

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 12<sup>th</sup> July, 2018

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM IKG STUDENTS FROM SPAIN

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Inside Kenya Group (IKG) Students from Spain. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

#### VISITING DELEGATION FROM ST. SCHOLASTICA CATHOLIC SCHOOL RUARAKA, NAIROBI CITY COUNTY

Again, Hon. Senators, I would also like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from St. Scholastica Catholic School, Ruaraka, Nairobi County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

Next Order.

### PAPERS LAID

**The Speaker** (Hon. Lusaka): Chairperson of the Standing Committee on Education, the Floor is yours

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REPORT ON 20<sup>TH</sup> CONFERENCE OF COMMONWEALTH  
EDUCATION MINISTERS (20CCEM)

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday 12<sup>th</sup> July, 2018:-

Report of the Standing Committee on Education on the 20<sup>th</sup> Conference of Commonwealth Education Ministers (20CCEM) held in Nadi, Fiji, from 19-23 February, 2018.

*(Sen. (Dr.) Langat laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Sen. Halake is not in the Chamber. Please, proceed, Sen. (Dr.) Ali.

REPORT OF THE PROCEEDINGS OF THE GLOBAL  
PARLIAMENTARY CONFERENCE (GPC)

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday 12<sup>th</sup> July, 2018:

Report of the proceedings of the Global Parliamentary Conference (GPC) held at the World Bank Headquarters in Washington DC, USA, from 16<sup>th</sup> to 17<sup>th</sup> April, 2018.

*(Sen. (Dr.) Ali laid the document on the Table.)*

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

**NOTICES OF MOTIONS**

NOTING OF REPORT ON THE 20<sup>TH</sup> CONFERENCE OF  
COMMONWEALTH EDUCATION MINISTERS (20CCEM)

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

THAT, this House notes the Report of the Standing Committee on Education on the 20<sup>th</sup> Conference of Commonwealth Education Ministers (20CCEM) held in Nadi, Fiji, from 19<sup>th</sup> to 23<sup>rd</sup> February, 2018, laid on the Table of the House on Thursday, 12<sup>th</sup> July, 2018.

**The Speaker** (Hon. Lusaka): Please, proceed, Sen. (Dr.) Ali.

NOTING OF REPORT OF THE PROCEEDINGS OF THE  
GLOBAL PARLIAMENTARY CONFERENCE (GPC)

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

THAT, this House notes the Report of the proceedings of the Global Parliamentary Conference (GPC), held at the World Bank Headquarters in Washington DC, USA, from 16<sup>th</sup> to 17<sup>th</sup> April, 2018, laid on the Table of the House on Thursday, 12<sup>th</sup> July, 2018.

ENFORCEMENT OF NATIONAL TRANSPORT AND SAFETY  
AUTHORITY (OPERATION OF MOTORCYCLE) REGULATIONS 2015

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

AWARE that the National Transport and Safety Authority (NTSA) is mandated to plan, manage and regulate the road transport system, while ensuring the provision of safe, reliable and efficient road transport services;

FURTHER AWARE that motorcycle transport services have been rapidly embraced throughout the country leading to several challenges including: rise in road accidents involving motorcycle riders, unlawfulness, insecurity and road congestion;

COGNIZANT that the National Transport and Safety Authority (Operation of Motorcycles) Regulations that came into force on 1<sup>st</sup> January, 2016, have not adequately addressed the challenges associated with the high numbers of motorcycles as a mode of transport;

NOW THEREFORE, the Senate resolves that the Ministry of Transport, Infrastructure, Housing, and Urban Development: -

1. identify strategies to enforce the National Transport and Safety Authority (Operation of Motorcycles) Regulations;
2. in collaboration with county governments, develop programmes to sensitize and educate members of boda-boda associations and the public on the laws regulating motorcycle operations;
3. submits a report to the Senate within 90 days outlining the short and long-term strategies, and preventative measures that are being put in place to halt the rising cases of road carnage involving motorcycle riders.

**The Speaker** (Hon. Lusaka): Since we only had one statement to be issued by the Senate Majority Leader, we will defer that Statement to a later time.

Let us move on to the next Order.

**BILL***Second Reading*THE KENYA ROADS BILL (NATIONAL  
ASSEMBLY BILLS NO.47 OF 2017)*(Sen. Murkomen on 4.7.2018)**(Resumption of debate interrupted on 4.7.2018)*

**Sen. (Eng.) Mahamud:** Thank you, Mr. Speaker, Sir, for giving me the chance to contribute to the debate on The Kenya Roads Bill (National Assembly Bills No.47 of 2017). This Bill is long overdue. It is a Bill to align the road sector with the Constitution of Kenya, 2010. The current Road Act was enacted in 2007 and amended in 2009. That means that it was enacted before the Constitution was promulgated.

The Fourth Schedule of the Constitution states the functions of the national Government and the county government in as far as road management and maintenance is concerned. It talks about the county roads and the national roads. It is important that this Bill is enacted so that we can align the operation of the roads today to the Constitution.

Mr. Speaker, Sir, as currently organized, the roads sector was unbundled in 2007. There are four institutions which manage roads in some way or the other; namely, the Kenya Roads Board (KRB) manages the finances; the Kenya National Highway Authority (KeNHA) manages the roads under Classes A, B and C; the Kenya Urban Roads Authority (KURA) manages the urban roads while the Kenya Rural Roads Authority (KeRRA) manages roads under Class D and below.

This Bill attempts to classify roads and change their classification rules. In the First Schedule of the Bill, we have classes which have been introduced that include Class S, Class A, Class B, Class H and Class J. Class S will be the highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation. That is a new class that is being introduced.

Class A roads will be roads forming strategic routes and corridors, connecting international boundaries at identified immigration entry and exit points and international terminals such as international air or sea ports.

Mr. Speaker, Sir, there is then Class B, Class H and Class J, all of which are supposed to be part of the mandate of the national Government roads and managed by the KeNHA.

The Bill also introduced secondary national trunk roads which is Class C. The Class C roads are supposed to be managed at a different level. They form important regional routes linking county headquarters or other regionally important centres, constituency headquarters, municipal or town council centres and other towns.

Mr. Speaker, Sir, there is Part II which is county roads. It is envisaged in this Bill that county roads are going to deal with Classes D, E, F, G, H, L, M, N and P. All of

them are new classifications properly described within this Bill. The whole idea is to unbundle the sector so that we have the roads managed better.

There are authorities which are currently in place, which are three, together with the Kenya Roads Board (KRB). The KRB tries to manage the funds which are raised under the Fuel Levy Fund. Fuel levy funds are levied to fuel users at source. In fact, that is the money which is supposed to be used for road maintenance. This Bill is long overdue. The way it is today, the fuel levy is divided and given to those authorities in proportion. Some percentage goes to Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA).

However, recently the Treasury introduced another provision which allows them to disburse to the counties. As we sit here today, counties get 15 per cent of fuel levy collected. It is important that this is regularized through an Act of Parliament so that we know what everyone gets. The authorities that are in place have all done a good job. In fact, it is important that we maintain those bodies. The KeNHA, KURA and KeRRA roads must be maintained and allow counties to also build capacity and do the roads within their mandate.

Mr. Speaker, Sir, we have to look at the Bill at the Third Reading on what needs to be done in terms of what our colleagues in the National Assembly have done. This Bill passed through the National Assembly in the last Parliament and came here. It lapsed because before the Senate could take action on it, we went to elections. I personally was very much involved right from the beginning when the Kenya Roads Act, 2007 was enacted. I was then the Accounting Officer in the then Ministry of Roads and Public Works.

We did a lot of work in the National Assembly last time as the Vice Chairperson of the Committee on Roads and Transportation. I am sure our Members of the Committee on Transport led by the Senator for Kiambu County and deputized with my former colleague who was an engineer in the then Ministry of Transport and Public Works also, Sen. (Eng.) Hargura Godana, will look at this Bill properly so that we enact a Bill that is useful for this country and make the management of the road sector in this country better.

Mr. Speaker, Sir, roads are a very important part of this economy. Without proper infrastructure and maintenance, we cannot grow our economy. Before the commissioning of the Standard Gauge Railway (SGR), 80 percent of both human traffic and luggage is putting a lot of stress on our roads. We need our roads to be better constructed and managed. I am happy today because compared to the last 10 years, the road sector looks quite different. We have interchanges and beautiful roads that we see in the first world. I am sure our roads can be done better if we get proper funding and organization.

We should not be thinking of who is supposed to do what. It is important to have the authorities that are there. They have established the rural authorities. I think the other name has changed a little bit. The KeRRA has now been renamed as the Kenya National Second Roads Authority because the roads have been defined. We also have the other one which is KURA. I am sure there will be a lot of clamor by counties wanting to maintain their roads in the cities. I think it is important that we give a specialized agency to do that for them.

I would personally advocate for the three roads authorities to be retained so that we can give the functions that are commensurate with the ability of the counties to do that. Parliament and especially my former House, the National Assembly, would want to retain some money given to constituencies. When we look at the Bill in detail, the Committee on Roads and Transportation should see how best this can be addressed so that we come up with a better law.

The authorities are managed by very competent engineers. The position of the Director-General of both the authorities are engineers. The law says that the Director-General of KeNHA should be an engineer with certain qualifications. I have no problem with that. For KURA and KeRRA the same applies. However, for the Public Roads Safety Board (PRSB), it does not matter whether you have a legal, financial or engineering expert. You can leave it open so that you get a competent person to lead the PRSB, but the rest must be people competent and have the right qualifications and expertise.

Mr. Speaker, Sir, with those few remarks, I urge the Committee on Roads and Transportation to expedite this so that the road sector can be managed and we have some order.

I beg to support.

**The Speaker** (Hon. Lusaka): Proceed, Sen. (Eng.) Maina.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I rise to support this Bill and make a few comments and observations.

The road sector is an important part of the Big Four Agenda of the President. The road sector will open up this country so that our economy can grow. We also have devolution.

First, the boards have been suggested so that they can infuse more efficiency and accountability into the usage of the resources that are available. I want to remind the management of the various departments and boards who are going to manage these roads both at national and county level that they have a responsibility to see that the infrastructure of this country, specifically, the roads, is done in a manner that befits the environment where the road is being done.

When a road is being built anywhere in Kenya, and that has been the tradition in all countries, people should examine the local materials available. They need to utilize those materials because they will be more economical than transportation of materials. If we go the traditional way of thinking that a road is black bitumen, it is going to be extremely expensive to this country. It is also going to call upon our foreign reserves to be drawn because what people see as a black top on a road is nothing else than an oil derivative.

In the 1970s, Kenya was opened up. Most of the tea roads that are standing up to today and most of the rural roads were made with what we normally refer to as murrum. However, murrum in engineering terms is just one type of the soil that can be used. This country was opened up in the 1970s quite successfully where produce could be transported from every area by using stabilized soils.

I call upon engineers in the Ministry to come out and do more research on our local materials because that is what is going to make us achieve more infrastructure in

this country without spending colossal sums of money. We are all aware that, nowadays, the cost construction of a road goes for Kshs2 billion to Kshs6 billion. We need to re-examine this issue. Secondly, it is not enough just to handover functions to the counties if they do not have capacity and the right framework of accountability. I happen to have the advantage, as an engineer, to say that a road that can be made with normal soils costing about Kshs1.5 million to Kshs3 million per kilometre and be done properly. However, most of our roads are deteriorating today because when you look around, sometimes they do not have proper drainage. We should have good roads being made in this country at reasonable costs. It should be at minimum cost by employing local materials.

