of the House is also alive to the fact that we even have a retreat next week where we shall be considering some of these issues. I will invite all those who were invited to come to that retreat with such passion as has been displayed today so that now we can interrogate those matters in a more substantive manner and with the international resource persons we have invited.

Thank you.

Thursday, 18th July, 2013

COMMUNICATION FROM THE CHAIR

CONCURRENCE OF THE NATIONAL ASSEMBLY
ON BILLS UNDER S.O No.145

The other issue I want to communicate to Members is that as the House Committee commits itself to fidelity and the rule of law, I wrote a letter to the Speaker of the National Assembly on 12th July on concurrence on whether a Bill concerns counties or not. This is important for you so that as you proceed, you can know that we have asked for the concurrence. I would also like to confirm that there has not been any feedback.

However, we will proceed because we have communicated according to the law. The procedural Motion does not affect counties. Therefore, everybody has a vote here. However, when it comes to the Bill itself, the Leader of a Delegation or the designated person will vote.

(Question put and agreed to)

Tuesday, 23rd July, 2013

COMMUNICATION FROM THE CHAIR

ELECTION OF SENATOR TO PRESIDE OVER THE HOUSE
PURSUANT TO STANDING ORDER NO.18 AND ARTICLE
107 (1) (C) OF THE CONSTITUTION

The Deputy Speaker (Sen. Kembu-Gitura): Thank you. Sen. Mong'are, before you second, give me one minute.

Hon. Senators, you notice that I have been sitting here continuously, which is unusual. It is good to inform you that the Speaker is out of jurisdiction for now for a short time. Both panelists are similarly out of jurisdiction also on other official duties. So, in their absence, therefore, I can only sit here alone. But in consultation with the Constitution and other legislation, if you refer to Standing Order No.18, it says that:-

“The Speaker shall preside at any sitting of the Senate but in the absence of the Speaker, the Deputy Speaker shall preside and in absence of the Deputy Speaker, pursuant to Article 107(1) (c) of the Constitution, another Senator elected by the Senate for that purpose shall preside.”

If you refer to Article 107 of the Constitution, it says the same thing as our Standing Orders, which is that:-

“In the absence of the Speaker and the Deputy Speaker, another member of the House elected by the House presides.”

Now, we have a panelist whom we have elected under Article 107 of the Constitution, but since I may want to take a short break myself, we cannot just pick somebody from the Floor of the House and tell them to come and sit here; it will be unconstitutional. We must follow the Constitution to the letter because we are the guardians of the Constitution. So, I am proposing we do that before the Motion is seconded. I want to take a few minutes leave of absence from the Chair. I would like somebody to come and sit here because the Business of the House must continue. So, I would like us to proceed with Article 107, should you find it fit. Elect somebody to sit here as the Speaker for the 10, 20 or maybe 30 minutes for this session only.

The election of such a person shall not constitute that person to be a Member of the Speaker's Panel as contemplated whether by Article 107 or Standing Order No.18. So, that is the way I would like us to proceed. If you should find it fit, maybe we can have an election of somebody to be Speaker for the 10, 20 or 30 minutes that I propose to be out of the Chair.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, you have been very clear. But because we are a House of rules, could you be further clearer by confirming that the person who shall sit there in your absence will, amongst other things, enjoy the full privileges of the Speaker? Because sitting there, we happen to know certain things which we do not want to put in the public domain. But if you could confirm, so that should this person be shortchanged, later on, in the course of the week, then we can have recourse to the Speaker of the Senate and your direction.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): I have made it clear that whoever it is that is elected will sit here for 20 or 30 minutes while I am away. I am just trying to follow the Constitution as much as possible, but he or she shall have the full right to throw you out of the House should the need arise. By “you” I mean the Members present; I am not talking about Sen. (Dr.) Khalwale.

Hon. Senators: Are there any privileges?

The Deputy Speaker (Sen. Kembi-Gitura): I want to assure you that the privilege is a glass of water as he or she sits here and calls you out.

(Sen. Kittony stood in her place)

What is it, Sen. Kittony?

Sen. Kittony: I am proposing, Sen. Kajwang.

Sen. Lesuuda: I am seconding.

The Deputy Speaker (Sen. Kembi-Gitura): Does Sen. Kajwang have any problem with that?

Sen. Kajwang: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): That is so ordered, Sen. Kajwang, and thank you very much.

I am now going to put the Question, with the consent of the House, which is that Sen. Kajwang be elected to preside over the session temporarily under Article 107(1) of the Constitution.

(Question, that Sen. Kajwang be elected to temporarily preside over the Session Pursuant to Article 107(1) (c) of the Constitution, put and agreed to)

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

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

Wednesday, 24th July, 2013

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM NYANDARUA
COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before we proceed with business this morning, I wish to acknowledge the presence of some visitors. I heartily welcome them to the Senate. Allow me, hon. Senators, to introduce to you a delegation of County Assembly Members from Nyandarua County Assembly who are seated at the gallery. Of, course, that is the county represented by our colleague, Sen. (Eng.) Muriuki Karue. The delegation is led by the Nyandarua County Assembly Majority Leader, Hon. James Mwangi Gichuki

As I proceed to introduce the rest of the delegation, I request that if an hon. Member's name is called out, he or she should stand up and be acknowledged in the normal tradition of Parliament and of this Senate. We have the following 11 visiting hon. Members from Nyandarua County, over and above the Majority Leader:-

1. Hon. Peter Githinji, Ngumba, Minority Leader
2. Hon. Sylvestus Kagiri Mwangi
3. Hon. John Githinji Mwaniki
4. Hon. Joseph Mumba Gichini
5. Hon. David Ngige Ndirangu
6. Hon. Kariuki Muchiri
7. Hon. Paul Maina Nderitu
8. Hon. Peter Njoroge Kairu
9. Hon. Sammy Douglas Kamau
10. Hon. Samuel Kimani Njiraini
11. Hon. Samuel Mwangi Thuita

Feel welcome and I hope you enjoy the proceedings of the Senate.

(Applause)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM BUNGOMA COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. Before the next Senator contributes, Sen. Billow, I would like to make another communication. Today we have many visitors.

I interrupt our business to acknowledge county assembly members from the County Assembly of Bungoma who are seated at the gallery. As you know, that is the county represented by our colleague, Sen. Moses Wetangula, who is at the moment out on official business. That is why he is not here. I hope that our colleagues from Bungoma will take note of that. This delegation is led by the hon. Speaker, John Makali.

