

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 31st July, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

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

(The Speaker (Hon. Ethuro) consulted the Clerk-at-the-Table)

Hon. Senators, I am informed that we have 21 hon. Senators in the Chamber. We have a quorum.

Let us proceed.

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.

PETITIONS

PLIGHT OF RICE FARMERS AT MWEA SETTLEMENT SCHEME

The Speaker (Hon. Ethuro): Proceed, Sen. Karaba.

Sen. Karaba: Thank you, Mr. Speaker, Sir, for giving me this chance to present a petition on the state and position of Mwea Settlement Scheme in Kirinyaga County. This is pursuant to what farmers in Mwea---

(Loud consultations)

Mr. Speaker, Sir, if you could protect me, please.

The Speaker (Hon. Ethuro): Order, hon. Senators. Please consult in low tones. The Senator for Kirinyaga County has the Floor.

Sen. Karaba: Thank you, Mr. Speaker, Sir, for that protection.

I rise to table a petition on the misuse and abuse of Mwea rice farmers in Kirinyaga County and at Mwea Settlement Scheme. This petition would have been signed by more than 30,000 farmers, but I have been able to capture 50 signatures as a representative of the plight of Mwea Settlement Scheme farmers.

Mwea Settlement Scheme was started in 1954. During the struggle for Independence, the Mau Mau detainees were used to construct the canals. The Scheme has been in existence for a long time. It caters for more than 30,000 tenants producing paddy for the local market as well as for export. A variety of rice is grown in conditions I would describe as pathetic.

Mr. Speaker, Sir, like everybody else, these farmers wake up very early in the morning to struggle with mud following the watering of the paddy fields. They eke a living from the sale of the said products. After a day's struggle, these farmers retire to what we can call newly created villages or settlement villages in Mwea. In this area, there is no water for domestic use. They use canal water which is contaminated from its source

as it passes through Kutus, Kibiti and Ngurubani towns. There are no toilets in that area. They suffer from water borne related diseases while some are emaciated. At the end of all this, they end up selling rice in a very competitive environment. Their rice must compete with that from overseas markets.

Mr. Speaker, Sir, at the moment, a lot of rice is piling up in the stores against imports from various countries such as Cambodia, Vietnam and Pakistan. Mwea farmers are unable to access foreign markets because of the high cost of production at Mwea. They also do not have adequate machines. In fact, most of the work is done manually. It is also very difficult for them to use hired machinery.

Mr. Speaker, Sir, farmers at Mwea Settlement Scheme rely on the defunct National Irrigation Board (NIB). This Board initially put up mills and stores which to date have been misused and put into abuse. Most of them have been closed down by the management rendering the farmers to turn to other mills in various towns around Mwea Settlement Scheme.

Mr. Speaker, Sir, it is for this reason, therefore, that I rise to ask the Government and the relevant Committee to look into the plight of farmers of Mwea Settlement Scheme, which is the largest scheme growing paddy in Africa. This Scheme produces more than Kshs6 billion worth of rice. There are also horticultural crops that are grown on this Scheme. If this Scheme is not properly managed, we will lose a major asset in this country.

Mr. Speaker, Sir, I am seeking your indulgence to invoke the Committee which is related to production, processing, sales and marketing of rice and also to see to it that farmers in this region are taken care of by the Government. We have dilapidated stores which have been vandalized. It is only the Government which can save the farmers. We need protection from importers and the big merchants who facilitate production of rice. This has led to the impoverishment of rice farmers.

Mr. Speaker, Sir, I, therefore, beg to table the petition.

(Sen. Karaba laid the petition on the Table)

The Speaker (Hon. Ethuro): Hon. Senators, as established by practise, this is like a notice. We will deal with it after seven days.

Next Order.

NOTICE OF MOTION

DEVELOPMENT OF POLICY STATEMENT FOR ENGAGEMENT OF POLICE RESERVISTS

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I beg to give notice of the following Motion:

THAT, aware of the crucial role played by the National Police Service in the provision of security to citizens; further aware that the number of police officers in the Service currently, is way below the ideal

number required to effectively cover all areas in Kenya to provide adequate security to Kenyans; appreciating the Government's efforts to supplement the services of police officers with police reservists, especially in areas prone to cattle rustling; concerned that in spite of the immense contribution towards national security by the reservists, no form of compensation is given to them; further concerned that many of them are maimed while others die in the line of duty; the Senate urges the national Government to develop a policy framework for the engagement, training, remuneration and compensation of police reservists.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, I thought you also wanted to seek a Statement.

WITHDRAWAL OF SECURITY OFFICERS FROM MEMBERS OF PARLIAMENT

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise to seek a Statement, under the provisions of Standing Order No.43(2)(c). I would like to see clarification from the Chairperson of the Standing Committee on National Security and Foreign Relations on the following:-

- (a) Why have officers seconded from the Prisons Department to provide security services to Members of Parliament been withdrawn?
- (b) What informed this drastic action?
- (c) Could the decision be reversed and all withdrawn officers immediately returned, given the invaluable service they offer to Members of Parliament and the country?

The Speaker (Hon. Ethuro): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Chairperson (Sen. Kembi-Gitura) took the Chair]

THE COUNTY ALLOCATION OF REVENUE BILL, 2013

*(Resumption of consideration of Committee
of the Whole interrupted on 30.7.2013)*

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, we are now in the Committee of the Whole. How fast we move on this part of business depends on you. Yesterday we adjourned because we had no quorum to deal with the division. We are moving to a division on clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

I propose that for those 13 clauses, we shall do one division, like we have done in the past. Please, listen to me carefully so that we do not have any misunderstandings on this issue. When I put the question, we shall proceed to one division. When we come back, we shall vote this way:-

I will take you through the clauses; that is, “clause 3, 4, 5, 6 up to 13” and then you shall say: “On Clause 3, I vote “yes” or “No” or “Abstain” as you wish. You shall vote in the manner that you want all the way up to Clause 13. Then we will take that one vote. That is clear and the easiest way to go about it. As you note, there are no amendments from Clauses 7 to 12. Therefore, on clauses 7, 8, 9, 10, 11 and 12, you shall vote this way: “I vote “Yes”, “No” or “Abstain”. That is on that cluster of clauses.

Hon. Senators, with that understanding, and unless there is any issue on it, I order that the Division Bell be rung. We shall then deal with those clauses.

I order that the Division Bell be rung for eight minutes.

(The Division Bell was rung)

In the meantime, could I, please, have the tellers for the Noes and the tellers for the Ayes from the leaders? Let the doors be locked now so that we can proceed with business. But before the doors are locked, for the record, I would like the Clerk to ascertain that we have the threshold for the vote. Do we have the threshold?

(The Clerk-at-the-Table did a head count)

Okay; we have the threshold; can the doors be locked now?

(The doors were locked)

For the Ayes, we have Senator Ali Bule and for the Noes, we have Sen. Kanainza. For the record, we have not received any designations for voting. So that we can go to voting, I will put the question; which is, That Clauses 3, 4, 5, 6 and 13 be amended as proposed; and that clauses 7 to 12, to which there were no proposed amendments, be part of the Bill.

We can now go to roll call voting.

Let me make this easier for you. You say this; “For clauses 3, 4, 5, 6, 7 and 13, I vote yes, no or abstain. Then for clauses 7 to 10, again, you vote. There are only two issues here.

(Hon. Senators continued voting by roll call)

Actually, we can make it easier if we agree on procedure. Unless you are voting no, or unless you are abstaining, or unless you are voting yes and in a zigzag manner, you just need to stand up and say “I vote yes on the question as put.” But, of course, if you are going to vote – to use the words of one of you, “zigzag” – then we will direct you. Is that agreed?

Hon. Senators: Yes.

The Chairperson (Sen. Kembi-Gitura): That is agreed on then.
Let us proceed.

(Hon. Senators continued voting by roll call)

(Sen. Hassan spoke off record)

The Chairperson (Sen. Kembi-Gitura): Sen. Omar, are you addressing somebody?

(Loud consultations)

Let us proceed.

(Hon. Senators resumed voting by roll call)

(An hon. Senator walked into the Chamber)

Serjeant-at-Arms, can you explain whether the doors are locked or not? We are doing very serious business of the House and you cannot be sitting there while people are walking in and out, and you are casual about it! You are the one I can see here; the doors are either locked or not.

(An officer of the Serjeant-at-Arms spoke off record)

And how did the Senator walk in? You cannot tell me you do not know because you must know; you should know! This locking of the doors is serious business. It is not just a matter of a simple procedure.

We are in division, and the doors will be locked and you will not even allow people to walk into the small office here. It is as simple as that!

(Loud consultations)

Then they must stand out there! It is not for me to know whether or not the lock is faulty; it is basically not for me! But the Standing Orders say clearly that after the bell is rung, the doors shall be locked. It is not just a clause that is there. So, if you do not have a lock for that door, let somebody stand out there and tell Senators that we are in Division. It is as simple as that actually.

Let us proceed.

(Hon. Senators resumed voting by roll call)

The Chairperson (Sen. Kembi-Gitura): That is it; we shall have the tally now.

Clause 3

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billoo, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

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

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

(Clause 3 as amended agreed to)

*Clause 4***DIVISION**

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billore, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

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

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

(Clause 4 as amended agreed to)

*Clause 5***DIVISION**

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ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

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

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

(Clause 5 as amended agreed to)

Clause 6

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Sen. Ndiema, Trans Nzoia County.

Teller of the Noes: Sen. Kanainza.

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 26

NOES: 1

ABSENTIONS: Nil

(Question carried by 26 votes to 1)

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

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

(Clause 6 as amended agreed to)

Clause 7

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen.

Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 7 agreed to)

Clause 8

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

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NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 8 agreed to)

Clause 9

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 9 agreed to)

*Clause 10***DIVISION**

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billoo, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in now and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 10 agreed to)

*Clause 11***DIVISION**

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 11 agreed to)

Clause 12

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans

Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

(Clause 12 agreed to)

Clause 13

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Bellow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Munyes, Turkana County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; and Sen. Wetangula, Bungoma County

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results are in and they are as follows:-

AYES: 27

ABSENTIONS: Nil

(Question carried by 27 votes to 0)

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

(Clause 13 as amended agreed to)

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

The Chairperson (Sen. Kembi-Gitura): Yes, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: On a point of order, Mr. Chairman, Sir. Since everything that is taking place in this House goes on record, could you confirm whether the results you have read include the vote that was purported to have been cast by the delegation of Kisumu, because technically he did not vote? Could you confirm?

The Chairperson (Sen. Kembi-Gitura): Well, I am the Chair and as far as I am concerned, the Senator for Kisumu voted and I said so at that time. So, the vote is proper. Are you satisfied?

(Sen. (Dr.) Khalwale spoke off-record)

Sen. (Dr.) Khalwale, I will require you to withdraw and apologise to the House.

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, since I did not make it on record---

The Chairperson (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you are going to apologise and withdraw. You cannot refer to a gentleman like Kivuitu, who is now deceased so casually. You should withdraw and apologise or leave the House.

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, because of the respect I have for the dead, I want to withdraw and apologise.

The Chairperson (Sen. Kembi-Gitura): No. It is going to be unconditional. You are going to withdraw and apologise or leave the House. It is as simple as that and there is not going to be any discussion on it. You either withdraw and apologise or leave the House.

Sen. (Dr.) Khalwale: Thank you, Mr. Chairman, Sir. I withdraw and apologise.

The Chairperson (Sen. Kembi-Gitura): Thank you very much.

Shall we proceed? The doors can be opened now.

We are going to proceed to the new Clauses 3A, 12A and 14. The tellers can now leave.

We are proceeding to a new procedure and I think it is good that all of us concentrate on this one because all of us are learning. We are on a new procedure and I would not want us to make mistakes. If we make mistakes, I want us to be together.

So, we are on new Clauses 3A, 12A and 14 which are going to be read a second time.

The Chairperson (Sen. Kembi-Gitura): Sen. Billow, you need to move this one for the Second Reading.

New Clause 3A

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 3-

Sharable revenue

and division of revenue

3A. (1) The sharable revenue through the approved formula for the financial year 2013/2014 shall be as set out in the First Schedule.

(2) The division of revenue among county governments for the financial year 2013/2014 shall be as set out in the Second Schedule.

Mr. Chairman, Sir, the reason for this clause is to try and show the actual distribution in two different schedules instead of what is in the Bill because the Bill had only one schedule. We want members of the public, Members of the Senate and all other users of this document to understand how we arrived at the sharable revenue. In the first schedule we have clearly shown how the percentages, based on the factors like population, basic equal share, poverty levels and so on. In the Second Schedule, we have also shown the division of what percentages that amounts to. In the final one, we had included the conditional amount. So, this amendment is merely to bring in those schedules.

(Question of the New Clause 3A proposed)

New Clause 12A

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 12-

Amendment of Sec. 17

of No.18 of 2012.

12A. The Public Finance Management Act is amended in Section 17 by deleting sub-section (6) and replacing it with the following new sub-section-

(6) The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the county governments for the expenditure of the following month.

Mr. Chairman, Sir, the reason for this is that in the Public Finance Management Act, the current sub-section (6) provides that these funds be disbursed on quarterly basis and we are trying to bring in an amendment so that the funds can be disbursed to the counties on monthly basis. It also says that at the beginning of every month and not later than 15th, Treasury should disburse the money for the following month. In other words, if we are now in August, before the 15th August, they should disburse the money for the month of September so that the counties can plan for it and to have the money they can use for that particular month.

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(Question of the New Clause 12A proposed)

New Clause 14

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 13-

14. The Memorandum accompanying the Bill giving rise to this Act pursuant to Article 218(2) of the Constitution shall not be binding on Parliament in subsequent proceedings relating to the budget estimates and the annual Appropriation Bill for a particular financial year.

Of course, we also did this when we were looking at the Division of Revenue Bill. The reason is that the memorandum is to provide information for purposes of our debate and discussion but it does not form part of the Bill and so it is not binding to the House.

Those are the three clauses we have inserted and we request Members to support them. I want to ask Sen. Kagwe to second.

The Chairperson (Sen. Kembi-Gitura): This one does not have to be seconded unless you insist because we are in the Committee of the Whole.

Sen. Kagwe, you can second but you do not need to because we are in the Committee.

So, I am now going to propose the Question.

(Question of the New Clause 14 proposed)

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, I rise to support the new clauses but I would like to request the Chair to come back and clarify two issues. The first one is; as the Chairman knows, the practice in this country is that we spend revenue as we collect. It is not like in other governments where the money they spend is the money which was collected and banked for the previous years. Could you come and explain to the nation what would happen if, in spite of that provision in that amendment, the Government did not collect revenue because we are talking about billions of shillings? I would like you to clarify that.

The second thing I would like the Chair to clarify is that this issue came up yesterday but you attempted to sweep it under the carpet. Yesterday, I observed that in the Bill that was moved by the Senate Leader of Majority, the money which was available for conditional allocation was indicated as Kshs43 billion. Now, in your new matrix, you have shared out Kshs20 billion. Could you tell us what happened to the Kshs23 billion that is now missing here and which Treasury had already told us in its Bill that it was available and ready for sharing? If that money is still in Treasury, we would like you to go ahead and share it at this stage.

Sen. Haji: Mr. Chairman, Sir, the purpose of giving money quarterly is to aggregate the collection for every month. In view of the fact that you are paying for money which has not been collected, how is it going to be possible? The Chair can clarify.

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

The Chairperson (Sen. Kembi-Gitura): Are you on a point of order, Sen. Kagwe?

Sen. Kagwe: Yes, Mr. Chairman, Sir. I am rising on a point of order because I know that this matter came up but I wanted to put my two cents into it before he does.

Mr. Chairman, Sir, the purpose of this clause was basically to help two institutions. The first one is Treasury because of cash flow. When we discussed it with them, they found it easier to actually handle this money on a monthly basis than on a quarterly basis. Once you do it on a quarterly basis, the amount becomes humongous and considering that the Government is not famous for putting money aside, in fact, the problem of not having enough money will begin to arise when they have to pay so much money simply on consideration of cash flow. This is something that they themselves were happy to accommodate.

The other reason is that if there is a delay at the end of the month and the money is targeted to be paid on 30th, the counties will not meet their obligations at the end of the month and the lateness of their payment will be commensurate with the lateness of the national Government's payment. That is why we are proposing that this payment be made 15 days prior so that because at the end of the day, the money is already in the bank to make payments at the end of the month. This will be done in consultation with the Treasury and I am sure they know whether they have enough money or not.

Sen. Billow: Thank you, Mr. Chairman, Sir. I thank Sen. Kagwe because he has explained that point. We are talking about Kshs210 billion and the total monthly remittances are about or less than Kshs18 billion per month. We are talking about public revenues of about Kshs1trillion in a year. Therefore, the amount that they collect is more than two to three times that amount. We have discussed with them and they are in agreement that they prefer this mode of payment. It is also easier for the counties to get monthly cash flows than quarterly.

The other thing that the Senator for Kakamega raised is about the Kshs43 billion. These amendment were done on the Division of Revenue Bill if you can remember and was reversed but Kshs20 billion was retained. An amount of Kshs3.6 billion was retained for Level Five Hospitals and Kshs16.5 billion for donor funded projects. The rest of the money was shared out using the sharable revenue formula that is under Schedule A. So, that is why the figures are more with regard to the sharable revenue than they are in the Bill for each county. That money was shared using that formula. This was meant for what they call "holding counties harmless".

However, it was felt that paying a county money specific to that county that was not there would create a situation where some counties would complain that there is no equitable distribution of funds. The money was shared using that formula. I request Members to approve these amendments.

The Chairperson (Sen. Kembi-Gitura): It seems as if that is the end of debate. We will now go into division.

Sen. Billow: Mr. Chairman, Sir, before we conduct the division, could we proceed with the Schedules?

The Chairperson (Sen. Kembi-Gitura): Let me tell you why that will not work. We have now read New Clauses 3A, 12A and 14 a second time. These are supposed to go to the Committee Stage. However, these three new clauses have not become part of the Bill because we have not voted on them to become part of the Bill.

Whereas the Schedules are part of the Bill, we will go into division so that we agree that the new clauses have been read a Second Time. It is after that division that we will go through the clauses and agree that they should become part of the Bill. We will then go into one more division continuously with the Schedules. Are we together? We cannot mix the two. It will not work. The bell will be rung now for 10 minutes. In the meantime, we will have the tellers.

The Senate Leader of Majority and the Senate Leader of Minority, let us have the tellers please.

Lock the doors but let us first confirm that we have the threshold to vote.

(The Division Bell was rung and Senators proceeded to vote)

New Clause 3A

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

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The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results of the vote are as follows:-

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 votes to 0)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the New Clause be read a Second Time put and agreed to)

(The New Clause was read a Second Time)

(Question, that the New Clause be added to the Bill put and agreed to)

(New Clause 3A agreed to)

New Clause 12A

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billoo, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the vote are as follows:-

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 votes to 0)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the New Clause be read a Second Time put and agreed to)

(The New Clause was read a Second Time)

(Question, that the New Clause be added to the Bill put and agreed to)

(New Clause 12A agreed to)

New Clause 14

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang', Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Kanainza

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the vote are as follows.