Mr. Speaker, Sir, it is good that the organisation, as set, goes ahead to classify more roads. I call upon the Committee on Roads and Transportation to inquire from the Ministries about what roads they can do with local materials, employing local labour and our youth. They should also inquire on the roads they can do by employing other materials and people from outside this country.

Mr. Speaker, Sir, I want to mention something that was addressed here yesterday, about the Chinese. I am sorry I have to repeat it. The Chinese are building many roads and we are all very amused and happy. However, we do not seem to realise that non-employment of our youth is a ticking time bomb. We must, therefore, create employment opportunities for our youth in this country. We must look into ways of engaging our youth meaningfully. Otherwise, you will be hearing about all those criminal gangs like *Chinkororo* from where my friend comes from; *Mungiki*, *Baghdad* and other criminal gangs because our youth are not properly engaged.

Mr. Speaker, Sir, if we had the framework of utilizing available local materials and capacity, we could then employ many youths using the road sector budget. These are the policies that I want the Committee and the Ministry to sit down and come up with. It is not enough to say that you are building a road. What are the social benefits of building these roads to the community and to the country called Kenya? It is not enough to say that we have built a road and then we call it a beautiful road, yet it was never built with any local materials or local labour, including that of the youth, who could do some of the simple things. That should not be the benefit that we should be looking for when we are enacting this Bill.

Therefore, Mr. Speaker, Sir, it is high time that the Ministry calls upon engineers to ensure that we have a proper research organisation to conduct research on roads. For instance, they should find out what resources we can get in Marsabit or Mombasa; where we can employ them and which classes of roads we can employ these resources. Those are the kinds of things that we should be doing. We should not be guided by people who are commercially driven. The Ministry should be ahead of the people.

Mr. Speaker, Sir, the other thing is procurement. We think that when we talk of open tender, it can come and cover up for the conscience of men. It cannot. This is because something can be called an open tender when it has been coordinated between a few individuals, such that the price being quoted is still not the price that you expect. Therefore, I would like to see a regulation – by engaging the national Treasury and the relevant Ministry especially in the road sector – where if a road is found to be too

expensive, some methodology should be adopted and even negotiations be done to bring the price down.

Many countries have done that. I remember when Egypt and India were building dams; they got some tenders whose quotations were very high. They knew it was expensive because they knew what price they were looking for. They engaged those people and managed to bring the cost of the dams down to about two thirds the price of what it was supposed to be. This is what Kenya should be doing. It is not enough to call for tenders, and only six Chinese contractors submit their bids. The six could be one company when you go Beijing, and they will give you a price. Then here you are, very happy, saying that you have done open tendering. Open tendering is there as a guide; it is supposed to be exercised in a free system where there is consciousness of purpose.

Therefore, Mr. Speaker, Sir, my closing point will be that we support the President; I also support him; even my people support the “President of Nyeri.” Most people support the President in his fight against corruption. If we support the President---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. (Dr.) Ali?

**Sen. (Dr.) Ali:** On a point of order, Mr. Speaker, Sir. Is the senior Senator from Nyeri County in order to say “the President of Nyeri?”

*(Sen. (Eng.) Maina and Sen. (Dr.) Ali were on their feet)*

**Sen. (Eng.) Maina:** No, I never said that!

**The Speaker** (Hon. Lusaka): I guess it was slip of the tongue, but you said that.

**Sen. (Eng.) Maina:** No, Mr. Speaker, Sir; I said my people of Nyeri support the President. That is written somewhere in the annals of history and it does not have to be repeated.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Poghisio?

**Sen. Poghisio:** Mr. Speaker, Sir, I do not know if you noticed that both of the Members were on their feet at the same time, which means that one of them was out of order.

*(Laughter)*

**The Speaker** (Hon. Lusaka): They were actually out order.

Sen. (Eng.) Maina, conclude your contribution.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. Sen. Poghisio has been here long enough and he knows the rules thoroughly. Therefore, we appreciate his comment. However, I was only stressing the fact that we support the President in his fight against corruption, because this country has no choice. The road sector is one area where we must look at how we can save the resources of this country. I call upon the Committee, this House, all people involved, the Ministry and the people in the devolved units to come together and think of how we are going to improve the road network in this country. We need a road network that will survive for long; one that will be done reasonably and economically for the benefit of the people of Kenya.

Thank you, Mr. Speaker, Sir.



**The Speaker** (Hon. Lusaka): Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for the opportunity. Listening to my good friend – the tycoon from Nyeri County – talking about roads is very gratifying, because he is a contractor and he knows much more than many of us.

Mr. Speaker, Sir, this Bill is in line with the new Constitution. It tries to give effect to the Fourth Schedule of the Constitution in trying to review, consolidate and rationalise the legal regime in the road sector. The Bill also seeks to reclassify roads and set up management structures that will help in the management, construction and maintenance of the road network.

Mr. Speaker, Sir, because of limited time, I will go straight to the Bill. I do not know who will respond to the issues raised because both the Senate Majority Leader and the Chairperson of the Committee on Roads and Transportation are not here.

If you look at Clauses 6 and 7 and run through all those established boards, there is very little provision for involvement of county governments. Roads, whether highways, super highways or feeder roads, are in the counties. Even where the responsibility falls under the national Government, it will be desirable to have the involvement of county governments.

Mr. Speaker, Sir, Clause 7 establishes the Public Roads Standards Board. The composition of the Board is the State department responsible for public roads, that is, the national Government, and the State department responsible for matters relating to devolution, which is still the national Government. As you run through, there is no single mention of representation by either the Council of Governors (CoG) or any content for counties. When you talk of the State department responsible to matters relating to devolution, you are talking about the Ministry of Devolution and ASALs, which is a national Ministry. So, we are totally excluding county governments in whose jurisdiction roads of whatever classification fall.

I urge those who brought the Bill that at the Committee Stage, we must amend, running through all these boards established and in a similar manner, to give some opportunity for the CoG to nominate representatives to these boards. If we do not do that, we run the risk of men and women sitting in Nairobi City County and pretending that they know what happens to the roads in Bomet, Mandera, Wajir and everywhere when, in fact, some of the roads that they are superintending on are devolved.

Mr. Speaker, Sir, I have looked at Clause 56, and I expected my good friend, the Chairpersons of the Committee of Finance and Budget, who has a long history with roads to mention this. Clause 56 is introducing a new tax on road users. As it is, road users in this country are heavily taxed. The fuel levy that we pay and the taxation of fuel and other taxes that people pay towards driving on our roads does not warrant the Bill to give authority to the Cabinet Secretary (CS) to create a new tax.

The Clause says:

“The Cabinet Secretary responsible for the National Treasury may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including the national and county roads.”

To begin with, you are giving authority to the Cabinet Secretary for National Treasury and Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development to impose a levy on even county roads without consulting the counties and the county governors. This is not right.

Secondly, the Kenyan taxpayer is so over taxed that any law that pretends to introduce a new level of taxation, in whatever form or manifestation, is misguided. I urge this House that a clause such as this should be rejected, so that the Bill ends up in mediation to change this. This is because once this Bill becomes an Act of Parliament and is in operation, the two Cabinet Secretaries will sit, agree and impose a levy through a gazette notice and start taxing Kenyans without even involving the Houses of Parliament. Worse still, they are being given authority to levy even on a small road from Bulahawa to Mandera, Kirinyaga to some small place in Kirinyaga County or from Chwele to Mt. Elgon in my county. This is not acceptable and this House should protect the people we represent in the counties.

Mr. Speaker, Sir, equally, the Bill does not even say, when that money is collected, how it will be rationally distributed across the country. We live in this country where we know that development has always been skewed towards those who are in power. Go to the areas of those who have been in power – whether it is the old President Kenyatta, President Moi, the new President Kenyatta, Mzee Kibaki – you will find that the bulk of infrastructure is skewed and gerrymandered to favour those in power. Areas that have no opportunity to produce anybody in power – like where my good friend, Sen. (Dr.) Ali, comes from – saw tarmac when devolution came. Children were learning about tarmac roads in textbooks. Now that devolution has come, we want to see the national cake being distributed equitably and to benefit the people of this country.

There is something that is also lacking and, again, my good friend, Sen. (Eng.) Mahamud, has been a Permanent Secretary in this sector. There is a chaotic situation in the infrastructure contracting. You should have taken judicial notice to ask Sen. (Eng.) Ephraim Maina to declare his interest. Being a contractor, he should declare his interest before he talks about contracts. He did not, but it is something that we all agree with.

In any sensible jurisdiction that you go to, there is affirmative action for local contractors. In fact, you may recall that we used to have a circular in this country that is no longer referred to or enforced. The circular required and provided that in any competitive contractual situation, a local contractor, who is 15 to 20 per cent more expensive than a foreigner, will still be given the contract as affirmative action.

Today, there is an invasion of foreigners in every sector. Even in contracts of Kshs100 million, which are very small contractors in terms of major road construction, the locals cannot compete with foreigners. I would expect this Bill to have a specific provision that insulates, protects and gives affirmative action to local contractors. In the old days, as you may remember, when foreigners came to this country, they were not allowed to incorporate companies and start operating without local content. So, you always had local partners. Of course, this was thoroughly abused because all the big guys like Permanent Secretaries (PSs), directors and so on, are the ones that took those opportunities to become partners with foreigners. That is why the richest people in this country are not people who have worked hard, but people who have worked with the

Government and in the Government by cutting shortcuts and using their positions to enrich themselves.

Mr. Speaker, Sir, I would want to see a situation where this Bill provides for a ceiling of contracts that allow only local competition; that the roads whose value of construction is Kshs1 to Kshs1 billion is left to the competition of only locals. Then when you go to Kshs1 billion and above, the league in which the tycoon of Nyeri plays---

**Sen. (Eng.) Maina:** On a point of Order, Mr. Speaker, Sir. At one time, I sought your protection from this man. This man, as you know him, since demonstrations ceased to happen after the handshake, he is suffering from excessive energy and that is why he is engaging in extra-ordinary matters by agitating other people in this House. He has called me a tycoon. Let it be so, my brother. I would wish to be one. I do not play in any league. I used to employ 5,000 people. Today I am employing only about 300 or 500 people.

**Mr. Speaker:** What is your point of order?

**Sen. (Eng.) Maina:** Is he in order to attack me personally by calling me a tycoon and yet there is no known register for tycoons? Could he substantiate?

**Sen. Wetangula:** Mr. Speaker, Sir, the more my distinguished colleague attempted to run away from what I said, the more he proved that that he is a tycoon. Employing 5,000 or 300 people is not a joke. How many Senators here employ even 20 people? You can see from my colleague's body language that he is very excited that I called him a tycoon.

Mr. Speaker, Sir, I was talking about those who play in big leagues. In this country, on road construction, there are very few contractors who play in the league that we are seeing the Chinese playing; maybe my good friend Joseph Swartzman and H. Young, Kirinyaga Construction and a few others, not more than 10. The rest are struggling to grow. They will only grow if the Government gives them affirmative action and protection. In fact, if this Government is committed to growing local entrepreneurship. They should also have a fund which is not mentioned anywhere to help young, emerging entrepreneurs, to acquire equipment for road construction, so that they can compete.