I will introduce the other Members who are here and as I do so, I will request them to stand in the normal tradition of Parliament so that our Members can acknowledge you. Owing to lack of space in our gallery in this temporary Senate Chamber, the delegation is divided into two. I would like to inform you, hon. County Assembly Members of Bungoma, that this is a temporary Chamber for us. Next time you visit us, you will find us in a proper Senate Chamber. I will interrupt the Senate again to introduce the first group. This group is made up of 11 Members.

Hon. Rosemary Khisa

Hon. Ben. Manaswa Wafula

Hon. Tindi E. Manase

Hon. James Mukhongo

Hon. Charles Wamukota

Hon. Benson Mukonda

Hon. Gershem Namasake

Hon. Nathan Obwana

Hon. Julius J. Wanjala

Hon. David Fwaro

Hon. Moses Wambile.

I hope you will enjoy our sessions in the short time you will be here.

Wednesday, 24th July, 2013

COMMUNICATION FROM THE CHAIR

INVITATION TO LAUNCH OF JUDICIAL PERFORMANCE
IMPROVEMENT PROJECT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a short Communication to make. I am in receipt of an invitation from the hon. Chief Justice, Dr. Willy Mutunga, inviting all hon. Senators to the launch of the Judicial Performance Improvement Project (JPIP). The project is intended to bring about enormous improvement in infrastructure, court administration, case management, staff development and training.

Hon. Senators, I, therefore, extend the invitation of the hon. Chief Justice to you and request that you diarize to attend the launch which will be held on Tuesday, 30th July, 2013 at the Chief Justice's garden, Supreme Court of Kenya at 9.00 a.m.

Thank you.

Tuesday, 30th July, 2013

COMMUNICATION FROM THE CHAIR

APPOINTMENT OF JOINT COMMITTEE TO REVIEW CONCURRENCE ON THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL, 2013

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make with regard to the National Flag, Emblems and Names (Amendment) Bill, 2013.

As you are aware, the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.2 of 2013 was published on 5th July, 2013. The Bill is sponsored by Sen. (Dr.) Khalwale, Senator for Kakamega County. Following the publication of the Bill, pursuant to Article 110(3) of the Constitution and Standing Orders Nos.116 and 122 of the Senate and National Assembly Standing Orders respectively, by a letter dated 12th July, 2013, the Speaker of the Senate sought the concurrence of the Speaker of the National Assembly that the Bill concerns county governments and further that it is an ordinary Bill within the meaning of Article 110(2)(b) of the Constitution.

Hon. Senators, in a letter dated 18th July, 2013, the Speaker of the National Assembly responded and stated, among other things as follows, and I quote:-

“I am convinced that the aforementioned Bill does not concern counties within the meaning of Article 110(1) of the Constitution and further that the Bill does not satisfy the criteria stipulated in Article 110 of the Constitution for it to be regarded as either a Special or Ordinary Bill concerning counties and cannot, therefore, be regarded as such.”

Hon. Senators, on receipt of the letter by the Speaker of the National Assembly, by a letter dated 23rd July, 2013, the Speaker of the Senate disagreed with the position, arguments and conclusion of the Speaker of the National Assembly.

Hon. Senators: Yes!

(Applause)

The Speaker (Hon. Ethuro): Order, hon. Senators! Further, in the letter, the Speaker of the Senate proposed that pursuant to Article 110(3) of the Constitution and Standing Orders Nos.124 and 122 of the Senate and National Assembly Standing Orders respectively, in order to unlock the impasse, it seemed reasonable to appoint a joint committee to advise the Speakers on the matter. The Speaker of the Senate has, therefore, appointed Sen. Kembi-Gitura, the Senate Deputy Speaker, Sen. James Orenge, Sen. (Dr.) Boni Khalwale, the author of the Bill and Sen. Kipchumba Murkomen to constitute the Senate membership of the Joint Committee. The Speaker has further requested the Speaker of the National Assembly to appoint a similar number of hon. Members of the National Assembly in order to complete the team.

Hon. Senators, the Clerks of the two houses shall, as required under Rule No.7 of the Houses of Parliament Joint Sitting Rules, constitute the joint secretariat to the Committee.

Hon. Senators, in light of these developments, I hereby direct that all further proceedings by the Senate on the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.2 be pended until the conclusion of the deliberations by the Joint Committee. This matter should be concluded within seven days, by Thursday.

Thank you.

(Applause)

Wednesday, 31st July, 2013 (Afternoon)

COMMUNICATION FROM THE CHAIR

BREAKFAST MEETING TO REVIEW MEDIUM TERM PLAN, 2013-2017

The Speaker (Hon. Ethuro): Order, hon. Senators. I wish to make the following Communication.

The Ministry of Devolution and Planning has organised for a special meeting with the Senators to discuss the Second Medium Term Plan (MTP), 2013-2017. The Second Medium Term Plan, 2013-2017 has been prepared in an inclusive and participatory stakeholder consultative process with a view to help transform Kenya into a newly industrializing middle-income country providing high quality life to all its citizens in line with Vision 2030.

Hon. Senators, I am informed that the county consultations fora were undertaken in all the 47 counties between 3rd to 10th December, 2012 and as a result of the fora, priority sectors were identified in each county. The programmes and projects to address the sector priorities will be outlined in the Second MTP and in the integrated county development plans.

Hon. Senators, I requested that a special session be held for hon. Senators where it is expected that they will also validate the draft and give input to be incorporated before its launch in August, 2013.

In view of the foregoing, the Ministry of Devolution and Planning has organised for a special breakfast meeting with all hon. Senators. The Cabinet Secretary and Principal Secretaries in the Ministry of Devolution and Planning are expected to lead the discussions during the breakfast meeting.

Hon. Senators, I, therefore, take this opportunity to invite you all to the meeting scheduled to be held on Thursday, 1st 2013, at Laico Regency Hotel, Nairobi from 8.00 a.m. to 10.15 a.m.

I thank you and hope to see all of you there.

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR DIVISION ON MOTIONS BY SEN. HAJI AND SEN. KAGWE

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this is a short Communication from the Chair, actually. We are going to the last Division on the Bill that we are dealing with. This is to request you as hon. Members of this Senate to note that in the Order Paper, we have to call Divisions on two Motions. They are important and you have debated them in this House. You have been very patient the whole afternoon. I am now doing the work of the whip, which maybe I should not, I just want to request you to note that there are those two Motions which you need to vote for. I propose that we will do a Roll Call for one Motion and another one for the

next Motion, without ringing the Bell twice. One Motion is by Sen. Haji and the other one is by Sen. Kagwe.

My request to you is that, please, do not walk away after we have finished with this Bill. We will now go into the Roll Call.