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 votes to 0)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

*(Question, that the New Clause be read
a Second Time put and agreed to)*

(The New Clause was read a Second Time)

*(Question, that the New Clause be added
to the Bill put and agreed to)*

(New Clause 14 agreed to)

Schedule

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the Schedule be deleted and replaced with the following new Schedules:-

FIRST SCHEDULE

SHAREABLE REVENUE THROUGH APPROVED FORMULA FOR 2013-2014 FINANCIAL YEAR – KSHS.190,000,000,000

NO.	PARAMETER	%	SHS.
1.	Population	45%	85,500,000,000
2.	Basic Equal Share	25%	47,500,000,000
3.	Poverty	20%	38,000,000,000
4.	Land Area	8%	15,200,000,000
5.	Fiscal Responsibility	2%	3,800,000,000
TOTAL			190,000,000,000

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SECOND SCHEDULE

DIVISION OF REVENUE AMONG COUNTY GOVERNMENTS 2013-2014							
SHAREABLE REVENUE: KSHS. 190,000,000,000							
NO.	COUNTY	45% POPULATION (SHILLINGS)	20% POVERTY (SHILLINGS)	8% LAND AREA (SHILLINGS)	25% BASIC EQUAL SHARE (SHILLINGS)	2% FISCAL RESPON- SIBILITY (SHILLINGS)	100% TOTAL REVENUE (SHILLINGS)
1	BARINGO	1,230,260,196	666,964,954	259,138,703	1,010,638,298	80,851,064	3,247,853,215
2	BOMET	1,603,671,262	610,719,813	136,758,186	1,010,638,298	80,851,064	3,442,638,623
3	BUNGOMA	3,611,616,334	1,340,802,999	136,758,186	1,010,638,298	80,851,064	6,180,666,881
4	BUSIA	1,080,816,049	1,103,340,563	136,758,186	1,010,638,298	80,851,064	3,412,404,160
5	ELGEYO- MARAKWET	819,340,832	344,423,211	136,758,186	1,010,638,298	80,851,064	2,392,011,591
6	EMBU	1,143,123,935	435,711,208	136,758,186	1,010,638,298	80,851,064	2,807,082,691
7	GARISSA	1,379,733,130	710,950,923	1,039,260,300	1,010,638,298	80,851,064	4,221,433,715
8	HOMA-BAY	2,134,270,396	758,911,881	136,758,186	1,010,638,298	80,851,064	4,121,429,825
9	ISIOLO	317,316,918	230,722,751	596,054,306	1,010,638,298	80,851,064	2,235,583,337
10	KAJIADO	1,522,015,757	98,662,186	515,242,554	1,010,638,298	80,851,064	3,227,409,859
11	KAKAMEGA	3,677,423,046	1,609,840,164	136,758,186	1,010,638,298	80,851,064	6,515,510,758
12	KERICHO	1,679,301,259	387,470,845	136,758,186	1,010,638,298	80,851,064	3,295,019,652
13	KIAMBU	3,594,671,389	635,941,923	136,758,186	1,010,638,298	80,851,064	5,458,860,860
14	KILIFI	2,457,448,954	1,596,932,520	296,662,646	1,010,638,298	80,851,064	5,442,533,482
15	KIRINYAGA	1,169,347,412	190,270,129	136,758,186	1,010,638,298	80,851,064	2,587,865,089
16	KISII	2,551,667,016	1,408,389,393	136,758,186	1,010,638,298	80,851,064	5,188,303,957
17	KISUMU	2,145,597,290	781,453,228	136,758,186	1,010,638,298	80,851,064	4,155,298,066
18	KITUI	2,242,590,054	1,263,758,513	717,471,904	1,010,638,298	80,851,064	5,315,309,833
19	KWALE	1,439,237,526	1,023,665,902	194,559,880	1,010,638,298	80,851,064	3,748,952,670
20	LAIKIPIA	884,066,893	324,853,931	222,602,851	1,010,638,298	80,851,064	2,523,013,037
21	LAMU	224,852,699	36,834,550	147,578,491	1,010,638,298	80,851,064	1,500,755,102
22	MACHAKOS	2,432,755,660	1,280,322,736	146,049,303	1,010,638,298	80,851,064	4,950,617,061
23	MAKUENI	1,958,737,853	1,127,592,265	188,419,598	1,010,638,298	80,851,064	4,366,239,078
24	MANDERA	2,271,481,939	2,575,797,803	611,463,825	1,010,638,298	80,851,064	6,550,232,929
25	MARSABIT	644,771,574	691,748,245	1,367,581,861	1,010,638,298	80,851,064	3,795,591,042

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26	MERU	3,003,456,207	491,393,217	163,105,640	1,010,638,298	80,851,064	4,749,444,426
27	MIGORI	2,031,024,035	1,009,823,713	136,758,186	1,010,638,298	80,851,064	4,269,095,296
28	MOMBASA	2,080,184,751	493,326,014	136,758,186	1,010,638,298	80,851,064	3,801,758,313
29	MURANG'A	2,087,295,339	601,852,584	136,758,186	1,010,638,298	80,851,064	3,917,395,471
30	NAIROBI	6,949,750,722	1,327,768,135	136,758,186	1,010,638,298	80,851,064	9,505,766,405
31	NAKURU	3,550,477,677	1,118,019,555	176,327,243	1,010,638,298	80,851,064	5,936,313,837
32	NANDI	1,667,400,823	582,253,456	136,758,186	1,010,638,298	80,851,064	3,477,901,827
33	NAROK	1,884,316,944	469,892,572	421,891,453	1,010,638,298	80,851,064	3,867,590,331
34	NYAMIRA	1,324,797,138	485,599,081	136,758,186	1,010,638,298	80,851,064	3,038,643,767
35	NYANDARU A	1,320,403,676	601,556,065	136,758,186	1,010,638,298	80,851,064	3,150,207,289
36	NYERI	1,535,847,190	490,080,491	136,758,186	1,010,638,298	80,851,064	3,254,175,229
37	SAMBURU	495,918,684	516,181,961	494,563,215	1,010,638,298	80,851,064	2,598,153,222
38	SIAYA	1,865,237,272	560,094,515	136,758,186	1,010,638,298	80,851,064	3,653,579,335
39	TAITA- TAVETA	630,357,740	296,865,007	401,917,894	1,010,638,298	80,851,064	2,420,630,003
40	TANA- RIVER	531,633,280	386,937,700	904,268,209	1,010,638,298	80,851,064	2,914,328,551
41	THARAKA- NITHI	809,003,795	257,576,604	136,758,186	1,010,638,298	80,851,064	2,294,827,947
42	TRANS- NZOIA	1,813,093,697	688,533,382	136,758,186	1,010,638,298	80,851,064	3,729,874,627
43	TURKANA	1,894,235,451	3,311,095,920	1,367,581,861	1,010,638,298	80,851,064	7,664,402,594
44	UASIN- GISHU	1,980,111,692	588,269,447	136,758,186	1,010,638,298	80,851,064	3,796,628,687
45	VIHIGA	1,228,180,831	375,136,063	136,758,186	1,010,638,298	80,851,064	2,831,564,442
46	WAJIR	1,465,833,031	1,399,135,914	1,333,593,873	1,010,638,298	80,851,064	5,290,052,180
47	WEST POKOT	1,135,324,654	712,525,972	215,709,738	1,010,638,298	80,851,064	3,155,049,726
	TOTALS	85,500,000,000	38,000,000,000	15,200,000,000	47,500,000,000	3,800,000,000	190,000,000,000

THIRD SCHEDULE

EQUITABLE TRANSFERS AND CONDITIONAL TRANSFERS FROM NATIONAL TO COUNTY GOVERNMENTS

		A	B	C = A+B
NO.	COUNTY	TOTAL EQUITABLE SHARE OF REVENUE (SHILLINGS)	TOTAL CONDITIONAL ALLOCATION	GRAND (SHILLINGS) TOTAL

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		(31%)	(SHILLINGS)	
1	Baringo	3,247,853,215	382,555,501	3,630,408,716
2	Bomet	3,442,638,623	272,582,727	3,715,221,350
3	Bungoma	6,180,666,881	334,595,329	6,515,262,210
4	Busia	3,412,404,160	266,369,417	3,678,773,577
5	Elgeyo/ Marakwet	2,392,011,591	744,501,814	3,136,513,405
6	Embu	2,807,082,691	557,198,402	3,364,281,093
7	Garissa	4,221,433,715	475,032,960	4,696,466,675
8	Homa Bay	4,121,429,825	1,604,785,613	5,726,215,438
9	Isiolo	2,235,583,337	187,893,545	2,423,476,882
10	Kajiado	3,227,409,859	284,382,199	3,511,792,058
11	Kakamega	6,515,510,758	840,702,017	7,356,212,775
12	Kericho	3,295,019,652	317,792,977	3,612,812,629
13	Kiambu	5,458,860,860	805,574,808	6,264,435,668
14	Kilifi	5,442,533,482	377,885,641	5,820,419,123
15	Kirinyanga	2,587,865,089	242,055,751	2,829,920,840
16	Kisii	5,188,303,957	635,954,331	5,824,258,288
17	Kisumu	4,155,298,066	711,380,679	4,866,678,745
18	Kitui	5,315,309,833	519,086,118	5,834,395,951
19	Kwale	3,748,952,670	280,447,997	4,029,400,667
20	Laikipia	2,523,013,037	234,821,897	2,757,834,934
21	Lamu	1,500,755,102	99,237,004	1,599,992,106
22	Machakos	4,950,617,061	523,080,848	5,473,697,909
23	Makueni	4,366,239,078	354,912,725	4,721,151,803
24	Mandera	6,550,232,929	230,310,408	6,780,543,337
25	Marsabit	3,795,591,042	272,856,567	4,068,447,609
26	Meru	4,749,444,426	758,421,849	5,507,866,275
27	Migori	4,269,095,296	490,967,787	4,760,063,083
28	Mombasa	3,801,758,313	545,817,618	4,347,575,931
29	Muranga	3,917,395,471	404,431,503	4,321,826,974
30	Nairobi	9,505,766,405	390,470,421	9,896,236,826
31	Nakuru	5,936,313,837	1,024,998,693	6,961,312,530
32	Nandi	3,477,901,827	408,946,759	3,886,848,586
33	Narok	3,867,590,331	278,791,611	4,146,381,942
34	Nyamira	3,038,643,767	278,440,754	3,317,084,521
35	Nyandarua	3,150,207,289	284,911,755	3,435,119,044
36	Nyeri	3,254,175,229	817,147,697	4,071,322,926