Mr. Speaker, Sir, we have reached a situation where you go to a Ministry where they have put up tenders and the shortlisting of tenders to go to evaluation; number one to seven are Chinese. Where are the rest of Kenyans? Some of these Chinese companies - probably not all of them - when they have these contracts, we find that 60 per cent of the labour is from China. This is totally unacceptable! This country has no shortage of engineers, crane drivers, shovel drivers, grader drivers or surveyors. However, everywhere there is a construction, you will see a Chinese holding equipment and directing somebody on the other end on what to do. We cannot allow this. We can only do this by law. The law that is being brought here is falling short of that. I want to see, even the authority we are setting up, because it will appropriate public funds, to have a fund where young emerging contractors can borrow from, so that they can also grow.

Mr. Speaker, Sir, I also want to urge that the manner in which roads are constructed is very expensive. I want us to have it in the law. I am sure Sen. (Eng.) Mahamud can agree with me on this that if you go to other jurisdictions like the USA and

other places, almost all major infrastructure is undertaken by the national government then handed over to the counties and the states for maintenance.

There is no single county in this country, probably Nairobi City County because of its major economic base, that can undertake road works of the quality required of tarmacking roads that can last for 10 to 20 years because they do not have money. The demands on them are such that you go to a county, every area wants a tarmac road. So, you will find that the counties are now trying to juggle like conjurers with the little money they have to make sure there is a little tarmac here and there. They end up with roads like look like a veneer of tarmac.

In the last Parliament, we were treated to some comedy here from Machakos County where we saying Machakos County had the distinction of having the oldest new road in Kenya; a brand-new road that was in tatters within three months. If we want to do that kind of shoddy work and parade ourselves with selfies and all manner of paraphernalia that we are doing a good job, we are committing a fraud on the people of Kenya. It is better to make a few kilometres every year of good roads than to make many kilometres of no tarmac; just a pigment of tarmac and nothing else. This is so important. This can only be cured if, as Parliament, we obligate the national Government that it constructs all, if not as much as possible major tarmac roads in the counties and hand over to county governments for routine maintenance and repairs so, that they can be part of their economic activities.

Mr. Speaker, Sir, equally important is the lack of positive action in marginalized areas. When you look at the classification of roads here, if this classification will work, God help the people of northern Kenya like Dr. Ali's counties and others. This is because we are emphasizing communication, population, number of cars and so on, that will determine the classification of roads and the amount of money to be put on it for construction. When will anybody ever construct a road from Marsabit to Loyangalani? When will anybody every construct a highway from Modogashe to Isiolo? It means those areas will remain marginalized. I would expect my colleagues from those parts of the country to scan through these Bills and argue against continued marginalization of their areas.

Mr. Speaker, Sir, I want also to talk about the issue of lack of maintenance of roads. There was an American Ambassador here who once said: "It does appear that in Africa, the vocabulary of repair and maintenance do not exist." If you look around, you will see a road is constructed, it is used, wears off until there is need for reconstruction. If you go to Europe, you are told this road was constructed a century ago and it is still intact.

Mr. Speaker, Sir, could I have a few more minutes?

**The Speaker** (Hon. Lusaka): That is okay.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. If you go to Europe, you will find that a road that was constructed 100 years ago has never been reconstructed because it is routinely maintained. I am talking about maintenance. In Africa, and Kenya, in particular, maintenance, repairs are alien to our vocabulary.

Mr. Speaker, Sir, in our own county, the road from Bungoma through Nalondo, Bokoli to Kimilili, since it was constructed, has never been maintained. It is now

completely broken and torn and the only saviour would be to reconstruct it. We have a road from Lodwar to Kakuma. I used it the other day and you will have a better ride on the moon than on that road. Cars have now created alleys in the bush away from the tarmac because the tarmac is so broken that if you drive your car from Lodwar to Kakuma, you will have no car on arrival. It is just because of negligence and dereliction of duty by those who are charged with responsibility.

For those gentlemen and ladies in Government across the Floor; we want to see in this Bill a substantial sum of money in the Budget kept aside for repairs and maintenance of roads. Equally important, we must obligate the State and county governments that roads are due for maintenance periodically at regular intervals, so that when a road is constructed, in about five years, you have to recarpet or reseal it. Then you let it run on for another five years and then you re-carpet or reseal it. That way, we will spend much sell money.

Mr. Speaker, Sir, I do not understand the cost we hear about roads, for instance, from Thika to Nairobi, Kshs40 billion. It is mind boggling. We are now hearing of a road from Mombasa to Nairobi being concessioned for Kshs300 billion. We now talk about money as if it was the old Zimbabwe of President Mugabe where they had useless money with so many zeros. There was a shilling note with 26, zeros. A Minister friend of mine told me that they had denominations to something called a gillion. I asked her what it meant and she told me that a gillion is a note with 26 zeros. How much can you buy with this? She said that if she goes to a supermarket, she does not need a basket. She will spend it and carry the goods in her hand.

Mr. Speaker, Sir, we do not want to spend money as if it has no value. If we want to construct a highway - this is my last point - I want to see this country constructing a dual carriage from Mombasa to Malaba; this is the artery of our economy. Our number one trading partner is Uganda and beyond; Rwanda, Burundi and eastern Congo. Almost 60 per cent of our trade goes along this road.

You have seen a simple incident in Makindu results to a traffic jam of 20 kilometers because there is no alternative road. We want to see a dual carriage from Mombasa to Malaba, Mau Summit to Kisumu, Mau Summit to Isebania and Nairobi to Moyale, so that we open up. If the money wasted on the Standard Gauge Railway was invested on roads in this country, we would have registered 20 to 30 per cent Gross Domestic Product growth. Nonetheless, our priorities are always personal driven, misguided and sometimes make no sense. However, this is the country we live in.

I beg to support.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Wetangula. Yes, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Mr. Speaker, Sir, I rise to support this Bill with a few comments. The classification of roads as it appears here is quite in order. We have the Kenya National Highways Authority (KeNHA), Kenya Urban Infrastructure Development Programme and now the Kenya National Secondary Roads Authority.

It is now very clear that there are two distinct governments; the national government and county governments. The intention of creating county governments is to bequeath the county governments the capacity and ability to do their own things. When

you look through this Bill, there is nowhere it postulates the amount of money set either by the Authority established, that is, the Kenya National Highways Authority or the Kenya Urban Roads Authority or the Kenya National Secondary Road Authority. There is nowhere this Bill expressly states that resources will be set aside to build capacity at the county government level.

We will be wrong, as the Senate, to pass this Bill without an amendment to make provision that capacity building at the county level will be one of the most critical functions required for any national or road network to take effect. For example, the heart can only pump through a system. If any of the ulterior systems is defective, then it clogs up, you have jam and you are no longer alive. Similarly, the road network in this country is so critical and important for the development of this nation. This is why Kenyans were willing to accept any levy to build the infrastructure necessary to carry their goods or produce from the farms and everywhere else to the market.

When you go outside Nairobi or the three cities; Mombasa, Nairobi or Kisumu, the road network is pathetic. It takes you hours to be on the road. You just need to have one vehicle to block the road and you are stuck for 12 to 24 hours. Any structure that needs to be done at this stage must have a vision, programme and plan on how to alleviate the congestion you are likely to meet.

This is why I was persuaded by Sen. Wetangula's approach, that we should now look at what is most cost effective. We should spend more money on dual carriageways linking counties and the international highways so that we can get smooth flow of traffic without any hindrances.

Mr. Speaker, Sir, Clause 17 of the Bill discusses the Kenya National Urban Roads Authority and Clause 18 talks about the Kenya National Secondary Roads Authority. Some of these functions are done by the county governments. There is no provision in the Bill which states how the county governments are going to be represented. Everything is centralized, and there is no way county governments can exert influence on a particular structure of the road to be done within their own counties.

Since we are here for the interest of counties, I think it is important to look at this more closely, particularly at the Committee Stage so that we know how to bring in county representation, either through the Council of Governors caucus. I can see in the Bill, the Intergovernmental Relations Technical Committee as a representative but that is not the way to go because policy is an important ingredient to the development of these roads.

Without having the policy head involved and only putting technical people, we will be making a big mistake as Senate if we let this Bill go through without necessary amendments. We should look at that level and decide how we want to do it. I will give you an example. I am very worried because these days, roads are being done in terms of billions.

This road was developed when I was the Minister for Local Government and it was in tatters because of the heavy rains. However, through the Kenya Urban Support Programme of the World Bank (WB), they gave out a contract for this road. You will be surprised that Kenyatta Avenue that you see here today was done at a cost of Kshs25 million. However, if you were to give out the same stretch of Kenyatta Avenue from Moi Avenue to the roundabout at in Nyayo House near the Provincial Administration, the cost

will be in terms of billions of shillings. Like I have mentioned before, this road was done when I was the Minister for Local Government, and you have not seen a single pothole there. It is as clean and as new as possible. What we are looking for is this capacity, where we will have given people the opportunity to learn and know what to do.

Mr. Speaker, Sir, I am afraid that the Senator for Kirinyaga County has gone out.

This issue of Chinese contractors dominating the scene in this country is becoming an eyesore because we have abrogated the ability to give our people contracts to perform. There are good Kenyans here who can be good contractors. If they are given specifications, they can perform as well as any other person. What are we going to do with the young engineers we are training these days in our universities? We have said that we should become more innovative. Consequently, we have created polytechnics and vocational training centers to improve skills so that our young people can gain employment, yet they have no opportunities whatsoever. This will remain so until we sort out what goes into the various authorities we are establishing through this Bill.

Mr. Speaker, Sir, Sen. (Eng.) Mahamud was a Permanent Secretary (PS) in the road sector, and he knows why we need to build capacity for our people. Even Small roads can be done by small contractors at the rural level. Why do we go for these big contractors taking billions of shillings? It is terrifying that you go for the big contractors but when the road is done, there is a high level of wear and tear within a short period of time. The Narok-Maai Mahiu Road is already in tatters, yet it was done only recently. What has happened to the money that went to the contractors? It is wasted money because the standards were not carefully observed. We, therefore, need to be very careful. Let us approve this Bill and ensure that everything goes according to the plan.

Mr. Speaker, Sir, Sen. Wetangula mentioned Clause 27. If you look at Clause 100, it states that:-

“Each county government shall within its area of jurisdiction be responsible for the construction and maintenance of county roads in accordance with the provisions of Part II of the Fourth Schedule to the Constitution and Part B to the First Schedule of this Act”.

How will they be responsible for this construction if they are not part of this process, because they are not in these authorities and they are not represented anywhere? We should query this Bill more intensely and come out with a solution that is applicable and acceptable to each and every person. We do not need to belabor the point. The message is loud and clear.

Mr. Speaker, Sir, what we have done in this Bill is that we have centralized instead of decentralizing the functions. We must look for a formula, and if it means that we must go for negotiations, then so be it. We should decentralize the functions and, in the process, also decentralize capacity building, because we have young graduates and young school leavers who have been trained in vocational training centres who want to apply their technology yet they cannot gain employment, including in the Chinese companies which are now operating in this country.

Yesterday, Mr. Speaker, Sir, we had a heated debate on how people have been locked out of employment when the Standard Gauge Railway (SGR) was being done. Similarly, in the building of some of these highways, we hardly get local people being

incorporated in those projects. When will they ever know how to maintain these roads? Are we also going to bring the Chinese back to maintain the roads for us? It will be a mistake for a country which has been independent for the over 50 years. This is not the way we should go. The point I am making here is that we have the capacity to borrow; we can train and empower our people to do some of these functions to the best interest of this nation. By doing so, we will save a lot.