Thursday, 1st August, 2013

COMMUNICATION FROM THE CHAIR

WELCOME TO THE NEW SENATOR FOR MAKUENI,
SEN. M. KILONZO JUNIOR

The Speaker (Hon. Ethuro): Order, hon. Senators. I do not have any formal Communication but I want to use this opportunity, for all of us, as a Senate, to welcome the new hon. Senator for Makueni County. I want to wish him well for the duration of his tenure in this House. I want to assure him that the rest of the hon. Senators will accord him every necessary support to induct him and also to ensure that he plays his role in this House. I also wish to assure him, as the Speaker, that we shall provide him with the every opportunity to play his role.

Senator Mutula Kilonzo Junior, you are most welcome.

(Applause)

Tuesday, 10th September, 2013

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE TO DEBATE MOTION ON WITHDRAWAL OF KENYA FROM THE ROME STATUTE

The Speaker (Hon. Ethuro): Hon. Senators, let me take this opportunity to welcome you all to this special sitting of the Senate that has been convened by the Speaker at the request of the Majority Leader as set out in our rules of procedure.

Hon. Senators, I wish to take a moment to indulge you to make the following Communication on the circumstances under which this special sitting was convened. You will recall that the Senate adjourned on Thursday, 1st August, 2013 and was to reconvene on Tuesday, 17th September, 2013 in accordance with the Senate Calendar, pursuant to Senate Standing Order No.28. Subsequently, on Monday, 2nd September, 2013, in accordance with Standing Order No.29 (1), the Speaker received a request from the Senate Majority Leader, Sen. (Prof.) Kindiki, to appoint a day for a special sitting of the Senate to deliberate on a Motion asking the Government to initiate the process of Kenya's withdrawal from the Rome Statute of the International Criminal Court (ICC).

For the benefit of hon. Senators, Standing Order No.29 (1) states as follows:-

“Whenever during a Session the Senate stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may, on the request of the Senate Majority Leader or the Senate Minority Leader, appoint a day for a special sitting of the Senate.”

Hon. Senators, the Speaker considered the request against the criteria set out in Standing Order No.29(2) which states as follows:-

“The Speaker may allow a request under paragraph (1) if the Speaker is satisfied that the business proposed to be transacted relates to the matters specified under Standing Order 59 (*Definition of Special Motions*) or other urgent and exceptional business as the Speaker may allow.”

The Speaker noted that the business proposed to be transacted is not one falling under the definition of Special Motions as defined under the provisions of that particular Standing Order. The Speaker was, however, satisfied that given the sensitivity and the magnitude of the nature of the subject matter contained in the Motion on the Republic of Kenya, it was not only urgent, but also exceptional business as envisaged in the following Standing Order and accordingly appointed today, Tuesday, 10th September, 2013 for the special sitting.

In accordance with Standing Order No.29 (3), I notified all hon. Senators of the sitting through a special issue of Gazette Notice No.123735 dated 4th September, 2013.

Hon. Senators, Standing Order No.29 (3) states as follows:-

“The Speaker shall, by notice in the Gazette, notify the Senators of the place, date and time appointed for the special sitting of the Senate.”

The Gazette Notice read as follows:-

“Notice is given to all Senators that pursuant to Standing Order No.29 of the Senate Standing Orders, on the request of the Senate Majority Leader, I have appointed Tuesday, 10th September, 2013 as a day for a Special Sitting of the Senate. The special sitting shall be held at the Senate Chamber, 1st Floor, Kenyatta International Conference Centre, Nairobi commencing at 2.30 p.m. The business to be transacted at the special sitting shall be a Motion relating to the membership of the Republic of Kenya to the Rome Statute of the International Criminal Court (ICC).

In accordance with Standing Order No.29(5) of the Senate Standing Orders, the business specified in this notice shall be the only one before the Senate during the special sitting, following which the Senate shall stand adjourned until Tuesday, 17th September, 2013 at 2.30 p.m. in accordance with the resolution of the Senate made on Thursday, 1st August, 2013.”

Distinguished Senators, let me, therefore, conclude this Communication by bringing to your attention the provisions of Standing Order No.29(5) which states as follows:-

“Whenever the Senate meets for a special sitting under paragraph (1), the Speaker shall specify the business to be transacted on the day or days appointed and the business so specified shall be the only business before the Senate during the special sitting, following which the Senate shall stand adjourned until the day appointed in the parliamentary calendar.”

Hon. Senators, I trust that we are now reading from the same page on the circumstances relating to the sitting, the purpose of the sitting, the business before the Senate and what happens after this particular sitting. It is my sincere hope that you will debate this Motion on the basis of its merits or demerits and give this matter of immense public interest, your highest consideration befitting your higher calling while maintaining the dignity and decorum of the state organ of the Senate which you have been called upon to serve. You have always done this as the Senate. Kenyans expect the same from every contributor to this Motion.

I thank you.

Wednesday, 18th September, 2013

COMMUNICATION FROM THE CHAIR

SUBMISSION OF PROGRESS REPORT ON SENATE
RESOLUTIONS BY IMPLEMENTATION COMMITTEE

The Temporary Speaker (Sen. Murkomen): Hon. Senators, I have a Communication to make. Hon. Senators, in the course of this debate, a lot has been said about the situation of the Motions that we pass in this House and whether or not they are being implemented. Every resolution of this House requires action by the respective Ministries and Cabinet Secretaries. There is a procedure and channel in this House for communicating the same to respective Ministries. The Committee on Implementation is seized of the matter and is taking the necessary action. However, the Chair rules that this Committee on Implementation should apprise the Senate on the progress that it is making on all Motions that have been passed in this House, and report to the House next week, on Thursday, 26th, September, 2013, so that we can understand what action the House can take based on their report. So, I order the Vice-Chair of the Committee on Implementation, Sen. Kanainza, who is here, that we should have a report next week on Thursday.

Tuesday, 24th September, 2013

COMMUNICATION FROM THE CHAIR

ATTACK ON THE WESTGATE SHOPPING MALL

The Speaker (Hon. Ethuro): Order, hon. Senators, I have a communication to make on the attack on the Westgate Shopping Mall in Nairobi on Saturday, 21st September, 2013.

Hon. Senators, as you are all aware, our country was under attack after armed gunmen stormed the Westgate Shopping Mall in Westlands area of Nairobi County on Saturday, 21st September, 2013. Let me take this opportunity, on my own behalf and on behalf of the Senate, to convey our sincere condolences to the families and friends of those who were killed by the heartless terrorists. I want to assure them that we share in the pain and the loss and shall stand with them during this difficult period of grief. We also wish to take this opportunity to wish all those who were injured and hospitalized a quick recovery.