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		A	B	C = A+B
NO.	COUNTY	TOTAL EQUITABLE SHARE OF REVENUE (SHILLINGS) (31%)	TOTAL CONDITIONAL ALLOCATION (SHILLINGS)	GRAND TOTAL (SHILLINGS)
37	Samburu	2,598,153,222	206,938,875	2,805,092,097
38	Siaya	3,653,579,335	318,012,871	3,971,592,206
39	Taita	2,420,630,003	205,852,212	2,626,482,215
40	Tana River	2,914,328,551	204,478,573	3,118,807,124
41	Tharaka Nithi	2,294,827,947	139,762,124	2,434,590,071
42	Tranzonia	3,729,874,627	193,134,230	3,923,008,857
43	Turkana	7,664,402,594	229,995,474	7,894,398,068
44	Uasin Gishu	3,796,628,687	270,261,206	4,066,889,893
45	Vihiga	2,831,564,442	196,974,298	3,028,538,740
46	Wajir	5,290,052,180	357,469,372	5,647,521,552
47	West Pokot	3,155,049,726	437,777,043	3,592,826,769
	GRAND TOTAL	190,000,000,000	20,000,000,000	210,000,000,000

Mr. Chairman, Sir, the First Schedule is the shareable revenue through the approved formula, which shows the criteria and parameters. It shows how much each parameter carries out of the Kshs190 billion.

Mr. Chairman, Sir, the Second Schedule shows the division of revenue among the county governments. It shows how much each county gets.

Mr. Chairman, Sir, lastly, the Third Schedule shows the equitable transfers and conditional transfers. It includes the conditional allocations.

Mr. Chairman, Sir, this is the better way of presentation instead of putting everything in one schedule. So, it is easier for people to follow the progress from the parameters; all the way up to how much each county is entitled to.

(Question of the amendment proposed)

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, I want to support strongly the Committee in the new way that they have brought the schedules. Indeed, it makes it clearer. However, I want to observe the following. The seriousness of what we are doing now reminds this House of the practice in the National Assembly. When a matter like this is being tackled at the National Assembly, usually the technocrats from the Treasury will sit in the galleries, so that they take note of the comments that we make. When the Chairman is cornered, they are able to feed him with quick answers on the spot. This is not only to demonstrate the seriousness of the exercise, but also to provide an opportunity for technocrats at the Ministry to understand the language and mood of the Senate.

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Mr. Chairman, Sir, having said that, yesterday, the Chairman promised that he was going to furnish us with an appendix showing the list of donor-funded projects, which are the reason we have discrepancies in the conditional allocations. Could I request that the Chairman of the Committee gives us this appendix? We want to know which projects are being funded by the donor funds in our respective counties so that should this money be misapplied, we can then carry out proper oversight.

Sen. Ndiema: Mr. Chairman, Sir, on the same issue of the conditional allocations, the Chairman of the Committee on Finance promised that he would give us an itemised breakdown. This is very important for us as well as those who will be oversighting, including auditors. We do not doubt the differences, but it is better to be clearer. I propose that the Committee should consider having another schedule. We were told that the lists are there and are very clear. There is no harm in the same being appended as an additional schedule.

Sen. Kagwe: Mr. Chairman, Sir, in support of what the hon. Senators have said, the detail that is required, over and above what Sen. Khalwale has proposed, is not just for the column. What actually the Members will need is the details of even the allocations themselves. In other words, if you get Kshs7.5 billion, it is important that you know what that Kshs7.5 billion constitutes. It is not just about the conditional allocations or the Kshs3.6 billion allocations, but everything. As I speak today, we are not actually quite sure what constitutes that. Right now, there is an argument in the Lower House whether or not the Kshs47 billion that has been allocated to roads is part of the Kshs210 billion that is included in this Bill. Therefore, I think that, as a Committee, what we will be seeking through our Chairman, is to get complete details of the allocation rather than just one column detail.

The Chairperson (Sen. Kembi-Gitura): Okay. Read out Clause 2.

Sen. Billow: Mr. Chairman, Sir, I appreciate the questions raised by hon. Senators. I did respond to this, particularly regarding the breakdown for the Kshs20 billion conditional allocations. But Kshs3.5 billion of the conditional allocation is for Level Five Hospitals. The Bill actually sets out how much goes to each hospital. The balance is for donor funded projects. We had agreed and we suggested that before Kshs16.5 billion is disbursed, Treasury will actually provide every county with the details of the donor projects, what activities and so on. It is not just a matter of approving it. Those are operational details and they will be provided. Yesterday, I assured the hon. Member that it cannot form---

Sen. Ndiema: On a point of order, Mr. Chairman, Sir.

Sen. Billow: I am on a point of order.

(Laughter)

Mr. Chairman, Sir, I have assured the hon. Member that one thing we cannot do is to put all those details as part of a Bill. It cannot be so. The Bill simply shows how much money is being provided for. However, we can provide the detailed schedule that shows the breakdown as additional information to each of you, so that when you go to your counties, you actually know what projects that money is supposed to go to, for the

purpose of oversight by your county assemblies and yourselves. We can provide that information next week.

The second---

The Chairperson (Sen. Kembi-Gitura): Have you finished, Sen. Billow?

Sen. Billow: Yes, Mr. Chairman, Sir.

(Sen. Ndiema stood up in his place)

The Chairperson (Sen. Kembi-Gitura): Sen. Ndiema, are you on a point of order?

Sen. Ndiema: Mr. Chairman, Sir, this is a very serious matter. What we are asking here is that there be another schedule. The explanation that it will be too bulky does not stand. There is nothing as bulky as the annual estimates of appropriation. So, let it not just be tabled; let it be part of this process. Let there be another appendix which will show---

Sen. Billow: I have it!

Sen. Ndiema: You have it? Let it come before we approve!

(Several hon. Senators stood up in their places)

The Chairperson (Sen. Kembi-Gitura): Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Chairman, Sir, if the hon. Ndiema had that idea, he should have moved an amendment, including it in the Motion. He has been overtaken by events.

(Laughter)

The Chairperson (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Chairman, Sir. One of my points of order was directed at the Chairman of the Committee and another one to the Chairman of the Committee of the Whole. However, you were consulting and that is, probably, why you did not hear. For this exercise to be given the seriousness that it deserves, I had requested that you consider directing technocrats from the Ministry as they do during budget process, to sit in the Speaker's Gallery for them to capture the proceedings of the House and to instantly give answers to the Chairman of the Committee. It requires that the Chair makes that pronouncement for them to comply.

The Chairperson (Sen. Kembi-Gitura): What do you say, Chairman of the Committee?

Sen. Billow: Mr. Chairman, Sir, that is a great idea. Going forward starting next year, we will invite the technocrats to be here to help us.

The Chairperson (Sen. Kembi-Gitura): Thank you very much. Are you satisfied, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: I am, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): That is going forward, next year.

(Sen. (Prof.) Anyang'-Nyong'o stood up in his place)

Sen. (Prof.) Anyang'-Nyong'o, are you on a point of order?

Sen. (Prof.) Anyang'-Nyong'o: Yes, Mr. Chairman, Sir. Along with what the Chairman of the Committee has said, really, there is very little improvement we can do on the present budgetary system because it misses a lot of processes that we have gone through before. So, I think we should be patient; what Sen. (Dr.) Khalwale has asked for will definitely be accomplished next year if we are really serious about the budgeting process.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Okay. So, we go on.

Long Title

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the Long Title of the Bill be deleted and replaced with the following new title:-

“AN ACT of Parliament to provide, pursuant to Article 202(2) and 218(1)(b) of the Constitution, for the division, among the counties, of conditional allocations and equitable share of revenue allocated to the county level of government on the basis determined in accordance with resolution in force under Article 217 of the Constitution for the financial year 2013/14; to provide for the responsibilities of the national and county governments pursuant to such division; and for connected purposes.”

(Question of the amendment proposed)

The Chairperson (Sen. Kembi-Gitura): Let us move on. We shall put the Question later.

Hon. Senators, we shall now go to Division again to determine all the Questions that we have dealt with from the new clauses to the Schedule, *et cetera*. Therefore, I would ask that the Division Bell be rung. But in the meantime, we have the tellers.

(The Division Bell was rung)

The Chairperson (Sen. Kembi-Gitura): Okay, we have the tellers now. The doors may be locked. The Senate Majority Leader has informed me that we have the threshold, so we can proceed.

I will put the Question that the Schedule as amended, Clause 2, The Long Title as amended and Clause 1 be part of the Bill.

Let us have the roll call voting.

Schedule

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DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Nobwola

The Chairperson (Sen. Kembu-Gitura): Hon. Senators, the results of the vote are as follows:-

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 to 0)

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

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

(Schedule as amended agreed to)

Clause 2

DIVISION

ROLL CALL VOTING

(Question put and the Senate proceeded

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to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Nobwola

The Chairperson (Sen. Kembu-Gitura): Hon. Senators, the results of the vote are as follows:-

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 to 0)

(Clause 2 agreed to)

Long Title

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County;

Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Nobwola

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, the results of the vote are as follows.