Mr. Speaker, Sir, with regard to the main body, the structure of the authorities is in line with the Constitution, and we have no quarrel with that. We are only looking at that aspect that deals with the issue of empowering the counties and resource flow to the counties. What we are saying, in effect, is that we will deny counties resources in the budget-making process. The argument that will be used by the national Treasury is that the national Government will do the infrastructure for the counties; and that infrastructure which will come at a heavy cost. We are trying to say that we can reduce the cost of the construction of these highways and the road networks in this country by empowering our people to have the necessary knowledge and skills. For example, in 1991, the WB and the so-called Bretton Woods Institutions placed an embargo on Kenya on foreign exchange. Therefore, it was impossible for us to get foreign exchange to import certain important and very essential commodities for this nation. As a result, the level of unemployment surged. I was the Minister for Technical Training and Applied Technology in charge of *Jua Kali* at the time.

Mr. Speaker, Sir, through our national polytechnics and vocational training centers under the Ministry of Labour, we were able to do in-servicing skill upgrading for our people. As a result, the *Jua Kali* sector is today a very competitive market where 40 per cent of Kenyans were employed during that period of time. It took a Marshall Plan for us to overcome the WB regulations. We can do the same today and empower our people. I am not saying that the Chinese should not construct the roads; let them do so. However, we should set aside a certain amount of money geared towards empowering Kenyans at the county level so as to achieve these functions in a more cost-effective manner.

Mr. Speaker, Sir, with those few remarks, I beg to support this Bill with a proviso that we should make amendments during the Committee Stage to include some of those points that we have discussed.

I thank you, Mr. Speaker, Sir.

*(Interruption of debate on Bill)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM SIGIRIA  
SECONDARY SCHOOL, MIGORI

**The Speaker** (Hon. Lusaka): Hon. Senators, before we proceed, I have a brief Communication. I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Sigiria Secondary School, Migori

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County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

Proceed, Sen. Outa.

**Sen. Outa:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to join you in welcoming Sigiria Secondary School in Migori County.

I also take this opportunity to thank you very much for supporting the family of our late brother, Sen. Ben Oluoch Okello. You came in when the family needed support and you visited them in the hospital. Secondly, when our brother passed on, you came forward and rallied all Senators to support the family. You also attended the fundraising in person to help offset the funeral expenses. Lastly, you also came to bid him farewell in Migori County.

On behalf of the people of Migori County, I sincerely thank all my colleagues, together with our Clerk, for contributing heavily to help our brother who was in need.

Mr. Speaker Sir, I also take this opportunity to welcome the students. I want them to emulate the late Senator Ben Oluoch Okello and some of us who are here in different capacities in terms of profession. As the students learn what we do here, I want to warn them against the trend of burning schools when examinations draw near. This is something that we must condemn. The students must prepare well for examinations.

In Nyanza region, we have 19 secondary schools that have been set ablaze. It will cost their parents to rebuild those schools. We want the Government to take stern action against the culprits, who are afraid to take the examinations. That kind of hooliganism is unacceptable and we want to the Government to jail them, if they are above 18 years old. Punitive measures should be taken, so that this impunity of burning schools every year when examinations approach comes to an end.

I truly believe that the teachers who are before us today have prepared this wonderful school called Sigiria. I expect that, at the end of this year, a good number of students will pass with flying colours and join universities, in honour of the late Sen. Ben Oluoch Okello.

With those few remarks, I welcome them.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for also giving me this opportunity to welcome the students from Sigiria Secondary School, Migori County, to the Senate. As the Senator for Kisumu County has said, the current unrests in our schools are highly condemned. A civilized society is open to discussion by solving issues through negotiations, and this is very open in our schools.

I want to tell the students who are here that discipline is important. Some students think that academics is more important than character. However, I wish to inform them that most of us were not very brilliant as such, but discipline has brought us to where we are today. I encourage them that as they go back, they should preach the good news that Senators demand from them nothing but discipline. We are also sending a message from the Committee on Education that we are totally in support of the Government measures that have been put in place to curb this menace of burning schools in our country.

The students who have burnt their schools will carry their own cross and it will affect their lives for a long time. In future, they will be denied certificates of good conduct that are needed in order to be employed. These measures must be in place so that we can reduce this problem that is affecting our society. Therefore, I wish them the best as they visit the Senate and other places.

Mr. Speaker, Sir, you assisted us and demonstrated the unity and the love you have for us when we attended the funeral of our late brother, the Senator for Migori County. The students who are here can make a great contribution in honour of the late great Senator, whom we miss. He used to sit behind the Senator for Kisumu County and made academic and vibrant contributions in this Senate. It is my wish and prayer that, at one time, one of the students will come and sit there and represent Migori County, and fulfill the vision and mission that the late great Senator had for Migori County.

I welcome the students to the Senate.

**The Speaker** (Hon. Lusaka): Hon. Senators, some of you may also wish to appreciate the students, but we have other schools lined up. I will stop it there and invite Sen. (Dr.) Mwaura to continue with the debate.

*(Resumption of debate on Bill)*

**Sen. (Dr.) Mwaura:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to make my contribution with regard to the Kenya Roads Bill that is before us.

From the outset, before I get into the debate, I wish to say that our schools need to be properly managed. Right now, as I speak, there is a serious case of a child with disability by the name Fredrick Okoth, who was killed and dumped in a borehole at St. Oda School for the Blind. He was 10 years old and had injuries at the back and missing teeth. It seems that there is cover-up. I have already spoken to the Director of Public Prosecution (DPP) and the Principal Secretary, Ministry of Education. We are demanding to uncover what exactly happened to that child, because children with disability also deserve to go to school. We do not want to send our children to special schools and they come back dead.

Mr. Speaker, Sir, in this world, you live in one of the two tents. There is a tent called discontent and another one called content. The difference between the two is whether you are a thief or an honest man. Why do I say so? The reason we are discussing the Kenya Roads Bill 2017 today is because it is a big area of contestation. The area of contestation one would want to imagine is as a result of us wanting to increase the number of kilometres of roads in this country, but that is not the case. The case is whether we, as a country, are doing roads and at what cost. Any political contestation that we may have ends up being about the resources. However, the interesting thing about these resources is not about how they are shared, but who gets the share at a very personal level.

It has been a long road to have this Bill come to the House. This is because the Bill seeks to align the regime of road construction, maintenance and administration within the ambit of the new Constitution. I was very much involved as a consultant in the

discussions before I came to Parliament. We were looking at how to ensure that road construction speaks to the specific needs of various special interest groups. We were assisted by the United Nations to come up with policies that Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA) and Kenya National Highways Authority (KeNHA) would utilize in terms of even access to job opportunities for groups such as Persons with Disabilities (PWDs), women and the neighbouring communities.

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

*[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]*

Madam Temporary Speaker, we have had big projects like Road 2000 Programme. However, there are questions which beg for answers. For example, which authority is supposed to construct which roads? Which level of Government is supposed to be managing what class of road? That is the crux of the matter.

This Bill provides for the establishment of the Kenya National Secondary Roads Authority (KNSRA). I see a lot of glutton in this Bill because all the roads seem to be the purview of the national Government. That is totally unacceptable. The County governments across the country are in dire need of tarmacking over 31,000 kilometres, but there is no proper financing mechanism.

Critically looking at the KNSRA, you will see there is no much difference between it and the Kenya Rural Roads Authority (KeRRA). We are only baptizing KeRRA by giving it a new name, so that it remains to be the purview of the national Government and under the control of the Members of the National Assembly through the constituencies. That is the truth. County governments may not maintain roads, but ordinarily, be pathways to market places and small towns. This is within their jurisdiction.

How do you explain to me a provision within this Bill that 28 per cent of the monies allocated for roads be shared equally amongst the 290 constituencies? That is why you end up with a half a kilometre of tarmac road. We are not sharing development, but money. This does not augur well for the long-term macro-economic development of this country. This is totally unacceptable. Not all constituencies are at the same level of development. At the same time, there are roads that are more important than others in terms of spurring economic growth. If we do that, we just have a situation where we identify whatever road that we must do within a particular financial year. This is a very absurd way of predicating our development.

Madam Temporary Speaker, as I said, this is an area that I have contention with. I urge this august House that we need to relook at that. We need to ensure that resources are allocated based on needs and priorities within the framework of the Kenya Vision 2030 and the way we would want to integrate Africa.

Another key concern about roads is the costing. This issue has not been properly addressed by this Bill. It is left to the forces of supply and demand. We have done a comparative study that clearly shows that Kenyan roads cost three to four times the

amount of money Tanzania and Uganda are using because of corruption. How do you justify Kshs4 billion being spent to construct a 11 kilometres road? How can that happen on earth? How do you explain the Dongo Kundu Road of 10 kilometres is being constructed at a cost of Kshs11 billion? Even if this road is passing under the water or over the sea, that is open thuggery.

Estimates have shown that for you to construct a kilometre of road, you need about Kshs15 million to Kshs28 million. However, some people have formed cartels. When they are asked to bid - it is as if they have agreed - they give a quotation of over Kshs80 million to construct a kilometre of a road. It is totally unacceptable. It is a pity that a footbridge can cost Kshs300 million. How can that be?

In the last Parliament, I presented a petition to create a footbridge at the ABC Place along Waiyaki Way. This is a crossway for people with disabilities going to the various organisations on the other side of the road. In my limited estimation, I thought about Kshs20 million would do a good job, at least even to begin. However, that money was diverted because I was told it could do nothing.

I fail to understand how at this point in time we can justify about Kshs300 million being used to construct a footbridge. When you look at Thika Road, most of those footbridges were never constructed. Many people have died because of lack of footbridges. If you are given Kshs300 million to construct a footbridge, you have to weigh whether you need it or do something else.

Madam Temporary Speaker, costing of roads is the crux of the matter. That is where we are losing a lot of resources of our country. The financing of these roads is from domestic borrowing. However, mega infrastructural projects are financed through the Eurobond and from the Chinese banks. These are institutions lending money to us at very high interest rates and within a short period of repayment. As a result, we have ended up in a situation where we have not had enough return of investment as to service these loans.

Madam Temporary Speaker, if you look at the kind of agreements we have between the Chinese banks like the China Export Import Bank and the World Bank and other the Briton Woods Institutions, who we run away from because of Structural Adjustment Programmes (SAPs), there is a very good concessionary facility for Kenya under the World Bank where we get loans at 3 per cent over 30 year period under the International Development Alliance (IDA). Kenya is able to benefit from the IDA loans and the lower medium income loans. However, these monies are not corruptible since the uptake is only at 20 per cent for construction of roads and other infrastructural projects. I will not fear to say so on the Floor of this House that because of the kickbacks that Chinese companies give to government officials, their loans become very popular.

Let us take an example of Thika Road. What kind of development model is this? You get a loan from the so-called Chinese banks, you couple it with the Government of Kenya money which is Kshs3 billion or Kshs4 billion or thereabouts.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, hon. Senator! There is an intervention from Sen. Cherargei.

**QUORUM**

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. According to Standing Order No. 35 a quorum of the Senate or a Committee of the Whole shall be 15 Senators. I have noticed we are only 12 Senators in the House. Is it in order?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Can the Clerks ascertain if that is the position?

*(The Clerk-at-the-Table counted Members in the Chamber)*

That has been confirmed to be so. Can we have the Quorum Bell rung for five minutes?

*(The quorum bell was rung)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, hon. Members! We now have a quorum.

Sen. Mwaura, you still have eight minutes left.