Distinguished Senators, the events of that dark Saturday have left a wave of grief, death, injuries and destruction in its wake, where it is reported that a total of 69 people have tragically and needlessly lost their lives and an estimated 175 others injured. Let me take this opportunity to condemn, in the strongest terms possible, the attack on unarmed and defenceless men, women and children who were peacefully going about their lives as global citizens of the free world. The targeting, especially of infants, children and women has clearly exposed the soul of those involved and manifested the fact that the philosophy and objectives of the perpetrators of the heinous attack has nothing to do with religion, but an obvious act of cowardice and criminal barbarism of unimaginable proportions.

Allow me, therefore, to affirm that this country is founded on the principle of transparency, accountability, democracy and good governance as set out very well in our Constitution. We shall, therefore, never surrender to anybody; neither to any criminal nor terrorist of whatever character, now or in the future. In the same breath, I would like to highly commend our security officers for their patriotism and heroism in confronting these agents of terror and for rescuing thousands of innocent people who had been trapped in the mall, and they continue to do so.

I also wish to extend our appreciation, as the Senate, to all those ordinary people who have in one way or another assisted in evacuating people to safety and provided any form of support to those affected as well as our international friends who have expressed their solidarity with us and through other actions after this dastardly attack. We, as a Senate, have also received condolences from many other Senates in the world.

In this regard, I further note with appreciation that the Senators, this morning, sat in their *Kamukunji* and have contributed Kshs2 million to be donated to the Kenya Red Cross Society towards this effort; and this is in addition to the Kshs2 million that was contributed by the National Assembly yesterday. We will continue to donate blood as well as many other initiatives at the county level in collaboration with the governors.

The Senate stands by His Excellency the President, hon. Uhuru Kenyatta, and the Deputy President, hon. William Ruto, and the entire Executive Arm of the Government in managing the

crisis that befell our country and asserts its unreserved support in dealing with the criminals, helping those affected and in restoring normalcy back to our country.

Let us now, in our usual parliamentary tradition, distinguished Senators, stand in our places and observe a minute of silence in honour of those infants, children, women and men killed in the senseless attack and to reiterate our resolve to defeat terror and to affirm our way of life, democracy and the unity of the nation. Let us observe one minute of silence.

*(Hon. Senators stood up in their places and
observed a minute of silence)*

Wednesday, 25th September, 2013 (Afternoon)

COMMUNICATION FROM THE CHAIR

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

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale, you may freeze!

(Laughter)

LAUNCH OF BUNGE SPORTS CLUB

Hon. Senators, I have a Communication to make on the launch of Bunge Sports Club. As you may be aware, the leadership of Parliament takes measures to provide a conducive environment to Senators and the Members of the National Assembly in order to facilitate their work. It is in this spirit that over the years, the Parliament of Kenya has been extending support to Bunge Sports Club to, among other things, encourage Members to keep physically fit and healthy. We believe that a healthy body is a healthy mind. A number of parliamentarians interested in taking part in the activities of the club that include football, golf, athletics and netball have met and constituted a committee to manage the club. The club will, therefore, be launched officially this evening in the Main Parliament Buildings at the rise of both Houses, to be presided over by the co-patrons, who are the Speakers of the two Houses.

This is, therefore, to extend an invitation to all Senators to the launch at the Main Parliament Buildings and to appeal to you to not only attend the launch but also participate in the activities of the sports club.

I thank you.

Tuesday, 1st October, 2013

COMMUNICATION FROM THE CHAIR

ELECTION OF SENATOR TO PRESIDE OVER SITTING PURSUANT TO STANDING ORDER NO.18 AND ARTICLE 107(1) OF THE CONSTITUTION

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before we move to the next order, I wish to bring to your attention that the Speaker and the other two panelists are out of the country. So, I am alone running the show. Like I said last Thursday, it is not possible that one person can run the show continuously.

Hon. Senators, what I was proposing - and I have done consultations with the Clerk's Office - is that, again, proceeding under Article 107 of the Constitution and Standing Order No.18, we will do exactly what we did last week. But this time, I will ask that under Article 107 of the Constitution - it does not stop us from proceeding the way I want to propose - that we elect an hon. Senator, who will assist me in the running of this House until the end of this week. If the same situation persists next week, we can do the same thing in the following week.

Senate Majority Leader, I do not know what plans you have. But I would like to do a very quick election. Last week, we elected Sen.(Dr.) Machage. I want to sincerely thank him for the help that he gave me and the House.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TAITA TAVETA COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Members! Before we proceed to the next speaker, I mentioned to you that we have visitors from Taita Taveta County Assembly. I have already introduced the first group to you. However, due to the size of our galleries, we cannot accommodate all of them. However, I do not want them to go to Taita Taveta and say that the Senate has no gallery. These are temporary premises. When you visit us next time, you will find us in a place with a complete gallery. I will call the next group. When I call you, please, stand so that you are acknowledged in the parliamentary way.

The second group is composed of;
Hon. Roselyne W. Mshambala;
Hon. Rosina Mghoi Kisochoi;
Hon. Ruth Wambugha Mwanyiro;
Hon. Valery Mghoi Mganga;
Hon. Steven Mwakio;
Mrs. Jemmimah Makoko, member of staff;
Ms. Isabellah Talu, member of staff;
Ms. Beatrice Njumwa, member of staff;
Ms. Dora Manga, member of staff; and, finally,
Mr. Nelson Mwanyalo, member of staff.
Karibuni.

Tuesday, 15th October, 2013

COMMUNICATION FROM THE CHAIR

JOINT COMMITTEES OF PARLIAMENT

The Speaker (Hon. Ethuro): Hon. Members, we will appreciate that we constituted all our committees, including the committees that are joint with the National Assembly sometimes back. All other committees have been operational except the Joint Committees, because we were awaiting the names from the National Assembly. I am, therefore, happy to report that after a meeting, two weeks ago, with the leadership of the National Assembly, they have now written to us to confirm the membership to the Joint Committees from the National Assembly, and they are as follows: Because we do not have another mechanism again to--- We cannot do another resolution because we had already done our bit.