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 to 0)

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

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

(Long Title as amended agreed to)

Clause 1

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Nobwola

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the vote are as follows:-

AYES: 29

ABSENTIONS: Nil

(Question carried by 29 to 0)

(Clause 1 agreed to)

The Chairperson (Sen. Kembi-Gitura): Hon. Tellers, you are now released. Yes, the Deputy Senate Majority Leader.

Sen. Elachi: Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the County Allocation of Revenue Bill, 2013 and its approval thereof with amendments.

(Question proposed)

The Chairperson (Sen. Kembi-Gitura): This is not a matter of Ayes and Noes. It is a Question of Division. So, we are going to division and the Division Bell will be rung.

(The Division Bell was rung)

Shall we have the Tellers, please?

(Loud consultations)

Hon. Members, we are in session.

Order, Senators! Order, Sen. Karaba! Let us have some order because we have a lot of business to do.

The Chairperson (Sen. Kembi-Gitura): I beg to move that the Committee doth report its consideration of the County Allocation of Revenue Bill, (Senate Bill No.1 2013) and its approval thereof with amendments.

I understand we have the threshold.

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang,

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Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Mohamud

NOES: Nil

Teller of the Noes: Sen. Nobwola.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows.

AYES: 28

ABSENTIONS: Nil

You will appreciate that this vote has exceeded the threshold of 24. Therefore, the Motion is carried.

(Question carried by 29 votes to 0)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE COUNTY ALLOCATION OF REVENUE BILL, 2013

Sen. Keter: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole has considered The County Allocation of Revenue Bill (Senate Bill No.1 of 2013) and approved the same with amendments.

Sen. Elachi: Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

Sen. (Prof.) Lonyangapuo seconded.

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): We must go into division. I cannot just put the Question. Let me explain this because it is a tedious process that we have to get to grips with. That is the process and we have to take it to the end. We have to consider this

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Bill and pass it according to the law. All of you know that we have a Committee that is looking at the Standing Orders and other issues. Sen. Murungi, who is one of them, is here. Unless and until they come up with new Standing Orders, we have to follow this process which is a bit long, but the only way out. So, I will not put the Question. Instead, I will order that the Division Bell be rung for ten minutes.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. I seek your guidance. Can we, by a resolution of the House reduce the time that the Bell should be rung or at least dispense with it?

The Deputy Speaker (Sen. Kembi-Gitura): You cannot. In fact, if the bell was now ringing, it would have gone on for two minutes.

Could the Division Bell be rung now for ten minutes?

DIVISION

ROLL CALL VOTING

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

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Mohamud

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results as follows:-

AYES: 30

ABSENTIONS: Nil

You will appreciate that this vote has exceeded the threshold of 24. Therefore, the Bill is carried.

(Question carried by 30 votes to 0)

(Question put and agreed to)

Sen. Elachi: Mr. Deputy Speaker, Sir, I beg to move that the County Allocation of Revenue Bill, 2013 be now read the Third Time.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order, conscious of the fact that now this is the final nail. Having religiously gone through the County Allocation of Revenue Bill and, therefore, demonstrated to all and sundry that we are committed to sending money to all our counties, I wish to request Members to think deeply about this. When the Senate passed the Division of Revenue Bill, some hon. Members in the National Assembly and the Executive thought that they could do without the Senate and they ignored us completely. It is now clear that the reason that was given by the President, when he was assenting to the Bill, that he did not want money to fail to reach the counties. It is now clear that without this particular action, even that initial signing will not end up driving to the counties.

Mr. Deputy Speaker, Sir, so as to send a very clear message to all Kenyans, that the Senate is there forever, and the President can never do without both Houses---

The Deputy Speaker (Sen. Kembi-Gitura): I want to believe that you were making a point of order. What is your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise under Standing Order No.51 (30) to move that the vote on the Third Reading be postponed to another day, to give the President time to reflect on the wrong that he did to the Constitution of Kenya.

The Deputy Speaker (Sen. Kembi-Gitura): Surely, Sen. (Dr.) Khalwale, since this is not just for HANSARD purposes, how do you relate Standing Order No.51 to the issue at hand and the comments you have made in your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, under Standing Order No.51 (3) any Senator can move that a vote be adjourned. I have said that if we adjourn, we will be sending a very clear message that whoever thought we can proceed with only one House, it is not possible. We are not doing this in bad faith, but so that in the next 12 hours or so, the President can reflect on it and realize that in this Senate, we have people who are equal to the task.

The Deputy Speaker (Sen. Kembi-Gitura): Let us get the procedure correct, because I think that it is important. I do not want to get to a situation where I make a ruling on Sen. Khalwale's point of order without clarity on these issues.

First of all, your point of order is premature because I have not even proposed the Question. So, there is nothing on the Floor and I do not know really what it is that you are doing. If I had my way, I would have it expunged from the HANSARD, because you jumped the gun as it were. I have indicated in the past that I will not stop Senators from making points of order, because I want to assume that the points of order that will be made in the Senate will not just be procedural, but also within the law and for the benefit of the work that we do as Senators. So, it is important that we follow the process and procedure properly.

The other thing that I would like to say at this early stage is that I would like you also to consider the purpose of Standing Order No.51 without opening debate on it. Understand why it gives that window of asking that the vote be done the following day. I do not think that it is for sending messages to anybody, but for the sole of purpose of

making sure that there is a threshold in the House and that we do not vote in futility. We have dealt with the question in the past. So, I think that, that is the issue.

Having said that, it was moved that this Bill be read a Third Time. Somebody needs to second it, so that I can then propose the Question. Who is seconding?

Sen. Billow seconded.

(Question proposed)

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

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to raise the same thing, Sen. (Dr.) Khalwale? I think that I have pre-empted and made a sort of ruling on that issue.

Okay, Sen. (Dr.) Khalwale, proceed.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I wanted that it be clear on the record, that I jumped the gun. On this point of order, which you have already dealt with, you have now settled my mind. But then allow me to now make my contribution on this matter.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): That cannot be a point of order. First and foremost, I wish that Members do not pre-empt what I am going to say or do with this situation. The question has been proposed and seconded and so, the Floor is open. If you want to debate, you can do so. You do not have to raise it as a point of order.

Sen. (Dr.) Khalwale, proceed.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, having reflected on this matter overnight until today, I think that it is important that at this stage, when we are passing this law, the country is reminded that there is only one supreme organ in this country. That is the Constitution. Since the Constitution is the one that has given us the process that we are supposed to use, so as to allocate money to the counties, I want to use this opportunity, as I support this Third Reading, to condemn the action taken by all those who unprocedurally disallowed the considerations of the Senate on the Division of Revenue Bill. I want them to sit knowing that we have an opportunity today to say no, as the Senate, to this Bill. That hurriedness that they pretended they were using to bypass the Senate will come and count for naught. Since I am a politician and the people who did this are politicians, I want to appeal to them to know that we fought for the Constitution.

In fact, Mr. Deputy Speaker, Sir, many people in this House lost something, small or big, so as to see the current Constitution. We cannot allow one person, however eminent he is under the Constitution, to lord it down on us to the extent of making the people of Kakamega – 250,000 people who believed in me and who voted for me – to think that they elected me to come here and then what I say does not count.

Mr. Deputy Speaker, Sir, we would like them to know that we also---

(Off record)

They know themselves. But also under the provisions of the same Constitution, we reserve the power to impeach them.

I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir

The Deputy Speaker (Sen. Kembi-Gitura): What is out of order, Sen. Murkomen?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I know we will be going for division later. I just want to get your direction as to why the two Senators are sitting with Clerks in front here.

(Laughter)

(The two hon. Senators resumed their seats)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, actually, I released the two Senators a very long time ago as soon as we finished the Division. I do not know what they are still doing here. Will you, please, resume your seats?

(Laughter)

Thank you, Sen. Murkomen.

Proceed, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, this has, indeed, been a painful Bill to deliberate on, taking cognisance of the fact that a lot of bullets have, earlier on, been aimed at the Senate from the Lower House. But allow me to quote one hon. Member of Meru in the Ninth Parliament, hon. Maoka Maore, who once said:-

“You should never give a loaded gun to a monkey; you may never know where it will shoot.”

That is exactly what is happening. Indeed, we are likely to have this--- I do not know what happened to the Jubilee Government to have picked that kind of National Assembly Leader of Majority. Were you bankrupt of---?

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

The Deputy Speaker (Sen. Kembi-Gitura): Do you understand that Sen. (Dr.) Machage is on a point of order?

(Loud consultations)

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I have only talked about monkeys and guns; I have not talked about any Senator. But, indeed, Kenya has a granary of very many able leaders in both the Lower House and the Upper House. Let us pick on the best

characters and the best legislators to lead some departments and arms of Government, so that this country can live to its dream of prosperity.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Eng.) Muriuki Karue.

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, mine is a small contribution. It is to do with any proposed amendment to the Constitution which has been in the air and in the Senate, so far. We are now debating a Bill whose figures we, as Senate, did not agree with initially. However, we have no choice because the counties have to operate. When I look at it, I think what is wrong as a country is that we are doing the budget upside down. We should have started by we, the Senators, engaging the counties so that each one of them tells us and convinces us that “our expenses and our budget is this.” Once we have got those budgets from the counties, then and only then can the Division of Revenue Bill be debated, first of all, starting from the Senate and not from the National Assembly. In my view, we seem to be doing things upside down. This is the reason even when the Bill was signed, we could not do anything about it because the Constitution is beginning with the Division of Revenue Bill.