**Sen. Mwaura:** Thank you, Madam Temporary Speaker.

*(Interruption of debate on Bill)*

**COMMUNICATION FROM THE CHAIR****VISITING DELEGATION FROM ST. KIZITO  
PRIMARY SCHOOL, ISIOLO COUNTY**

**The Temporary Speaker** (Sen. (Prof.) Kamar): Before you do that, I have a communication to make now that an opportunity has availed itself.

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon of a visiting delegation of students and teachers from St. Kizito Primary School, Isiolo County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

Hon. Senators, again, before I call Sen. Mwaura, I would like to invite Sen. Halake who has requested to talk on behalf of this Senate to the students.

**Sen. Halake:** Thank you, Madam Temporary Speaker, for giving me this opportunity to welcome the students and teachers of St. Kizito Primary School from my county; Isiolo County.

*(Sen. (Eng.) Maina and Sen. Kibiru stood up)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, hon. Members! I can see two hon. Members in between me and the speaker on the Floor.

*(Sen. (Eng.) Maina and Sen. Kibiru took their seats)*

**Sen. Halake:** Thank you, Madam Temporary Speaker, for protecting me.

I would like to take this opportunity to welcome the students and teachers of St. Kizito Primary School from my county, Isiolo. I would like to inform the House that I started my early years of primary school at St. Kizito Primary School. Therefore, these are students not just from my county, but also from my former school.

So, I would like to take this opportunity to welcome them to the Senate and tell them that they can be anything they want to be because, like me, their dreams are valid. With discipline, hard work and the right values, they can be anything they want to be, including being in this Senate.

Madam Temporary Speaker, they have three teachers among them. In this country, we do not celebrate our teachers; we are always looking at their bad side only. However, today, I would like to celebrate those teachers for the good work they are doing with these children and also for the fine work they did with me.

I thank the students and teachers from St. Kizito Primary School and them all the best. I request the teachers to keep up the good work, and welcome to the Senate.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Halake. Sen. Mwaura, you can now continue.

*(Resumption of debate on Bill)*

**Sen. Mwaura:** Thank you, Madam Temporary Speaker. I also want to thank the Senators who came in to give us quorum.

*(Sen. Cherargei spoke off record)*

I would like to tell my good friend, Sen. Cherargei, who is a first time Member, that there are both written and unwritten Standing Orders of the House.

Madam Temporary Speaker, I was giving an example about the development of Thika Superhighway, and I was trying to ask the House to interrogate the kind of development model it is where we get loans from foreign countries, in this case China, you have a small contribution by the Kenya Government, divide the works into three and give all of them to Chinese companies. The Chinese companies then come with their technology which is faster, the question of durability is debatable. They use their prisoners or those other people who provide cheap labour to do their jobs. They take back all the money because they are going to be paid, then you are left with the road and a loan to service and whoever negotiated the contract has also gone away with his 10 or 20 per cent of the cost of the project. Is this really sustainable, my fellow Senators?

The issue is that we have to interrogate it. It is true that the value of the land has appreciated around Thika Superhighway and there are more constructions going on around there. However, the question is: Are we getting the true return on investment? The reason why we constructed, for example, the Thika Superhighway, was to reduce traffic.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Sen. Mwaura! There is a point of information. Would you like to be informed?

**Sen. Mwaura:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Madam Temporary Speaker. Sen. Mwaura, I congratulate you for the very intelligent contribution you are making. I wish to inform you that with the absurdity of what you are saying about the Thika Superhighway, immediately after the former President, Mwai Kibaki, officially launched the road, in the next financial year, there was an item of Kshs1.2 billion on Thika Superhighway for maintenance - a brand new road being maintained.

**The Temporary Speaker** (Sen. (Prof.) Kamar): That is good information. Proceed, Sen. Mwaura.

**Sen. Mwaura:** Thank you, Sen. Wetangula. I appreciate the information and for giving us the quorum which is very important.

Indeed, that is where I had a problem because I have been analysing this project called Thika Superhighway. So, soon after the Thika Superhighway was constructed, all of us are now there with our small vehicles because everyone in the village believes that when you buy a vehicle, it means that you have become a rich man; the home rich or the bourgeoisie of this country.

When you look at even the design of the road, we have five lanes leading to a bottleneck here at Ngara. Why did we not have several tiers so that you do not need to come to town if you are going to Westlands? The conceptualisation is about money and spending. It is a good road, but is there any solution to those challenges? Why have we not thought about moving away from roads to even having light trains? However, the Chinese have given us the money. The African Development Bank needs to do more, so that we do not become vulnerable.

Madam Temporary Speaker, yesterday, we were debating on how they are doing simple jobs on the Standard Gauge Railway (SGR). Where is the technology transfer? Who has become a better engineer? Why are we devaluing ourselves as a country? Do they think that we are lesser human beings and we cannot construct roads? Yes, we have the Kenya Institute of Highways and Building Technology (KIHBT), which is financed by this country and over 70 universities, most of which offer engineering courses. We have to wake up and smell the coffee.

The roads that are being constructed today are not built to last so that we can save money every year by increasing the road network coverage in this country. They are actually built to be maintained. Even Thika Superhighway has problems of drainage and a Mwaura somewhere will be given the contract to maintain it, just as Sen. Wetangula said. You will be shocked to find that the maintenance contract will be equal to constructing many other kilometers of roads.

Madam Temporary Speaker, we are depriving our counties of resources. They hoped to see how we can construct roads at a cheaper cost. People may have ridiculed Governor Alfred Mutua, but he tried and demonstrated to us that we can benefit from Reduced Implementation Cost Prototyping (RICOP). This is where you give the people an opportunity to demonstrate that the cost can actually come down by liberalising the sector. However, where is competition in the Government to Government deals with the Chinese because this is a liberal market? In the process, our debts continue to soar and our marginal debt is now close to Kshs5 trillion. We then have a Bill here which our colleagues in the National Assembly look at as if it is a cake they need to share. They come and tell us to create Kenya National Secondary Roads Authority (KNSRA) – or whatever it is called – and then they share money equally amongst 290 disparate geographical areas. We need to be serious as a country!

Madam Temporary Speaker, the issue of Public-Private-Partnership (PPP) and how to ensure we get private equity to enable our country to develop has not been addressed properly in this Bill.

On the issue of the Fuel Levy Fund, governors appeared before the Committee on Finance and Budget and said that they had agreed with the Executive to increase it from 15 to 25 per cent. This is, again, another area of contestation because we will continue having a tug of war. I do not know whether it is the lack of imagination, but counties cannot construct roads. However, I see a very serious aspect of cartelism, where some people feel as if whatever they have been doing before is being taken away. I see Government bureaucrats who always engage in what I call “empire-building tendencies,” not wanting to cede ground and, as a result, actually stifling the development of our counties. We must remind them that devolution is not something that you can just wish away. It has happened and it is a product of our own consensus that is domiciled within the very provisions of the Constitution of Kenya, 2010.

Therefore, Madam Temporary Speaker, I implore this House to reject this Bill as it is. We need to have a consensus. We cannot pass this Bill for the sake of being a rubberstamp of the Executive and the National Assembly.

*(Applause)*

The same people lied to us about the Division of Revenue Bill and went ahead to sign it. I did not even see the Senate leadership represented during the signing of that Bill. The time for romancing and talking nicely is over; if it is bad, it is bad. Let us call a spade a spade. The resources of this country must be shared equitably and development must be thought out properly. It is not just a question of thinking that it is a cake that you are cutting across the table so that you can eat it. These issues of patronage, where MPs are now preparing a kitty where they will be asking the Executive to give them whatever is due to them, is totally unacceptable.

Therefore, Madam Temporary Speaker, this Bill is long overdue, but it is wrongly drafted. If we will need to go for mediation; well and good. However, I imagine that we can put it aside and have a retreat or a *kamukunji*, where we can discuss openly and objectively about the destiny of this country.



Thank you, Madam Temporary Speaker.

*(Applause)*

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me a chance to contribute briefly to this Bill.

I am yet to come across a Bill that promotes devolution in this country. Any Bill which is sponsored by the Majority Party and, more so, by the Government, does not care about devolution.

From the outset, when you look at the objects and purpose of this Bill, you will be duped to say that it is actually very good, because it seems to be giving effect to the provisions of the Fourth Schedule of the Constitution. However, when you proceed and read it, you realise that it is an avenue of curtailing and taking powers away from the devolved governments.

Madam Temporary Speaker, I will go straight to the point and I will not belabour the issue. If this Bill was really designed to ensure proper public participation and accountability, there is no reason why everyone who is in that Board is from the Government. They should have improved it by including representatives from the Kenya Institute of Planners (KIP) or accountants, just to bring in some independence to ensure the transparency that they are talking about in this Bill.

Madam Temporary Speaker, Clause 10 talks about the classification of these roads. This should not be left to one person. It should be dealt with by an independent body. When you give the Cabinet Secretary (CS) powers to classify roads then, he can wake up at any time and decide to classify the roads as he wishes.

The other big issue I have with this Bill is to do with the creation of this national trunk roads. This is interesting because they are classifying county roads but then the function of designing those roads is given to the national Government. Where is the county government in this? This is, therefore, a terrible Bill because when you read every clause, you find that it is just an avenue to abate corruption.

Clause 56 states-

“The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.”

There was no public participation; you did not consult the county governments and yet you continue taxing Kenyans, who are currently overtaxed. Just the other day, we objected to the introduction of a 16 per cent Value Added Tax (VAT) on petroleum products. We are charging taxpayers more on all petroleum products, which will increase all their taxes; yet again, we give the CS powers to introduce a levy. It is taking away our job as legislators. We are giving powers to them by creating some mini-gods who will levy more taxes to Kenyans as if we are not overtaxed.

Madam Temporary Speaker, when you read Class C where it says “secondary national trunk roads”, this is part of the national trunk roads. It says-

“Roads forming important regional routes, linking county headquarters or other regionally important centres, constituency headquarters, municipal or town council centres and other towns to each other and to Class A, B, H and J roads required to collect regional and local tariffs and channel into Class A, B, H and J roads.”

Why should we allow National Trunk Roads Board (NTRB) to make all decisions pertaining to county roads? When you look at Class B, Class C should be in D. It should not be in part Class C. Therefore, it should not be under management of the NTRB.

I do not even want to waste my time on this Bill. This is a terrible Bill which should be rejected by all of us. If the National Assembly wants to pass this Bill, they should make it a National Road Bill. It should not have anything to do with county roads. We must protect devolution. That is the reason why we are in this House.

With those few remarks, I object to this Bill and I will vote against it.

**Sen. Seneta:** Thank you, Madam Temporary Speaker, for giving me a chance to contribute to this Bill.

From the outset, I want to say that this is an important Bill and is long overdue. I will support it, but with some amendments because it is not promoting the spirit of devolution. We need to analyse it critically because our role is to oversight county governments and take care of their interests. The passage of this Bill might slow down the development of infrastructure in our counties. Therefore, I urge this House to align this Bill to the functions of county governments. We can pass it as the Kenya National Roads Bill so that the authority envisaged in it, does not interfere with county roads.

Madam Temporary Speaker, when you look at Part II of this Bill on the establishment of the Public Roads Centred Boards, states as follows:

“The Board shall consist of a representative from each of the following bodies: The State department responsible for public roads; State department responsible for matters relating to devolution; the inter-governmental relation technical committee and all other authorities not having a single representative of the county governments and not having a single committee member from the county governments.”