The Joint Committee on National Cohesion and Equal Opportunity, membership from the National Assembly will include:

Hon. Johnson Sakajja, MP
Hon. Peris Tobiko, MP
Hon. Kimani Ngunjiri, MP
Hon. Roba Duba, MP
Hon. Francis Mwangangi, MP
Hon. Moses Injendi, MP
Hon. Maison Leshoomo, MP
Hon. Zipporah Jesang, MP
Hon. Grace Kipchoim, MP
Hon. Mohamed Elmi, MP
Hon. Maj-Gen. (Rtd.) Joseph Nkaissery, MP
Hon. Mohamed Diriye Abdullahi, MP
Hon. James Gordon Rege, MP
Hon. Rose Museo Mumo, MP
Hon. George Omondi Mallan, MP

The Joint Committee on Parliamentary Broadcasting and Library, the National Assembly has the following Members:

Hon. Isaac Waihenya, MP
Hon. Samuel Mathenge, MP
Hon. Ayub Savula, MP
Hon. Leonard Sang, MP
Hon. Wesley Korir, MP
Hon. Francis Waweru Nderitu, MP
Hon. Justice Kemei, MP
Hon. David Kosing, MP
Hon. (Prof.) Hellen Sambili, MP
Hon. Alice Nyanchoka Chae, MP
Hon. Mustafa Salim Idd, MP
Hon. Khamis Mishi Juma, MP
Hon. Bady Bady Twalib, MP

Hon. Regina Muia, MP
Hon. Mwanyoha Hassan Mohamed, MP
Thank you.

Tuesday, 22nd October, 2013

COMMUNICATION FROM THE CHAIR

INVITATION TO CONSULTATIVE FORUM BETWEEN THE SENATE AND THE TRANSITION AUTHORITY

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make. I am pleased to invite you to a consultative forum between the Senate and the Transition Authority (TA) which is scheduled to take place on 25th and 26th October, 2013 at Leisure Lodge, Kwale County. This event has been organised by the TA in conjunction with the leadership of the House with the main objective of discussing the progress made, the challenges experienced and in order to develop a common understanding on devolution, in particular the role of the TA in the devolved system of governance. Senators are expected to depart from Nairobi to Mombasa on Thursday, 24th October, 2013 after the rise of the House and travel back to Nairobi on 27th October, 2013.

Hon. Senators, you are advised to liaise with the Office of the Clerk of the Senate for logistical arrangements and for any other information that you may require on this meeting.

Thank you.

COMMUNICATION FROM THE CHAIR

THE ROLE OF THE SENATE MAJORITY LEADER IN FACILITATING THE WORK OF COMMITTEES

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! We must bring this debate to a close. While I appreciate the debate and it is healthy, this is a debating Chamber for sure; I want to clarify a few things. I think we disposed of the issue of the Constitution, so that is rested and the originator has exited with it. The issue is the role of the Senate Majority Leader in terms of assisting Committees. This matter has been canvassed severally here and we said we will undertake a lot of research. But that is just in terms of a bicameral Parliament *vis-à-vis* a presidential system; how the Senate Majority Leader and the Chairpersons of Committees can interact with the Executive to ensure that the issues sought by the Senators can be addressed. But in terms of how the Senate Majority Leader goes about it, I want to agree with Sen. Orenge and Sen. Wako that the Senate Majority Leader cannot come here and pretend to be so unsupported.

This is because, first, this House has given the Senate Majority Leader a big office and infrastructure to support him. Secondly, the expectation is that the Senate Majority Leader is the Leader of the Majority and, indeed, Sen. Orenge has educated him to just dispose with the rest of the adjectives and just remain “the leader”. Coming from Sen. Orenge, I am sure that was a highly considered matter coming from the other side of the coalition. Now, the Chair has the responsibility to manage the affairs of the Senate Majority Leader and his committees. You will all remember that committees of this House were constituted by the Senate Majority Leader and the Senate Minority Leader through their Whips, approved by the RBC and the rest of the House.

The persons who nominate Senators to Committees or denominate like they did to Sen. (Dr.) Khalwale – thank you Sen. Orenge for reminding me - in fact, I thought by the time Sen.

(Dr.) Khalwale was making the assertion that the Senate Majority Leader was not in the House - he would have reminded him of how he made his exit by the sheer principle of his position. So, the rule is that as the author and the originator of the membership to committees, you determine how long they remain there and how you wish them to make an exit. It was supposed to be based on some performance. So, you must be having your own monitoring mechanism. That is why we post things on the website and that is why we have a record of the proceedings of this House known as the HANSARD. It is up to the Senate Majority Leader at the end of the day or, at the very minimum, the following day, to look at the HANSARD and find out which Statements have been sought and by who. I cannot help you there, I am afraid.

I referred you to Standing Order No.43 (2) and I cannot go back to it. Let me give you another one. In the interpretation, on Page 22, section 2 (3) it states:-

“In the Standing Orders, whenever a document is required to be provided or made available to Senators, the document shall be considered to have been so provided or made available if placed in the Senator’s pigeon-holes or in such other place or availed in such other manner as the Speaker may direct”.

How to do you make documents available in the House? It is by placing papers on the Table of the House. That is why we have an Order on Statements on the Order Paper of the day. By raising Statements here, then they go to the record of the HANSARD, by getting a document as you enter the Chamber or as we had previously agreed, in a room where you can obtain any other documentation as needed.

But also the Senate Majority Leader was unfair to the House because he knows that even this very afternoon, in the Rules and Business Committee (RBC), I was the one who moved an agenda which he sought last week; on how we can facilitate some of the issues that he had raised last week on the Floor. The Speaker, as the Chairman of the RBC, was the one who brought that agenda to the Floor.

So, he knows that we are always more than willing and ready to go even beyond what I have raised here in terms of the normal ways in order to ensure that the Senate Majority Leader and the Senate Minority Leader are facilitated. But between the Cabinet Secretaries and his office, I am afraid there is not much the Chair can help unless you bring it to our attention and we will deal with it as a House. If you bring it to the attention of the House, we will handle it as a House. Secondly, in terms of whether the Government has failed or not, you recall last week, there were Committee Chairpersons who were able to make Statements as demanded and in record time or even earlier than the time they had promised.

So far, no Chairperson has made a report to this House about lack of co-operation from Cabinet Secretaries. Even this afternoon Sen. Kivuti has said that some of them are actually co-operating very well. So, you do not expect the House to Act on rumours. There must be a basis for everything; there should be a considered position by the Committee Chairpersons. They should come before the House and say that they are not getting support from the Executive, then the House will pronounce itself on that particular matter. I think everybody should be guided from today henceforth.

The Senate Majority Leader, we will see what we can do to help you. But in the meantime, I believe that you have sufficient recourse to undertake your job, including assuming responsibility for the failure of Committees.

Wednesday, 23rd October, 2013

COMMUNICATION FROM THE CHAIR

HON. SPEAKER'S ADDRESS AT THE OFFICIAL OPENING OF THE PAN AFRICAN PARLIAMENT

The Speaker (Hon. Ethuro): Hon. Senators, I wish to make a brief Communication on the address I made at the official opening of the Third Ordinary Session of the Third Legislature of the Pan African Parliament on Monday, 21st September, 2013, upon invitation by the President of the Pan African Parliament, the hon. Bethel Amadi, MP.