So, Mr. Deputy Speaker, Sir, mine is just a small comment for hon. Members of the Senate to reflect, because before very long, I think we must relook at that aspect of the Constitution and do the budget the right way.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutahi Kagwe.

Sen. Kagwe: Mr. Deputy Speaker, Sir, thank you very much for this opportunity. I rise to support and, in doing so, urge that the national Treasury looks at what we have done today very critically in the sense that it is very necessary for them, in the shortest time possible, to establish the actual cost of devolved government. Because the clause that we have added, Clause 6(d), essentially means that at some point, they may have to dig further into their pockets in order for them to live up to the law. Also, that law is actually the one that gives effect to the Constitution. Therefore, it is our hope and prayer that, in the soonest possible time, we will be given the actual cost of the devolved government because, as it is, from tomorrow, some areas are going to be operating on a deficit while others have got a much bigger surplus. Where there is a deficit, it is necessary for the Treasury to establish what the size of that deficit is in order to give effect to this Bill effectively.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I will allow three more persons.

Sen. Wetangula. Please, let us be brief because you know we have to go for a Division.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. We know that this stage is not for debate, but to make a few comments.

First of all, Mr. Deputy Speaker, Sir, I thank the Senate for passing this Bill up to where we are. Secondly, looking at these figures, they obviously are a trap for the county governments to enter the highway towards failure. This is because, apart from a few county governments, like Nairobi, Mombasa, probably, Machakos, Nakuru and Kiambu that have the capacity to raise some extra revenue, many of the counties we represent

here are simply getting a budget line for recurrent budget, period. Yet under the Fourth Schedule, we have devolved enormous responsibilities to the counties. It means that, at the end of the financial year, what all the governors will do is to pay salaries and call themselves governments.

Mr. Deputy Speaker, Sir, informed by this, this Senate should be on the frontline to fight for the impending constitutional change and referendum to enable devolution to work and work meaningfully.

(Applause)

It does not matter whether you are on the Jubilee side or on the CORD side; devolution is good for every Kenyan regardless of the shade of their political opinions. This kind of budget that we are passing here today -That was never our budget in the first place – is a knee-jerk reaction just to give some therapy to the counties to continue, because what we decided earlier was truncated elsewhere.

Mr. Deputy Speaker, Sir, we do not want a situation in this country where an important institution like devolution is dependent on the whims of any individual, office or authority. Like they used to say in the United Kingdom (UK) that “equity was equal to the length of the Chancellor’s foot;” we do not want that situation to pertain here.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo.

Sen. Orengo: Mr. Deputy Speaker, Sir, I support the Third Reading, but I have just been reminded of an old man who used to live in the village where my mother was born. This old man never used to say anything during the day, he was most of the time speechless. He would wait until midnight when everybody was asleep and then go to a small hill and if you were sleeping in your brother’s house, he would say, “today, Sen. (Dr.) Khalwale is in Sen. Wetangula’s house”. He would tell people what happened in the village during the day and end up by saying that “you my village men, even if you are quiet, I know you have heard.”

I am saying this to encourage Sen. (Dr.) Khalwale not to be discouraged. Some of the comments we make in this House, they get debated everywhere you go. Yesterday, I had an opportunity to be at some pub where people were debating what Sen. Kiraitu Murungi meant by violation of the Constitution in the context which he said it. Sen. Murkomen said that the referendum may come any time soon. This was also debated. I was sitting there quietly. So, the messages which are being debated by this Senate are not for nothing. So, we should not tire in saying what we are saying. Unlike Sen. (Dr.) Khalwale, if you love a child and you want to punish him, do not deny him food. Since we love devolution so much, we are not going to deny the county governments any money. However, what is rightfully for the counties, we will fight for it until the end using whatever means lawful and constitutional to make sure that county governments work.

With those few remarks, I support.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, mine will be very brief. While I support the Bill, I would like to appeal to the Government, given the

shortage on money on both frontiers; that is, at the county level and at the national level--
- We all know the national government has been having a lot of problems paying salaries. That is common knowledge. It would be very good if in restructuring what is called the provincial administration, a step is taken to second civil servants who were previously working for the national government to the county governments in the interim period rather than having this two tier systems of government which is currently going on where the national government is busy putting up officers at the county level. We know under the County Government's Act, there is also a very clear structure of county civil service which is not yet filled. So, we are going to end up with the county governments employing people and the national government employing people. They are more or less, doing the same things and increasing the recurrent expenditure.

I really find this extremely frustrating and making our work even more difficult. So, I would appeal that we identify civil servants who can be posted to the counties. What is going on now is going to be extremely expensive in this nation. So, in order to use the budget we have proposed here today much more efficiently, let us economise on the excessive use of civil servants at the local level where the national government is employing and the county government is also doing the same.

I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): I had said Sen. (Prof.) Anyang'-Nyong'o would be the last person, but I would exceptionally allow Sen. G. G. Kariuki to say something and be the last person on this issue.

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, first, I want to say thank you to the entire House for passing this Bill. As I said, they need to remember all the time that we are not party to the calculation and making of this Bill that we are passing. We are just a rubber stamp. So, we should not talk as if we have powers to set aside this Bill. Let us agree that we do not have power and we do not how much. For example, I do not know the balance sheet of Laikipia County Government. I do not know the figures they have to pay salaries or what they are doing with the money they have, if they do have it. None of us here can say for sure that we know what is happening. Here we are giving people money and saying that it is too little. So, how much do you think would be too much? We can only say that it is too little. So, how much did you want? If one is asked that question, will he answer it?

Hon. Senators: Point of order, Mr. Deputy Speaker, Sir!

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, there is no point of order. It is a point of argument.

The Deputy Speaker (Sen. Kembi-Gitura): You can make a point of order less violently.

Chairman of the Committee, Sen. Billow.

Sen. Billow: Mr. Deputy Speaker, Sir, is the hon. Senator for Laikipia in order to suggest that we do not even know what we are doing and all we are doing here is just to rubber stamp when, in fact, we explained when moving this Bill--- As I said, the actual amount of Kshs210 billion is based on the costing of the functions which are to be devolved. Is he in order; after all those discussions, he can simply concluded that he does not know what is going on his county?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. G.G. Kariuki, did you suggest by any chance that this Senate is just rubber stamping? Is that what you suggested?

Sen. G.G. Kariuki: That was my opinion. It is my opinion. I have a reason. When these figures were being made---

The Deputy Speaker (Sen. Kembi-Gitura): In which case, can you deal with the point of order of Sen. Billow?

Sen. G.G. Kariuki: What did he ask?

Mr. Deputy Speaker, Sir, I think we better be serious here. The Senators have said that they had a lot of work to do to get to where we are now, but I am disputing. As a Senator---

Hon. Senators: On a point of order, Mr. Deputy Speaker, Sir.

Sen. G.G. Kariuki: What is it? I have the right to dispute any figure. That is a right I was given by the people of Laikipia County. I want it to be understood very clearly.

Taking into account that we may have done a lot of work, that is for my good friends to go along with me. Yes, we have done a lot of work. But if we asked ourselves some questions before these papers were prepared, would we behave the way we have behaved? I would have wanted to be in a committee where the decision to give Laikipia County Kshs2.5 billion is made. I would have wanted to be there and be able to dispute whether the figure is more or less. That is my concern.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, let us be brief.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, is the Senator for Laikipia County in order to mislead the House that we were never given an opportunity to critique when in the Third Reading we had all the time to make amendments? He only has to carry the House with him to give Laikipia County more money. Is he in order?

(Sen. G.G. Kariuki walked across the Floor of the House)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. G.G. Kariuki, there is somebody on his feet. You cannot walk casually when somebody is on his feet. Now you are on your feet.

Sen. G.G. Kariuki: I apologise, Mr. Deputy Speaker, Sir. I am trained to think critically and not just to say "yes" where I think it is not good to say yes just to please any one. Let us get prepared in the next budget of this nature. We should be prepared so that we are able to say if I am in challenged in Laikipia County or if Sen. (Dr.) Khalwale is challenged over Kshs8 billion given to his county, he would be able to say that the following factors were taken to account. I remember when we went to a certain hotel here in Nairobi, we were being advised how the determination of the figures was done. That is what we were being advised, but we raised several questions. We came out of that meeting with many questions which have not been answered to date.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House and the nation? These figures are clear in the Order Paper. They are parameters on which allocations are based. The parameters include the

populations, basic equal share, poverty and all those things. They were debated and discussed here. Those parameters and the percentages were approved by Parliament in 2012. So, they are not figures that came out of nowhere.

Is he in order? He is really misleading the nation on this matter. We should not allow that kind of a debate.

The Deputy Speaker (Sen. Kembi-Gitura): Order, I think we need to cut short this issue. I would like to bring to the attention of the House the provisions of the Constitution which are very clear; specifically a number of issues that you have discussed and exchanged ideas on. These are the provisions of the Constitution, more specifically the Division of Revenue, Article 217 and Section 11 of Schedule 6 of the Constitution because these are clear issues.

I do not think it would be right for us to sit in this Senate and say that the actions we are taking are in futility. That would negate the purpose of the Constitution. We all know that we were not sitting in 2012 and that Section 11 of Schedule 6 of the Constitution--- Parliament did certain things which became Acts of the Senate because that is what the Constitution provides as provisional clauses.

The Division of Revenue Act talks about the Senate, every five years, creating the formula. That was done by the National Assembly and that is what we adopted. However, I want to agree on this score with the Chairman of this Committee, Sen. Billow. It would not be right to tell the nation that we are doing actions in futility because of the very simple reasons amongst others that for the few days we have been debating this Bill. We have gone through all the motions and stages. We were in the Second Reading where we debated this Bill very thoroughly. Indeed, the Schedule to the Bill has been replaced by another Schedule. It has different figures. This is because the Committee considered all the issues and came up with them. We have just adopted that Schedule. We have just adopted the Bill; the Second Reading, the amendments and everything else.