What are the functions of this Board? The functions of this Public Roads Standards Board are very good. I request to read the functions. It says:

“To look into the standards for roads and bridges materials, designs, construction, maintenance and performance levels. Standard contract forms for work and consultancy services. The research and studies necessary for development and updating on public roads standards.”

These are quite good functions. However, we are lacking the public participation aspects in this Bill. We need to listen to the voices of the counties. In the absence of public participation, we pass it as the National Roads Bill and exclude the county governments.

The issue of classification is very good. Management and maintenance of our roads is a good idea. As I talk, the issue of maintenance of our roads in this country is wanting. We spent a lot of money constructing our roads, but when it comes to maintenance, we do nothing. Today, many roads are not passable because they have not

been maintained for a long time. They have developed potholes and are completely damaged.

Many of our roads are now in very pathetic situation because of the floods we experienced a few months ago. Who is supposed to maintain them? Is it the national Government or county governments? That is where the confusion is. I welcome the issues of maintenance, management and classification as captured in this Bill. However, I feel the county governments should be represented on these very important authorities and boards.

Madam Temporary Speaker, with regard to classification, some roads are classified under the responsibility of the national Government. However, they are supposed to be under the functions of the county governments. Roads that link our constituency and county headquarters are placed under the national Government mandate. That also needs an amendment so that we put them in their right place.

The only good thing in this Bill is the committee under Clause 101. It says-  
“For the purpose of this part, each county government shall by county legislation establish a county road agency which shall be responsible for the management, development and maintenance of county roads under the county executive in charge of roads. That is the only thing which makes me feel that this Bill is very important. A county also needs a committee that can look into the data of the number of fraud that has been done, the standard and also maintenance of those roads and continuous monitoring and evaluation of the work that goes on in our counties.”

Many of our roads are in a pathetic state and when you ask who is supposed to repair them, you will be told they are under the Kenya Rural Roads Authority (KeRRA), Kenya National Highways Authority (KeNHA) or the Kenya Urban Roads Authority (KURA). Many people do not know which roads belong to which class. Therefore, having the county roads agency is a nice idea for our counties. It will have a database of the roads and know which ones have been done, which ones need to be done next and to what level they have been done. We also need to develop a tradition of continuity. If we were to complete a road and the money allocated to it was not enough, then we need to allocate more money in the next financial year to finish it and do quality work.

The agency should be responsible for looking at the standards. However, there is no way the county can adhere to the standards that have been set by a national Government agency or board that has no county representation. Therefore, I will be very reluctant to support this Bill, unless several amendments have been done or we do two Bills. In this Bill, classification, management and the establishment of the Public Roads Standards Board is okay. However, it should have the representation of the counties that we are supposed to oversight.

I will not support this Bill.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Yes, Sen. Halake.

**Sen. Halake:** Madam Temporary Speaker, thank you for giving me this opportunity to contribute to this important Bill. I have a lot of issues with this Bill. All Senators have alluded to and very passionately talked about the issue of protection of county governments. This Bill takes away from the county governments. Why do I say this? This Bill gives the Cabinet Secretary (CS) express power to reclassify roads? It does

not give provision for consultation with counties or any consultative or accountable participation that is expressly described in this Bill. Which means that the CS or the national executive can one morning wake up and reclassify the roads and leave the counties with only the roads that go to the cattle dips, as the Senator for Narok has said. This is not in line with Article 96 of the Constitution which has mandated us to protect counties and their governments, bearing in mind that the major infrastructure items are roads.

Madam Temporary Speaker, the classification of roads is not okay. I would like to differ with my colleague. She has looked at many things in the Bill that are okay. I am not saying that the Bill is bad in its entirety, but as long as a Bill takes back the gains from counties and does not support devolution and protection of county governments, then I have a problem with that.

Madam Temporary Speaker, additionally, Sen. Mwaura has passionately spoken about the quality of our roads and the amount of money that we use to build them. I know for a fact that we are building our roads with very expensive instruments. Multilateral instruments such as the World Bank are usually very reasonable, yet, as a country, we are opting for the very expensive options. This has been said before and I do not wish to belabour it.

This Bill will be very expensive to our country, especially if will be implemented through borrowing. As I speak, our ratio of the Gross Domestic Product (GDP) to our borrowing is pathetic. Our credit rating has been downgraded by Moody's Investors Service, the credit rating agency, and I have brought this discussion to this House before. Our sovereignty, as a country, is at stake because we are not even credit worthy. Based on that, our banks have been downgraded from Credit Rating A to B. In terms of debt financing for some of these roads, there is a lot that needs to be looked at.

I would like to concur with the Senator for Narok that many of the Bills that come to this House are very wanting with regard to their protection and support of counties. In fact, in the near future, I will bring a Motion that will look into the issue of due diligence of Bills that come before this House; that take away entrenchment of devolution. I will bring a Motion to propose a committee that will look at our mandate, which is the protection of counties. The protection of counties committee will ensure that there is due diligence on the legislation we make. We have committees on every sector, except for the mandate for which this House exists. Therefore, there is need for very thorough interrogation with regard to classification of roads. The Bill gives too much power to the CS to reclassify roads at the expense of taking away from the counties.

Madam Temporary Speaker, I have an issue with the number of authorities that are proposed by this Bill. We already have KeNHA, KURA, KeRRA and so on. Now, we have all manner of authorities being introduced in this Bill. This is very expensive to maintain and they will be based in the national Government and not counties. This means we are taking devolution back and concentrating decision making and power on these authorities that are national by nature.

Are we thinking about the expense and the possibility of corruption? As we know, some of these authorities have been known to divert public funds, and I do not want to accuse anybody. Instead of consolidating and making our Ministry for Infrastructure,

Housing and Urban Development strong and with the right capacity to do this work, we are creating layers of authorities and parastatals that take away from the development budget to recurrent budget. As I speak, over 50 percent of the country's revenue goes to recurrent budget. Creation of all these authorities will make our recurrent budget balloon even further. Our borrowing and public debt will go out of hand and our grandchildren will pay for this.

What is the quality of the roads? Today, a road is made and it develops potholes the next day. Why do we spend so much money to do shoddy roads, yet we have multiple authorities and experts who are supposed to be doing this work?

Madam Temporary Speaker, we are here to make laws but we will definitely have issues with some of the provisions of this Bill with regard to classification which entrenches devolution and the cost of implementing this Bill because of the number of authorities and extra layers that it proposes.

More importantly, the manner in which this will be put in place does not seem to support devolution. Some of the provisions in the Miscellaneous Amendment, Part 3, give a lot of authority to the national Government. While we agree and know very well that the national Government can make decisions, it does not mean that it is superior to county governments. They are complementary and not necessarily inferior. Therefore, I do not understand why a lot of legislation that comes from the National Assembly tends to be heavy on national institutions instead of being supportive. We need to push resources down to the local decision-making level and to the frontline of implementation, which is the counties. This Bill takes that away.

This House should fight tooth and nail to make sure that resources are given to counties. It has been said that counties do not have capacity yet the national Government does not build roads; it is the Chinese contractors that build the roads. It is not the technocrats that sit in the national Government that build the road. Therefore, why can we not have legislation that gives muscle and capacity to county governments so that they are able to supervise these contractors and get into these arrangements?

The idea that counties do not have capacity is being abused. There is no national Government technocrat who builds the roads directly; it is the Chinese that build roads and we have a problem with that because they are expensive, there is no technology transfer and the human rights record, as we have seen in the last few days, is pathetic.

Madam Temporary Speaker, on all counts, therefore, this Bill needs to be interrogated further by this House. We will also give written memoranda on what needs to change. I also do not support the idea of just passing the Bill as a national Bill. There is nothing that does not have inter-dependencies. Passing this as a national Bill will take responsibility away from counties because it will create a back door from which a parallel system can go on without the knowledge of the counties. Therefore, it is in the interest of counties and of this country for the two arms of Government to work together and not separate for whatever reason.

Madam Temporary Speaker, that said, I would like to speak a little bit to the issues of corruption. Everything that comes to this House has to be looked at to make sure that it ticks all the boxes with regard to good governance, in terms of resources and implementation. We have already been told that many roads were done on double

budgets and were below optimal in governance and have already fallen apart. These infrastructural issues are mortgaging our country and putting our children and the future generation of this country in a lot of debt.

Madam Temporary Speaker, I do not support this Bill. I wish that it is interrogated further by this House and the National Assembly, so that it becomes a Bill that supports counties and encourages good governance of our resources and supports the public sector to build capacity and not to create other parallel systems and layers of expensive authorities and parastatals. It should be a Bill that looks at the future of this country and for cheaper options of borrowing.

I know this is not expressly written in this Bill but the next thing is the resourcing. We question why we are going for more expensive options and not the multilateral cheaper options. These are questions that must be answered. For those reasons, I do not support this Bill until such a time when further interrogation of it has been done and all the concerns that the Members of this House have raised are addressed.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Senator for Mandera, do you have an intervention?

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, pursuant to Standing Order No. 99 (1), I beg to move that the debate on the Bill be now adjourned to enable the Mover of the Bill, the Senate Majority Leader, who is away on official business to reply.

*(The Temporary Speaker (Sen. (Prof.) Kamar)  
consulted Clerks-at-the-Table)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, you have heard the request by Sen. (Eng.) Mahamud, according to the Standing Order No. 99 (1), that debate be now adjourned.

*(Question, that Debate be now adjourned, proposed)*

*(Question, that Debate be now adjourned, put and agreed to)*

Hon. Senators, we had skipped one very important sector of the Statements from the Senate Majority Leader. Now, the Sen. (Eng.) Mahamud will take charge of that Statement.

## STATEMENT

BUSINESS FOR THE WEEK COMMENCING,  
TUESDAY, 17<sup>TH</sup> JULY, 2018

**Sen. (Eng.) Mahamud:** Thank you, Madam Temporary Speaker. Hon. Senators, pursuant to Standing Order No. 46(2)(c) I, hereby, present to the Senate, the business of the House for the week commencing Tuesday, 17<sup>th</sup> July, 2018.

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The Senate Business Committee (SBC) will meet on Tuesday 17<sup>th</sup> July, 2018 to schedule the business of the Senate of the week. Subject to further directions by the SBC, the Senate will on Tuesday continue with consideration of business that will not have been concluded in today's Order Paper.

On Wednesday 18<sup>th</sup> July and Thursday 19<sup>th</sup> July, 2018, the Senate will consider business that will not have been concluded on Tuesday and the other business scheduled by SBC.

Hon. Senators, the following Bills are at the Second Reading Stage. They are the Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No.2 of 2018), the County Statistics Bill (Senate Bills No.9 of 2018), the Local Content Bill (Senate Bills No.10 of 2018); the Physical Planning Bill (National Assembly Bills No.34 of 2017); the Salary and Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018); the Impeachment Procedure Bill (Senate Bills No.15 of 2018), the Data Protection Bill (Senate Bills No.16 of 2018), the Energy Bill (National Assembly Bills No.50 of 2017); the Petroleum Bill (National Assembly Bills No.48 of 2017), the Irrigation Bill (National Assembly Bills No.14 of 2017) and the Kenya Roads Bill (National Assembly Bills No.47 of 2017).

There are also Bills which are due for Committee of the Whole. These are the Food Security Bill, (Senate Bills No. 12 of 2017), the County Boundaries Bill (Senate Bill No.6 of 2017), the County Government Retirement Scheme Bill (Senate Bills No.6 of 2018), the Office of the County Printer Bill (Senate Bills No.7 of 2018), the Office of the County Attorney Bill (Senate Bills No.3 of 2018), the Public Participation Bill (Senate Bills No.4 of 2018) and the Disaster Risk Management Bill (Senate Bills No.8 of 2018).