Hon. Senators, I received an invitation to deliver a message of goodwill and solidarity in recognition of our Senate and in appreciation of the Senate's unique role in protecting devolution which is a key economic driver in many of the developing nations. I felt greatly honoured and privileged to have joined the distinguished Assembly of the Pan African Parliament during the opening session of the auspicious occasion of the Third Ordinary Legislature of the Third Legislature of the Pan African Parliament which commenced on Monday, 21st October, 2013 and is scheduled to end on Friday, 1st November, 2013. This session is being held at the seat of the Pan African Parliament in Midrand, Johannesburg, in the rainbow nation of the Republic of South Africa.

I made the remarks conveying a message of goodwill and solidarity from you, hon. Senators, and through you from the people of Kenya to the President and the members of the Pan African Parliament.

Hon. Senators, the mandate and objectives of the Pan African Parliament as contained in the protocol to the Constitutive Act of the African Union (AU) are diverse. It covers implementation of the AU policies, human rights and democracy, good governance, transparency, accountability, integration of the African Continent, peace, security and stability, prosperity, co-operation and development, solidarity, common destiny and finally, to facilitate co-operation amongst the regional economic communities and the parliamentary fora.

Hon. Senators, I noted with appreciation that the President of the Pan African Parliament and the other invited speakers from the national and regional parliaments of Africa in their opening remarks, during the opening session, expressed their support for the resolution made by our Parliament on the International Criminal Court (ICC) cases and further condemned the recent terrorist attacks on the Westgate Mall.

Hon. Senators, conspicuously absent in the Pan African Parliament Assembly was the Kenyan delegation, which is yet to be constituted. I apologise for our collective failure as the Kenyan Parliament to send our nominees to the Pan African Parliament in good time. As you are aware, we are in consultation with the leadership of the National Assembly to finalise the nomination process in due course. Unfortunately, we will miss this particular session.

Hon. Senators, as the Senate is the House in charge of the Pan African Parliament affairs, on behalf of the two houses, we will continue with our collaborative efforts with the Pan African Parliament and other national and regional legislatures to fast-track the democratization process of the continent for the better welfare of the African citizenry and their endeavors. In particular, the Pan African Parliament's role in ensuring African unity captured in their mantra: "One Africa One Voice".

I thank you.

Tuesday, 29th October, 2013

COMMUNICATION FROM THE CHAIR

APPOINTMENT OF MEMBERS TO THE PAN-AFRICAN PARLIAMENT

The Speaker (Hon. Ethuro): Order, Senators. I have a Communication to make. This is to inform you that I am in receipt of a Message from the National Assembly to the Senate signed by the Speaker of the National Assembly and dated 25th October, 2013 on the appointment of Members of the Parliament of Kenya to the Pan-African Parliament (PAP).

Pursuant to Standing Order No.40 (4), I am required to report the Message of the National Assembly to the Senate at the first convenient opportunity after its receipt. In any event, not later than the next sitting day, which in this case is today, Tuesday 29th October, 2013. The message from the National Assembly reads as follows:

APPOINTMENT OF MEMBERS OF PARLIAMENT TO THE PAN-AFRICAN PARLIAMENT

“Pursuant to the provision of Standing Order No.41(1) of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly. The National Assembly on Thursday, 24th October, 2013 approved the following Members of Parliament to PAP:

Hon. Zakayo K. Cheruiyot, MP
Hon. Rachael Wambui Shebesh, MP
Hon. Millie Grace Akoth Odhiambo Mabona, MP
Hon. Shukran Hussein Gure, MP
Hon. Sen. Kipchumba Murkomen, MP”

Hon. Senators, pursuant to Standing Order No.40(6)(b) and in view of the urgency of the matter, I hereby appoint the afternoon sitting of Wednesday which is tomorrow 30th October, 2013 as the date for consideration by the Senate of the Message of the National Assembly. The message will be considered on a Motion;

THAT, the Senate concurs with the National Assembly that the following Members of Parliament be appointed to the PAP;

Hon. Zakayo K. Cheruiyot, MP
Hon. Rachael Wambui Shebesh, MP
Hon. Millie Grace Akoth Odhiambo Mabona, Mp
Hon. Shukran Hussein Gure, MP
Hon. Sen. Kipchumba Murkomen, MP”

Thank you.

Wednesday, 30th October, 2013 (Afternoon)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MOMBASA COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Before we move to the next Order, I would like to acknowledge the presence of some visitors, who are visiting us today.

Allow me, hon. Senators, to introduce to you a delegation of Members of Mombasa County Assembly who are seated to my right. The delegation is led by hon. Jimmy Ondari – Chairperson, Justice and Legal Committee. As I introduce the rest, I request that a Member of the Assembly called should stand up and be acknowledged in the normal tradition of the Senate.

The following are members of the delegation:-

Hon. Paul Onje

Hon. Dancan Onyango

Hon. Mohamed Ndanda

Hon. Amina Zuber

Hon. Hudson Karume

Hon. Rashid Muswaba

Hon. Chebes Oduor

Hon. Fadhili Mwalimu

Hon. Abdallah Hamisi

Hon. Simiyu Patrick

Hon. Lucy Chireri and,

Mr. Mohamed Kassim – Chief Serjeant-at-arms.

You are most welcome to the Senate and I also recognise your own Senator, Sen. Hassan, in the House.

CONSIDERED RULING

THE ISSUE OF PAP MEMBERSHIP TO BE REFERRED TO POLITICAL PARTIES FOR FURTHER CONSULTATION

The Speaker (Hon. Ethuro): Sen. Mukiite, you are making Sen. (Dr.) Machage have the last laugh. The Motion has yet to be moved. The arguments we can only entertain here is whether we should proceed or not.

Let me make the following ruling: The first is what Sen. (Dr.) Khalwale has asked. What he has asked of the Chair is perfectly in order although he is using the wrong Standing Order which is No.1, which talks about something not provided for. This is provided for in Standing Order No.40(6). Let us all just have a look at it.

Standing Order No.40 (1) reads:-

Messages to and from the National Assembly

“(1) A message from the Senate to the National Assembly shall be in writing and shall be signed by the Speaker.

(2) The Clerk of the Senate shall transmit the message from the Senate to the Clerk of the National Assembly and shall receive messages from the National Assembly.

(3) The Clerk shall deliver to the Speaker a message received from the National Assembly under paragraph 2 at the first available opportunity after receipt and in any event, not later than the next day not being a Saturday, Sunday or public holiday.

(4) If a message is received from the National Assembly at a time when the Senate is in session, the Speaker shall report the message to the Senate at the first convenient opportunity after its receipt and in any event not later than the next sitting day.”

That is what I did yesterday.