So, with respect to Sen. G.G. Kariuki, making a ruling on the point that has been made by Sen. Billow, I do not want to say that he is misleading the nation. It is good for us to take cognizant of the fact that we are acting pursuant to and under the Constitution. Nowhere have we acted against the Constitution. We are within our mandate as the Senate in doing what we are doing this afternoon. If you call it an act in futility, I hope that you did not vote against what we are doing. However, I hope that you voted in the affirmative in all the issues we have dealt with this afternoon because these are public vote. That would be my view on that position.

I request you very kindly to look at the provisions of the Constitution as pertains to what we are doing this afternoon.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. My proposal is that you should put the Question based on the kind consideration because some of us have to go and break our fast.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Hassan, I allowed the House to debate on this issue when I made a proposal to the Motion because it is important. The issues that have also come up are also important.

I had also said that Sen. G.G. Kariuki would be the last person to raise these issues. Since we have dealt with the point of order that he raised, maybe if you have something else to say, you can say it, so that we move on to division.

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I concur with your ruling.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, having exhausted that, I will put the Question when we come back from division. The Division Bell will now be rung for ten minutes. In the meantime, we can have the tellers.

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.

(The Division Bell was rung)

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Munyes,

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Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Mohamud

ABSTENTION: Sen. Muthama, Machakos County.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the vote are as follows:-

AYES: 30

ABSENTION: 1

(Question carried by 30 votes to 0)

(The Bill was read a Third Time and passed)

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

MOTIONS

COMPENSATION OF COMMUNITIES AFFECTED BY PERENNIAL FLOODING IN TANA DELTA

THAT, noting with concern that during the rainy season, Counties along the Tana River experience frequent flooding that causes displacement of many people and destruction of food and cash crops as well as loss of irrigation engines and other equipment thereby impoverishing very vulnerable communities; aware that most of the damage is caused by water overflow and spillovers occasioned by negligence from the main reservoir at Masinga dam which is owned by the Kenya Electricity Generating company (KenGen), the Senate urges the Government to take measures to eliminate this perennial danger and to compensate communities that have been displaced or otherwise adversely affected by the water released from dams in the Tana Delta.

(Sen. Haji on 24.7.2013 – Morning Sitting)

(Resumption of Debate interrupted on 24.7.2013 – Morning Sitting)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, like I said earlier, Motion No.9 by Sen. Mohamed Yusuf Haji is directed to the Department of Energy and Petroleum. Motion No.10 by Sen. Mutahi Kagwe is directed to the Department of Devolution and Planning. These two Motions are coming up for Division. That is why I

requested that we wait and agree to do a division together. I have made a proposal, for the sake of the record, that we shall do one division. However, the two Motions will be voted for separately the same way we adjourn and set aside a day or time for voting only. So, we are going to use that one division. We ring the bell once, when you come back, we shall vote, first for the Motion by Sen. Haji. Immediately we finish with that one, we shall vote for the Motion by Sen. Kagwe. Since we now have the threshold for voting, I request that we now proceed and ring the Division Bell.

(The Division Bell was rung)

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Senators! The doors should be locked now. Can we have the tellers, please? Senate Majority Leader and the Senate Minority Leader, who are the tellers?

(Loud consultations)

Order, hon. Senators! We are now dealing with Motion No.9. I shall put the Question so that we can go to Division.

Obviously, under Standing Order No.69, you have been told that this is a Motion affecting counties, which is supposed to be done before we put the Question. I have now put the Question with the knowledge that you have now been informed that it is a Motion to do with counties under Standing Order No.69. So, we shall now go to roll call voting on this one and then proceed to the next Motion.

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County, Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. Munyes, Turkana County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Mohamud.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results are in and are as follows:-

AYES: 26

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

(Question put and agreed to)

MOTION

PROVISION OF COMPUTERS AND ICT TRAINING TO MEMBERS OF COUNTY ASSEMBLIES

THAT, appreciating the significance of technology in the development of counties and also acknowledging the important role that Members of the County Assemblies (MCA) perform; determined to increase the efficiency of the legislative process and other parliamentary procedures and consequently save costs for counties; further recognizing that technology in Government fosters innovation and transformation, enhances performance and capacity in delivery of services and leverages support towards good governance, recognizing the important role played by the media in enhancing democracy and accountability; the Senate urges the county governments to provide offices, computers and ICT training to Members of the County Assemblies, and to establish network infrastructure as well as a data bank for reference in all county assemblies, and to provide a specially equipped media centre in all County Government offices.

(Sen. Kagwe on 24.7.2013 – Morning Sitting)

(Resumption of Debate interrupted on 30.7.2013 – Morning Sitting)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, again under S.O. No.69, it is the ruling of the Speaker that this is a Motion touching on counties. So, we are going to have voting by delegations. I will now put the question.

Hon. Senators, the vote is in on the Motion by Sen. Kagwe.

DIVISION

ROLL CALL VOTING

(Question put and the Senate proceeded)

to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Haji, Garissa County, Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Muthama, Machakos County; Sen. Munyes, Turkana County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Bule

NOES: Nil

Teller of the Noes: Sen. Mohamud

The Chairperson (Sen. Kembi-Gitrua): Hon. Senators, I wish to announce the results as follows:-

AYES: 26

ABSENTIONS: Nil

You will appreciate that this vote has exceeded the threshold of 24. Therefore, the Motion is carried.

(Question carried by 26 votes to 0)

(Question put and agreed to)

(Hon. Senators withdrew from the Chamber)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, we are still in business. If you are withdrawing, please, do so quietly. The Motion by Sen. (Prof.) Anyang'-Nyong'o is still open. This Motion was interrupted yesterday.

Sen. (Prof.) Anyang-Nyong'o: I think there is a wrong notion here. The Debate had not even started and I had not even moved the Motion.

The Deputy Speaker (Sen. Kembi-Gitura): I am sorry, Sen. (Prof.) Anyang'-Nyong'o. If that is the case, you need to move your Motion.

MOTION

RESTRUCTURING OF PROVINCIAL ADMINISTRATION

Sen. (Prof.) Anyang-Nyong'o: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, aware that the recent actions taken by the Inspector-General of Police to appoint police commanders at the County level have

raised concerns on the implementation and interpretation of Article 246(3) of the Constitution; realizing that the Government has since then gone further to appoint former Provincial Commissioners to hold Regional positions raising further concerns on the implications of Article 1(4)(a) and (b) of the Constitution; aware that paragraph 17 of the Sixth Schedule to the Constitution states that “within five years after effective date, the National Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under this Constitution”; the Senate hereby calls upon the Government to clarify the actions taken by the Inspector-General of the Police given the constitutional provisions and to table in the Senate a Policy Paper providing a time action plan for the restructuring of the Provincial Administration.

Before I go further, I want to remind the House of the specific provisions in Article 14(a) and (b) of the Constitution and Article 246(3). I will begin with Article 246(3) of the Constitution.

With your indulgence, for the record, I would like to read that Article verbatim so that it is known what I am referring to.

Article 246 of the Constitution entitled the National Police Service reads as follows:

- (1) There is established the National Police Service Commission.
- (2) The Commission consists of-
 - (a) the following persons, each appointed by the President-
 - (i) a person who is qualified to be appointed as a High Court Judge;
 - (ii) two retired senior police officers; (iii) three persons of integrity who have served the public with distinction;
 - (b) The Inspector-General of the National Police Service; and,
 - (c) both Deputy Inspectors-General of the National Police Service.
- (3) The Commission shall—
 - (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;
 - (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and
 - (c) perform any other functions prescribed by national legislation.
- (4) The composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya.

The functions of the Commission as laid down in the Constitution are very clear. There is no way that those functions can be varied without constitutional change.

If you look at Article 14(a) and (b), you will see that;

The sovereign power of the people is exercised at—

- (a) the national level; and

(b) the county level.

So, for all intents and purposes, it must be noted that we have two types of governments in this nation; the national Government and the county governments, both of which enjoy the sovereign power of the people. Once the sovereign power of the people is invested in certain institutions as constitutionally provided, nobody can vary the exercise of sovereign power without an amendment to this Constitution, however, politically expedient it is to do so.

I will go further and look at Paragraph 17 of the Sixth Schedule that I referred to in a debate earlier in this House. Paragraph 17 of the Sixth Schedule of the Constitution is equally very important. I would like to refer to it because most members of the Kenyan society do not know what it contains. This paragraph deals with the provincial administration and it says;

“Within five years after the effective date, the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under this Constitution.”

The national Government will do this. Usually, Government’s actions are taken as a result of two procedures. One is a policy paper that defines the kind of action that the Government intends to take. Once a policy paper is given, then the Government can go ahead and pass laws. On the other hand, laws can be brought to Parliament without the necessary policy papers. Usually these policy papers are called sessional papers.

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

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

Mr. Temporary Speaker, Sir, where there is a provision, like in paragraph 17 of the Sixth Schedule which says that within five years after the effective date, the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under this Constitution, it requires, therefore, that two things must be done. One, the Government must provide to Parliament its intentions, and the procedures that it is going to adopt to restructure the Provincial Administration to accord with devolved government and, secondly, to establish certain laws.

Mr. Temporary Speaker, Sir, we know that there are two Acts that were passed in the Tenth Parliament. One was the County Governments Act and the other is the Transition to County Government Act. The County Governments Act establishes exactly how county governments will work. The Transition to County Government Act gives certain transitional provisions in moving from one centralized government to two forms of government. What has happened is that the national Government has taken certain actions affecting personnel in what is commonly known as the Provincial Administration without proper policy. This is creating a lot of problems because, for example, there was a lot of hullabaloo about Provincial Commissioners, because there were no Provincial Commissioners under the present Constitution. There is nothing called a province.