The Senate Business Committee will also schedule pending Motions for consolidation.

I thank you and I hereby lay the Statement on the Table of the House.

*(Sen. (Eng.) Mahamud laid the document on the Table)*

**The Temporary Speaker** (Sen. (Prof. Kamar): Hon. Senators, I wish to communicate that I will defer Order No.9, the Irrigation Bill (National Assembly Bills No.46 of 2017) due to the official absence of the Senate Majority Leader, who is away on official duty.

## **BILL**

### *Second Reading*

THE IRRIGATION BILL (NATIONAL ASSEMBLY  
BILLS NO.46 OF 2017)

*(Bill Deferred)*

Hon. Senators, I also wish to further announce the deferment of Order No.10, which is the Motion on Registration of Persons with Disabilities (PWDs). The Senator who was due to move the Motion, Sen. Khaniri, is also away with the permission of the Speaker.

## MOTIONS

### REGISTRATION OF PERSONS WITH DISABILITIES

THAT, AWARE that the National Council for Persons with Disabilities was established through the Persons with Disabilities Act, 2003;

FURTHER AWARE that registration of persons living with disabilities is a function of the National Council for Persons with Disabilities;

ALSO AWARE that persons living with disabilities are estimated to be about 10 per cent of any given population;

COGNIZANT that for purposes of registration of persons living with disability, it is a mandatory requirement for one to undergo medical examination by a registered medical officer in a registered and certified health facility;

CONCERNED that of the nearly four million Kenyans living with disabilities who reside in Kenya, there is a very small fraction of the number which is duly registered;

AWARE that medical services are now a devolved function;

FURTHER CONCERNED that without proper registration, many persons living with disabilities are denied services because they lack the necessary proof of disability;

ALSO CONCERNED that owing to lack of accurate data on persons living with disabilities, the government at both levels cannot plan properly for this category of people;

NOW THEREFORE, the Senate calls upon the National Council for Persons with Disabilities in collaboration with Ministry of East African Community, Labour and Social Protection and county governments, to carry out a nationwide registration of all persons living with disabilities in order to determine their exact population to facilitate effective service for this marginalized group of our society.

*(Motion Deferred)*

Let us move on to the next Order. Sen. Sylvia Kasanga and Sen. Mercy Chebeni, who are the co-sponsors of this Motion, proceed to move.

**Sen. Kasanga:** Thank you, Madam Temporary. I will move the Motion and call another Senator to second. Sen. Chebeni will be there to support. I hope that is in order.



**The Temporary Speaker** (Sen. (Prof. Kamar): That is in order. Proceed.

ESTABLISHMENT OF MENTAL HEALTH FACILITIES IN COUNTIES

**Sen. Kasanga:** Thank you, Madam Temporary Speaker. I beg to move the following Motion-

AWARE THAT Article 43(1) of the Constitution provides that every person has a right to the highest attainable standards of health, which includes the right to health care services;

NOTING THAT cases of mental illness are on the rise with one in four Kenyans likely to suffer from a mental disorder at some point in their lives, coupled with the fact that many Kenyans with mental illness do not receive adequate treatment;

CONCERNED THAT the World Health Organization has ranked Kenya sixth among African countries with the highest number of depression cases;

DEEPLY CONCERNED that there exists internal inequities in the distribution of the already low numbers of mental health workers in Kenya with the available professionals being concentrated in cities leaving rural area with very few professionals, if any;

FURTHER CONCERNED THAT, delivery of mental health services is facing a myriad of challenges, key among them inadequate and understaffed rehabilitation facilities and outreach programmes leading to the provision of insufficient mental healthcare services at the psychiatric units;

NOW THEREFORE the Senate calls upon the National Government in collaboration with the County Governments to-

1. increase the number of specialized well equipped mental health facilities and develop effective outreach and other mental health programmes targeting Kenyans in remote areas and learning institutions;
2. increase the allocated mental health budget to ensure there are adequate funds targeting this specific area; and
3. develop initiatives to encourage more Kenyans to pursue and specialize in psychiatry and build the capacity of community health workers and staff in mental health facilities through continuous training.

Madam Temporary Speaker, the reason I brought this Motion is because I feel that mental health disorders are a national disaster, and this is informed by various issues. Many Kenyans do not understand the issue of mental health because of the stigma that is placed upon the illness.

Madam Temporary Speaker, mental illness canvasses also. In fact, in my research, I have come to learn a lot about mental health that I did not know. If I did not know, yet I have access to information, then I believe that a lot of Kenyans do not understand what exactly is canvassed as mental health. The statistics alone are very scary

from what I have read. In Kenya, where health is devolved, we have only 14 mental health facilities. Similarly, we only have 88 psychiatrists and 427 nurses who are qualified to handle these kinds of illnesses within these 14 institutions. Mathari Mental Hospital has a bed capacity of 700 while Moi Teaching and Referral Hospital (MTRH) offers inpatient services and can only accommodate 70. These mental disorders are common and widespread. Many Kenyans are suffering from them yet they do not understand what the illnesses we are talking about are. What is mental health? I will come to that later.

Madam Temporary Speaker, a World Health Organization (WHO) report has ranked Kenya sixth with the highest number of depression cases amongst African countries. These statistics are appalling. A 2011 report by the Kenya National Commission on Human Rights (KNHR) estimates that up to 25 per cent of outpatients and 40 per cent of inpatients in health facilities in Kenya suffer from some form of mental health condition. One in four Kenyans suffers from a mental disorder at some point in their lives, which is a very significant statistic.

Madam Temporary Speaker, five out of six Kenyans with mental illnesses do not receive treatment. Why is that so? Further, do they even know that they are suffering from a mental illness? Statistics indicate that four out of five people who commit suicide in Kenya are depressed at their time of death. Therefore, depression is a national disaster and it can be attributed to the standards of living, which has become so expensive. Our economy has become so difficult and, as a result, a lot of Kenyans are depressed. All the time we hear Senators raising issues on the Floor about people behaving in strange ways. For example, the story of a man who impregnated 25 young girls somewhere in a community or a father who raped his own daughter of three or five years old or of spouses killing each other. All these are signs of a society living with a lot of depression amongst them. They do not realize that they are actually ill and that they need intervention.

Madam Temporary Speaker, if I am to define what mental health is, the WHO has defined general health as a state of complete physical, mental and social wellbeing and not merely the absence of disease. The WHO definition of mental health has the same definition that is in our mental health policy. It defines it as a state of wellbeing whereby individuals recognize and realize their abilities. They are able to cope with normal stresses of life, work productively or fruitfully and make a contribution to their community. Therefore, that alone tells you that mental illness is not just schizophrenia, which we are used to or which you hear and then you say "that one is definitely mentally unwell." Schizophrenia is a chronic mental disorder that affects how a person thinks, feels and behaves. It is characterized by hallucinations and delusions.

That is just one type of mental health illness. There is also Bipolar Disorder, which is another type of brain disorder that causes unusual shifts in energy, activity levels and extreme mood swings. There is also Attention Deficit and Hyperactivity Disorder. What about the other day to day things that cause somebody to have depression? That is a mental disorder as well and it needs treatment. Many people do not even realize when they are going into depression. They will resort to all sorts of interventions to deal with their depression from alcoholism to drug abuse and other behavioural issues. We can see how this is impacting on our society at large.

Looking at the history of mental health legislation, you begin to understand why there is such a gap when it comes to mental health in our country. After colonization, Kenya adopted the Lunacy Act of 1910, which was the British mental health law. From there, we moved to the Mental Health Act of 1991 which was enacted and established the mental health boards, which I will allude to a little later. In 2010, we had the new Constitution. The Ministry of Health drafted a Bill that was meant to amend the Mental Health Act of 1991. Unfortunately, probably because of timing and going into an election, it was not passed.

Madam Temporary Speaker, in 2014, Hon. Lekuton brought a Bill to the National Assembly, but it did not go far. I am not sure why. We have tried to establish the reasons, but we still do not know. Therefore, to date, we do not have amendments to the 1991 legislation on mental health. What we have in the country today is a Mental Health Policy 2015-2030, which has largely not been operationalized. This is where the problem begins.

If we look at what is in the Mental Health Act of 1991, it has a section that made provision for the district mental health councils, which I think was a very brilliant idea at that time. If we are to amend this, which I am hoping to work with several stakeholders, we need to devolve mental health to all the counties with the establishment of the mental health facilities in each county. The 14 institutions that we have are not adequate. The idea that they had in this Bill is that there should be councils in every district which, of course, leads to having access to the facilities in those districts is alluding to the fact that it was envisioned and it needs to be actualized.

Madam Temporary Speaker, this is something that I would really like to see actualized and I look forward to working towards. However, by the time we get to that point, we need the infrastructure to be put in place. Since it has been envisioned in the policy as well, we need to devolve mental health completely down to the county level. We need to advocate for one mental health support facility within the villages and, at least one fully equipped mental health facility, at the county level. It can be either a part of Level 4 or Level 5 hospital, but they need to be available in every county. The facilities also need to be fully equipped.

Currently, what we know about Mathari National Teaching and Referral Hospital is that there was a petition that was brought to the Eleventh Parliaments in 2016 by Mr. Elijah King'ori regarding the deplorable state of the mental health facilities in Kenya. Case in point was the Mathari National Teaching and Referral Hospital. What was recommended in the report is yet to be actualized. One of the recommendations that they made because of the pressure with which Mathari National Teaching and Referral Hospital has to handle mental cases, forensic mental issues as well as be a prison for the mentally ill prisoners. They recommended that the Ministry of Health in line with the policy should work with the national and county governments to invest in health infrastructure and ensure progressive increase to mental health services. We are yet to see this being actualized. In line with that, I recommend in this Motion that this infrastructure be set up.

Madam Temporary Speaker, noting that most youth are affected because of lack of jobs, voice, mentorship and mature guidance in some instances, counselling and

awareness programmes also need to be put into place. We have a lot of substance abuse. My co-sponsor will talk on the issues that affect the youth and the interventions that can be instituted. Based on the unfortunate statistics on the few number of mental health facilities in the country, we recommend that the Government runs programmes to encourage the youth to specialize in psychiatric education.

On the issue of stigmatization of mental health, Kenyans need to re-learn and be re-taught that mental health disorder does not mean that one is not a human being or that there are spirits that are attacking you. It is a disorder. It is an illness that can be sorted because there are ways of treating it.

Allow me to interject myself and state that I appreciate the fact that the National Hospital Insurance Fund (NHIF) covers for this sort of psychiatric treatment. It is something that many Kenyans do not know. You can see a psychiatrist and it will be covered by the NHIF. I believe that is the spirit of the universal health care programme that will be rolled out. It is also the spirit of the Big Four Agendas. For that, I commend. However, the fact remains that many Kenyans do not realize that they can seek help on mental illnesses and that the NHIF will cover that cost. This awareness needs to get out there.