(5) If a message is received from the National Assembly, at a time when the Senate is not in session, the Speaker shall forthwith cause the message to be transmitted to every Senator and shall report the message to the Senate on the day the Senate next sits.”

So, even when you are away, you must be informed immediately.

“(6) When the Speaker reports a message from the National Assembly under paragraph (4) or (5), the message shall be deemed to have been laid before the Senate and the Speaker may-

(a) direct that the message be dealt with forthwith;

(b) appoint a day for the consideration of the message; or

(c) refer the message to the relevant Committee of the Senate for consideration.”

I am inclined to agree with Sen. (Dr.) Khalwale, in the sense that the substance of this Motion is really the issue of political parties coming to some understanding. I am also aware of some movements to that effect. So, since the request has come from the Floor, I think that there is no harm in deferring this matter maybe to next week, so that we allow the discussions that may be ongoing or others that you may wish to initiate, now that you are seized of the matter, and then we can make a final determination next week.

Thursday, 31st October, 2013

COMMUNICATION FROM THE CHAIR

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

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

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

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

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

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

I thank you.

(Applause)

Thursday, 31st October, 2013

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF COUNTY
ASSEMBLY SPEAKERS

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

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

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

(Applause)

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

Thank you very much.

Tuesday, 19th November, 2013

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM NYERI
COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Senators, I wish to acknowledge the presence of Members of County Assembly from the Nyeri County. The Delegation is led by hon. Wachira Waruru, who is the chairperson of the Liaison Committee of the Assembly. I will call them by their names and I ask them to rise so that we can recognise them.

Hon. Wachira Waruru

Hon. Salma Uledi

Hon. Baragu Mutahi

Hon. Nancy Wanjiku

Hon. Jesse Mwangi

Hon. Naomi Gitonga

Hon. Regina Macharia

Hon. Leah Mumbi Njoroge

Hon. Elizabeth W. Njee

Hon. Josephine Muthoni Muriithi

Hon. George Maina Gichuki

Hon. David Ndirangu

Ms. Eunice W. Mwangi

Ms. Lucy Bitutu

On behalf of the House and on my own behalf, I wish to welcome the delegation to the Senate.

Thursday, 21st November, 2013

COMMUNICATION FROM THE CHAIR

IMPLEMENTATION OF THE SUPREME COURT ADVISORY OPINION IN THE LEGISLATIVE PROCESS

The Speaker (Hon. Ethuro): Hon. Senators, you will recall that in the afternoon sitting of Wednesday, 20th November, 2013, which was yesterday, while making their contributions to the matter of the Draft Public Finance Management (Uwezo Fund) Regulations, 2013, Sen. Hassan, Sen (Dr.) Khalwale, Sen. Wako, Sen. Murkomen and Sen. Billow raised a number of issues concerning the matter of the legislative process in Parliament. The issues raised by the Senators may be summarized as follows:

(a) Was the input of the Chair sought, pursuant to Article 110(3) of the Constitution, with regard to the legislation that has continued to be processed in the National Assembly after the advisory opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 issued on 1st November, 2013?

(b) What steps have been taken to implement the advisory opinion of the Supreme Court in Parliament?

(c) Is the legislative process in Parliament now compliant with the Advisory Opinion of the Supreme Court?

Hon. Senators, these are important issues calling for the attention of Parliament particularly in the light of the advisory opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013. Following the advisory opinion of the Supreme Court, I have directed that copies of the full text of the advisory opinion as well as a summary thereof be forwarded by e-mail to each Senator. I urge all Senators to fully acquaint themselves with the advisory opinion.

Hon. Senators, it is critically important to observe that the Constitution and the Standing Orders of both the Senate and the National Assembly must henceforth be read in light of the advisory opinion. Any reading of the Constitution and the Standing Orders otherwise than in the manner set out by the Supreme Court would be unconstitutional and unlawful. Additionally, any legislation that is processed in a manner otherwise than that set out by the Supreme Court in the advisory opinion is null and void. Consequently, in light of the advisory opinion of the Supreme Court, any Bills that proceed to be processed by either House and are forwarded to His Excellency the President for assent otherwise than in the manner set out in the advisory opinion, are null and void.

I, therefore, urge all hon. Senators, and in particular the chairpersons of Committees, in respect of legislation falling within the subject matter of their respective mandates, to monitor the legislative process in Parliament and to ensure that the legislative process fully complies with the Constitution, the Standing Orders and the advisory opinion of the Supreme Court.

Hon. Senators, the concerns raised by the mentioned Senators on the legislative process in Parliament and the implementation of the advisory opinion are legitimate. Since 1st November, 2013, the date of the delivery of the advisory opinion, a number of Bills have continued to be considered in the National Assembly in a manner otherwise than that set out in

the Constitution and the Standing Orders of both Houses. In particular, the following five Bills have been read a First Time in the National Assembly:-

- (1) The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 32 of 2013);
- (2) The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 33 of 2013);
- (3) The Military Veterans Bill (National Assembly Bill No. 34 of 2013);
- (4) The Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No. 31 of 2013); and,
- (5) The Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No. 36 of 2013).

The following eight Bills have proceeded to Second Reading in the National Assembly:

- (1) The Election Campaign Financing Bill (National Assembly Bill No. 14 of 2013);
- (2) The National Police Service Commission (Amendment) Bill (National Assembly Bill No. 17 of 2013);
- (3) The Media Council Bill (National Assembly Bill No. 17 of 2013);
- (4) The Truth, Justice and Reconciliation (Amendment) Bill (National Assembly Bill No. 22 of 2013);
- (5) The Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill (National Assembly Bill No. 6 of 2013);
- (6) The National Social Security Bill (National Assembly Bill No. 27 of 2013);
- (7) The Wildlife Conservation and Management Bill (National Assembly Bill No. 21 of 2013); and
- (8) The National Police Service (Amendment) Bill (National Assembly Bill No. 18 of 2013).

Additionally, the Matrimonial Property Bill (National Assembly Bill No. 12 of 2013) has been passed by the National Assembly. This, hon. Senators, is obviously a grave matter that calls for the most urgent attention. I have, by correspondence, brought these matters to the attention of my brother, the Speaker of the National Assembly, who has assured me that these pieces of legislation will be subjected to the requirements of Article 110(3) of the Constitution as read with the advisory opinion.

I thank you.

Tuesday, 26th November, 2013

COMMUNICATION FROM THE CHAIR

GROUND BREAKING CEREMONY FOR THE LAUNCH OF SGR IN MOMBASA

The Speaker (Hon. Ethuro): Order, Senators. I have a communication to make.