The Provincial Commissioners were hurriedly removed and then a few days later, some coordinators were introduced in what is called “the region.” Even “the region” does not exist anywhere in the nomenclature of governance in this country. A region may be useful politically for political parties, churches or Non-Governmental Organizations (NGOs) and so on, but in terms of Government lexicon, it is nowhere provided for either in the Constitution or any other laws under the present Constitution. So, really, you cannot structure the Government under something called a “region”, unless, of course, there is, first and foremost, a sessional paper or a policy paper that Parliament has passed, which gives a region some entity in this transitional period or defines a region as something that is to be used in consonance with paragraph 17 of the Sixth Schedule.

Mr. Temporary Speaker, Sir, having said that, we now come to the issue of the police. After that constitutional provision that I have just read, in order to implement that constitutional provision into law, two Bills were assented to by the President to become Acts in our laws. One is the National Police Service Commission Act, 2011 and the other one is the National Police Service Act. Now these two Acts are very important, because they were passed in order to put in operation the provisions of the constitutional principles that I have read in Article 246 of the Constitution.

Mr. Temporary Speaker, Sir, I want to deal, first and foremost, with the National Police Commission Act, 2011. I am using the National Police Commission Act as, to me, a much more fundamental Act, with regard to the National Police Service Act. This is because it is the National Police Service Commission Act which actually employs. One is the parent of the other. So, it is important that when you are dealing with the National Police Service Act that, first and foremost, you take cognizance of the parent of that Act. I am happy that the Chairman of the Committee on Devolution is on the Chair. Now, if you look at the National Police Service Commission Act, it is very detailed in its provisions to comply with the functions given to the National Police Service Commission, which as I said, the Commission shall recruit and appoint persons to hold or act in offices in the service; confirm appointments and determine promotions and transfers within the National Police Service. These are constitutional provisions. Secondly, the Commission shall observe due process, exercise disciplinary control over and remove persons holding or acting in offices within the service and perform any other functions prescribed by national legislation. Those two functions of the Commission are so clear that even if you were to pass an Act of Parliament, you cannot vary them. They really must be presupposed to have existed *ab initio*.

Mr. Temporary Speaker, Sir, if you look at the National Police Service Commission Act, it does not negate those fundamental functions constitutionally provided. It elaborates on them and says exactly how they shall be operationalized by the National Police Service Commission. It gives further powers to the Commission. When you look at Part II of the Act, it says “further powers to the Commission.” This means that given what exists in the Constitution, now the Parliament of the Republic of Kenya is prepared to give further powers to this Commission. Let me just read these further powers, because it has occurred to some people that apparently, the Tenth Parliament erred in providing these further powers to the Commission. It reads:-

“In addition to the powers of the Commission under Article 253 of the Constitution”---

Mr. Temporary Speaker, Sir, Article 253 of the Constitution reads:

“Each commission and each independent office—

(a) is a body corporate with perpetual succession and a seal; and

(b) is capable of suing and being sued in its corporate name.”

This is just now operational. Now, these are the things that had been given to the Commission, which are purely procedural, including what it is going to own property and so on. Then it goes further to the membership of the Commission. The Commission consists of nine members appointed in accordance with the Constitution. The chairperson and members of the Commission other than the *ex-officio* members shall serve on a fulltime basis. This is where I think the nation is getting it wrong. If you look at the Police Service Act, it gives a lot of operational responsibilities to the Inspector-General of Police. If you look at the Constitution, likewise, the Inspector-General of Police’s hands are full. Then, the Inspector-General of Police and his deputies are *ex-officio* members of the Commission, as by the Constitution established. Some people are now arguing that the Inspector-General should leave his *ex-officio* membership and become a fulltime chairman of the Police Service Commission. This is contradictory and cannot really work, unless you change the Constitution.

In any case, the mischief that the Tenth Parliament was trying to cure was where the head of the Police, who is now the Inspector-General and not the commander--- One of the functions that he is given, which the Police Service Commission cannot interfere with, is to command the police force. That is quite stated both in the Constitution and the Act. He is the full commander of the police force without interference. But when it comes to appointments, promotions, discipline and so on, he is told: “We can discipline even you. So, you have to be answerable to the Commission.” People are now saying: “No, we want a powerful Inspector-General.” This idea of “powerful” so-and-so is a creature of the one-party system. We cannot really go back to it when it comes to the police force because some of us who lived under the Moi Regime and suffered for it know exactly what this absolute power can mean to you; where the man who takes you to detention is the man who decides when you are being released, whether what you did was wrong or not. They expected you to come and apologize!

Mr. Temporary Speaker, I remember when the Immigration Officer, Mr. Mutua, called me to his office when they had taken my passport and held it for ten months, and he went in there, opened the Bible and read to me on how to apologize. I told him “that is all fine, but all I want is my passport!

(Laughter)

Sen. G.G. Kariuki was the then Minister for Internal Security and he had the detention papers on his desk, ready to detain me, but I escaped and went out of the country before he did so!

(Laughter)

But, nonetheless, Mr. Temporary Speaker, Sir, these are some of the things that we were really, as a Tenth Parliament, trying to cure, in the sense that we wanted to separate all these rights that exist among personnel in the police force which should be preserved by the Commission from the command of the police, which exists in the Inspector-General (IG) of Police. He has to command them, he has to tell them when to report on duty, how to dress, how to behave if they misbehaved in the field; how to handle their guns and so on, and so forth – that is the professional running of the police. Just like when it comes to the armed forces, there is an armed forces body which appoints and promotes, not chaired by the head of the army, but by the President, which is another body all together.

So, Mr. Temporary Speaker, Sir, these things must be separated, and the debate currently going on and the amendments being proposed on both the Police Service Commission Act and the Police Service Act are actually misguided and mischievous. Really, what they should do is to look at the Constitution very carefully, not just at the part that deals, as I said, with the Police Service Commission and the Inspector-General of Police, but the fundamental article, which is Article 1(4)(a) and (b).

Mr. Temporary Speaker, Sir, I beg to move and request Sen. Wetangula to second me.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I am very happy that Sen. G.G. Kariuki is here, listening to this treatise, because he was a full commander, as it were, of the dark forces in the olden days.

Mr. Temporary Speaker, Sir, I beg to second. I will not cite the provisions of the Constitution or the statutes because Sen. (Prof.) Anyang'-Nyong'o has very ably cited them, compared them, contrasted them and shown the way. When we were at Bomas of Kenya and in many other fora, everybody including those who were beneficiaries of the old command regime resonated with one voice; that this country needed a police service and not a police force. The previous police force, in fact, had a motto that tended to falsely mislead the public that they were a service. They called themselves "*Utumishi kwa wote*;" but they were a force and not a service. In fact there used to be a joke that became a reality when we were in the university; that if you are in trouble in town and you encounter a policeman, even if you are drunk, run as fast as your legs can take you because if you encounter him, your problems will be multiplied.

Mr. Temporary Speaker, Sir, we have come a long way. Section 17 of the Sixth Schedule says that the Provincial Administration should be restructured in five years. We have now done two-and-a-half years since the promulgation of the Constitution, but we cannot see anything on the horizon that shows that the Provincial Administration is going to be restructured. If anything, there is now emboldened capacity for the Provincial Administration to run parallel with devolved system, overshadow the devolved system, undermine it and make it look like devolution was a mistake. I know that the Government may be having great difficulties, and we understand, of where to take these people but

they can be deployed in the manner that Sen. (Prof.) Anyang'-Nyong'o, the Mover of the Motion, has suggested. All these people are still on the payroll of the Government and yet we are here crying that there is no enough money going to devolution. In fact, the Constitution, and I think you have cited it here before, provides for the national Government and the county government to sit and sign agreements on how to pool their synergies together in the process of strengthening devolution.

One would expect that the county governments and the national Government can, in fact, sign agreements and deploy these Provincial Administration personnel to help establish county governments for the next couple of years while they are being paid from the wage bill of the national Government to relief the county governments of the burden as we move on. Sometimes you wonder whether the left hand knows what the right hand is doing because President Uhuru Kenyatta stood in public and we lauded him. He said, "I am from today ordering that Provincial Commissioners (PCs) and persons holding those levels of capacities in the Government are recalled." I have not heard of another public pronouncement from the President about the recall of the PCs.

Last week, I was shocked to see that PCs and policemen called PPOs who had been removed had been deployed in provinces now being falsely described as "regions". In the new Constitution, we do not have a province or a region. We only have two levels of government. We have the county and the national government. Then we have administrative structures of the constituency which is now equal to the district and other smaller structures below them. Now, it defeats logic to ask county governments to recruit what they call a sub-county administrator who is going to earn a salary and continue maintaining a district commissioner (DC) in the same unit. The sub-count administrator is going to administer the constituency which is the sub-county, then there is a DC administering the same unit.

When you go further down, most of the wards are equal to divisions. Now they are recruiting ward administrators who are going to be paid from the national coffers and the national government still has a district officer (DO) in the ward as an administrator. When you go further down, there is a chief and an assistant chief. If we are talking about a massive wage bill that is frightening the Government with everybody asking for money, why are we piling personnel, upon personnel, upon personnel? It does not make a lot of sense.

The Temporary Speaker (Sen. Murkomen): Order!

The Senate Minority Leader (Sen. Wetangula): How much time do I have left?

The Temporary Speaker (Sen. Murkomen): Order! Sen. Wetangula, you still have four minutes and you can continue tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, it is now time for interruption of business. Therefore, the House stands adjourned until tomorrow, Thursday, 1st August, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.