As you may already be aware, there shall be a ground-breaking ceremony for the launch of the Standard Gauge Railway (SGR) from Mombasa to Kampala to Kigali to Juba, to be presided over by His Excellency the President on Thursday, 28th November, 2013, that is, two days from today. The ceremony will take place at the Changamwe Marshalling Yard in Mombasa at exactly 9.00 a.m. The Ministry of Transport and Infrastructure has invited the Speaker, the Deputy Speaker and all the Senators to the event. However, given that Thursday, 28th November, 2013, is a sitting day, I have directed that the Standing Committee on Energy, Roads and Transportation represents the Senate at this important function as it is a matter falling under its purview.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM NATIONAL ASSEMBLY OF SOUTH SUDAN

The Speaker (Hon. Ethuro): Distinguished Senators, I wish to take this opportunity to introduce and acknowledge the presence of our colleagues who are visiting us today. Allow me, therefore, to introduce to you a delegation of Members of Parliament from the *ad hoc* Committee on the Parliamentary Service Commission of the National Legislative Assembly of the Republic of South Sudan, who are seated at the Gallery. This distinguished delegation from the National Legislative Assembly of the Republic of South Sudan is led by Hon. Jamine Samuel A.S., MP, who is the Deputy Speaker.

Distinguished Senators, I wish to introduce the rest of the honourable Members and will request each of them to stand once they are called, so that we acknowledge them in the normal warm tradition of our Parliament. They are as follows:-

Hon. Justin Lugworo A.K.;
Hon. Beatrice Aber Samson;
Hon. Akot Makuach Majok;
Hon. John Chuol Char Deng;
Hon. Tago'do Joseph Ngere Paciko;
Mr. Othom Rago Ajak Aweibuny - Clerk to the National Assembly;
Mr. Edward Apinyi M.O. - Legal Advisor;
Ms. John Stephen Jackline Yangi - Secretary to delegation; and,
Mr. Peter Wani Emmanuel.

We want to thank the distinguished delegation from the Parliament of South Sudan for visiting us today at the Senate and want them to feel most welcome as they follow our

proceedings. I hope that your visit will enable you to borrow one or two things from the great House of Senate, which you may implement when you go back home.

I also want to acknowledge that your visit will go a long way in cementing the cordial relations between our two sister countries, Governments and the people.

I thank you.

(Applause)

Thursday, 28th November, 2013

COMMUNICATION FROM THE CHAIR

INVITATION TO SPEAKER'S KAMUKUNJI TO
BE HELD ON 3RD DECEMBER, 2013

The Temporary Speaker (Sen. Murkomen): Hon. Senators, as you are aware, the Senators concluded the countrywide public hearing exercise on the county appeals on transfer of functions. This exercise was spearheaded by the Sessional Committee on Devolved Government under whose mandate the matter falls. Consequently, the Chairperson of the Sessional Committee on Devolved Government has requested the Speaker to convene a Kamukunji, and you all know what a Kamukunji is in line with the traditions of this House, which will serve as a forum for all Senators to chart the way forward on the matter.

Hon. Senators, this is, therefore, to invite all of you to a Kamukunji which will be held on Tuesday, 3rd December, 2013 at 11.00 a.m. in the Senate Chamber at KICC. I appeal to all Senators to attend this very important forum as we jointly seek solutions for the betterment of our counties.

Thank you.

Tuesday, 3rd December, 2013

COMMUNICATION FROM THE CHAIR

Hon. Senators, before we proceed with the Business, we need to introduce our visitors.

VISITING DELEGATION FROM WEST POKOT
COUNTY ASSEMBLY

Hon. Senators, I wish to acknowledge the presence of visitors who are Members of the County Assembly (MCAs) of West Pokot. They are seated at the Gallery. The delegation is led by the hon. Robert Katina, Speaker of the County Assembly.

(Applause)

I will proceed to introduce the rest of the hon. Members and request each Member to stand up once they are called out so that we acknowledge them in the normal tradition of the Senate. They are as follows:-

Hon. Samuel Lemare, Chairperson of the County Assembly Sectoral Committee on Justice and Legal Affairs;

Hon. Wilson Takaramoi;

Hon. Peter Lokor Yerer;

Hon. Simon Chumakemer;

Hon. Lucy Francis;

Hon. Peter Kasimotwo;

Hon. Thomas C. Tuliakim;

Hon. Eliza Lotam;

Hon. Losiaboi Milcah; and,

Hon. Josephine Cheprum.

Hon. Members, we want to welcome them to our Assembly and wish them all the best as they follow our proceedings. You are most welcome.

(Applause)

Wednesday, 4th December, 2013 (Afternoon)

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, 5th 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.

Thursday, 5th December, 2013

COMMUNICATIONS FROM THE CHAIR

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

The Speaker (Hon. Ethuro): Order, hon. Senators! I welcome you to our new Chamber. I hope you feel more comfortable than you were at the place we were previously hosting you. You will also realise that our Chamber is digital. So, maybe some noises are coming from your other gadgets. So, try to ensure that your phones are not near microphones.

KENYA 50TH ANNIVERSARY INDEPENDENCE CELEBRATIONS

I have a further communication to make. As you are all aware, Kenya marks her Golden Jubilee this year. The Government has lined up a series of activities to mark Kenya at 50 Celebrations. They run up to 12th December, 2013 when His Excellency the President will lead the nation in a celebration to be held at the Moi International Sports Centre, Kasarani. The Kenya at 50 Steering Committee has organized an exhibition where all public institutions are participating to show case their contribution to nation development over the last 50 years. The exhibition takes place between 4th and 10th December, 2013 at the KICC.

Indeed, our own institution, Parliament of Kenya, has a stand which hon. Senators are invited to visit. In appreciation of the significance and magnitude of the 50th Anniversary Independence Celebrations, a Ministerial Preparatory Committee was constituted in May, 2012. The Committee wishes to communicate that following arrangements to Senators who wish to attend the event on 12th December, 2013 – I encourage all of us to attend so that we become part of an anniversary of this magnitude – His Excellency the President will lead the nation in a celebration to be held at the Moi International Sports Centre, Kasarani.

All the Senators will be picked from Parliament Building by designated buses on Thursday, 12th December, 2013 at 8.00 am and will be seated at a designated section at the venue. They will be ferried back at the conclusion of the event.

Kindly, note that personal vehicles will not be allowed into the stadium. Parliamentary staff will be available to assist Senators to board the buses and to ensure their comfort at the venue of celebrations. Senators who wish to attend the ceremony are, therefore, asked to register at the reception desk outside the old Senate Chamber by the close of business, Friday, 6th December, 2013 which is tomorrow.

The event organizing committee will prepare admission passes which are a requirement for admittance to the venue.

Thank you.