Madam Temporary Speaker, we also want more psychiatrists. We would like our youth to be sensitized that these are areas that our country needs specialists because they are busy looking for jobs. Can we then get a few more psychiatrists in place? We would also like to increase the number of mental health facilities and specialists. We, therefore, recommend the increase of the current mental health budget. This is very critical. What has been allocated to the mental health budget is a mere two or three per cent of the health budget yet we recognise that the NHIF will cover mental illnesses. If that is recognized in the NHIF, it will be prudent that we allocate more funds to mental health and setting up of these institutions countrywide to allow Kenyans to access these facilities. In a bid to increase awareness and avail information on access to services, the Government should collaborate with other non-state actors in the mental health industry who offer mental health services and inform the public about their existence and what services they offer.

Madam Temporary Speaker, in conclusion, I believe that this is a very sensitive issue that requires a lot of conversation. Mental health issues need a lot of conversation. I would like to take cognisance of the fact that there has been a lot of conversation around the area of mental health. It has not been on the Floor of this House, but there are various stakeholders who have been having these conversations. I know that there have been on the media. There are a lot of reports that have been written regarding the state of mental health of Kenyans. It is time that this House adopted these issues. When the Bill comes, we will seek the support of the House so that we can amend the legislation to be in line with what the new Constitution envisages. We also pray that the policy can be operationalized because a lot of it has captured a number of good operational issues that if they were implemented, we would not be in the state that we are currently in today.

I beg to move this Motion and request the Senator for Kisii County to second it.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you.

Kindly proceed, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ogeri:** Madam Temporary Speaker, I thank you for giving this opportunity to second this important Motion. It is dealing with an issue that is so common amongst Kenyans. We are talking about 20 to 40 per cent or one out of four Kenyans who may be afflicted in one way or the other with a mental illness. If you translate that into statistics, it is about 11.5 million Kenyans who are afflicted in one form or the other of mental illness. It has, therefore, become a health burden in society that needs to be addressed, analysed and categorised.

It is a health burden that needs to be analysed and categorised. It should be dealt with more effectively without shying away. One of the things that we need to know is the hard statistics that we have in our hands. When I was at the University of Nairobi, we were training most of the doctors and nurses. It is quite clear to us now. Even as I stood as the Minister for Health in 1991, in the Health Act that has been referred to, it was quite clear to me that we had paucity or very few figures of properly trained psychiatrists in this country. Up to date, we have about 88 psychiatrists in this country. That is a pathetic figure. We have hardly 427 nurses who are trained to handle psychological cases, some of them bordering in the level of depression. When you look at these and the volume of the clientele they are likely to handle, which is 11.5 million, it is a drop in the ocean. It is just a scratch on the surface of the ocean. Therefore, it is incumbent upon any state that has a disease burden of this magnitude to put into place the measures that are available.

What is the main problem? Any patient or person who requires hospitalization has a right to health. However, the beds are not enough. If you talk of Mathari, which is a national mental hospital, it only has a bed capacity of 700. There are other small health centres here and there which have smaller capacities. The second largest would be Moi Teaching and Referral Hospital (MTRH), which has a bed capacity of about 70. Therefore, we have very limited space available to attend to people who have mental illness.

Madam Temporary Speaker, now that health is a devolved function, mental health will squarely fall within county governments. Therefore, it is incumbent upon the national Government and county governments to set up these facilities because the population needs them. Kenyans are very peculiar people. When they hear about mental illnesses, there are perceptions. Some believe that mental illness requires a traditional healer. That is why you find traditional healers thriving through ignorance, in the pretence that they know how to handle mental illnesses. That is why you find people shying away and thinking that it is a spiritual matter; that somehow their spirits are disturbed. Therefore, they approach the religious people to attend to them in this manner. In the process, we are destroying the people who are sick. Once you resort to the spiritual groups and traditional healers, they will not get the appropriate treatment.

What is so interesting is that these are treatable conditions. That is the beauty about the whole thing. Once you clearly define the causes of these mental illnesses, they are treatable like any other causes of any other illnesses in any hospital. We should integrate mental health with primary healthcare. There should be no desegregating, other than those who show what I call compulsive tendencies towards physical manifestations, fighting or destroying things. Those may be confined in other rooms, while we attend to their mental illnesses.

Madam Temporary Speaker, there is depression. Even the Senators, I included, at one time or the other, have depression, especially when we approach the elections. You do not know what the outcome will be and so many things go through your mind. That is depressive psychosis ailment and you cannot run away from it. Would you say that you are not sick? You are sick and all you need is somebody to come and tell you that it will be alright with you. You need a counsellor or your supporters coming to tell you: "Yes, we will make it in these elections." As a result, you brighten up, go out there and speak with force.

Ailments like simple depression can be handled by a well trained health worker or through counseling. It involves going to the hospital in the normal way and being checked for various things that require counselling. You will be told the reason you are down and what you need to do. Some people have very queer interpretation of mental illnesses. They say somebody has been bewitched or has some spirits from the devil. This is a human being that has no different spirits than what you have in you. We need to look at this and deal with it manually.

Madam Temporary Speaker, just to give you a scene, globally, there are about 450 million people who have depressive psychosis and mental illnesses. When you look at this group and try to analyse them, they are low income groups and people who are poor. We then ask a fundamental question: Why would the low income group or poor people be depressed and have mental illnesses? It is obviously the daily needs of the family, requirements in the households, school fees or some cattle which have been stolen by somebody and they cannot replace them. They are very simple things. Once you take corrective measures along those lines, these people will come back to normalcy. We need to recognize that point and do the necessary.

It is a disorder of the mind; the mood. When we talk when not angry, we are normal. But when you are angry, you are sick. That is a mental illness. Anger is an expression of inward frustration. You want to vent out your anger. That is why sometimes in funerals, when people cry, we let them cry out, so that they vent out that loss. It creates a vacuum that they feel is very difficult to fill. Let them vent out, but not excessively. We should be able to advise them to go back to normalcy. It is just a question of mood.

In our daily experiences, we go through this phase. Our moods change. In the families, children change their moods against their parents. Husbands and wives change moods and start fighting. That is a mental illness. If they can sit down and reason together, they will move forward without any difficulty.

There is also thinking. You may think about money, which is the source of evil. Money has caused more havoc than anything else. People want to know how to earn money. That is why we have some of these miscreants in society and antisocial elements developing. In pursuit of wanting to satisfy their ego and interests, they go into areas that are dangerous in terms of behaviour in the society. Therefore, we need to be careful about people looking for money. That is where we get petty thieves coming from. These are all mental illnesses. Why should one steal if they are normal? They should ask for it if they do not have it. They steal because they are disturbed. They do not know how to survive. They go to the extreme extent where they become violent robbers and everything else.

Madam Temporary Speaker, I wish to ask for a little more time, so that I can dress up this Motion.

**The Temporary Speaker** (Sen. (Prof.) Kamar): You still have five minutes more. Let us see how you will fair with that.

**Sen. (Prof.) Onger:** Thank you, Madam Temporary Speaker. I am just looking at the common issues. I have talked about the mood, thinking and behaviour. When you put these three categories together, they create a disease burden for this country. Burden is measured by the percentage of the people who are affected by these.

The disease burden, through the mental illnesses, constitutes 13 per cent of the population in this country and globally. You cannot ignore that. If you look at our mental illness policy outline from 2015 to 2030, it will rise up to about 15 per cent. So, we must see it as a burden of disease that we must deal with and not run away from it.

I must mention about stigma. Once somebody labels you as having mental illnesses, you will be subjected to some level of stigma which is very difficult to erase, for instance, the stigma of HIV/AIDS. When we had the HIV/AIDS pandemic when I was the Minister for Health, I had a very difficult time trying to get Kenyans to accept and think that HIV/AIDS is a normal condition. It is only caused by a virus, but you need to know how to manage it, what kinds of foods you should take, that is, the nutritional requirements like the micronutrients that you need to take, *et cetera*. Of course, if the viral load density is very high, then you need to take some antiretroviral drugs.

Therefore, it was a question of image and psych on how to deal with these things. When we got around, I realised that the most affected were the young people. That is when we brought in that popular band from New York City; Cool and Gang, here in Nairobi at Uhuru Park. The whole idea was to attract the young people and in the process of attracting them, I said: “Why do you not know your HIV/AIDS status?” I was sure, at that time, that 90 per cent of the Kenyan population was HIV negative. It was only 10 to 14 per cent of the population that was HIV positive because that was the overall prevalence rate at that time.

Similarly, we can adopt a similar approach in dealing with the mental illnesses like any other normal illnesses that we want to deal with. This will enable us deal with this issue of stigma because the minute you stigmatize that patient as mental, nobody would want to touch them. So, what are the consequences of this? There are many sick people with mental illness cases hidden and bounded up in the house as well as neglected. That is, obviously, human rights abuse. All you need to do is to take them to a health facility.

I want to thank the Movers of this Motion, Sen. Kasanga and Sen. Chebeni because it is now time we are saying that we must tackle this issue head on. It is not a difficult condition; it is preventable. You would be surprised to know that some of these disorders which are genetic are very few; they are not a majority. Therefore, where do these others come from? They are acquired like the social stigma that we put around ourselves. Some may be psychological, biological and environmental factors. I have talked about the environmental factors; the pressures around – poverty or even the meal for the day; how am I going to survive today?

That is why when we say that we are creating poverty--- When we fight corruption, we are not doing it for the sake of it; we are driving the population of Kenya from the level of depression because they do not know how to survive on a given day. They are waking up every morning wondering how they should be, yet only a few greedy individuals are grabbing this money to make themselves happy. Even with so much wealth, they cannot fall asleep; they have sleep disturbances. That is also some form of mental illnesses.

We need to look at this as a holistic thing and handle it because it is within our purview and competence. We can handle it if we have enough facilities in the hospitals. Just like you walk to any out-patient hospital, you can also walk out to any mental health clinic and be served comfortably then you come back home fair, square and normal.

Some of the mental illnesses are as a result of trauma during delivery. Some mothers undergo difficult deliveries and that is why the Universal Health Coverage will take care of the primary health issues so that they have a normal delivery process without having to create more mental cases through this problem.

We also have the brain injury and the drug abuse. I must talk about drug and alcohol abuse because these are some of the areas where we have been able to create so many rehabilitation centres because some people have drunk themselves silly.

**The Temporary Speaker** (Sen. (Prof) Kamar): I have added you three more minutes. We are learning a lot.

**Sen. (Prof.) Ongeri:** Thank you, Madam Temporary Speaker. They have drunk themselves silly and once this happens, they need some kind of rehabilitation. This is a withdrawal syndrome that you want to withdraw from alcohol, but you must be in a position to treat them.

Even though they appear with mental symptoms, they would still be treatable. We have seen many alcoholics recover to be normal. Some of them are now the greatest pastors around this country and in the world. They have come from alcoholism to pastors; people saving souls. The point I am trying to make is that these are issues that we can deal with squarely.

Finally, we must know in our daily lives how to treat anger, anxiety and panic when you are faced with a difficult situation; how to deal with simple depressions – I am not talking about the compulsive depressions – and so on. Of course, the Mover of the Motion mentioned the Bipolar Disorder where someone has split personalities. This can then be handled by the mental health experts. We must learn how to deal with drugs in our society.

In conclusion, what I am saying is that mental illness is a treatable condition. We must create the necessary services and infrastructure at our county level because county hospitals are capable of doing that. We must increase the number of doctors who are trained as psychiatrists as well as nurses who are trained as nurse psychiatrists to take care of them, and the going will be very smooth. This will ensure that this kind of burden of disease that we carry as nation can be lightened and become much easier and simpler to handle.

So, the solution is that we should put in more money in healthcare. I am hoping, from the Big Four Agenda which includes Universal Health Coverage in the pilot scheme



that they have started, that this is one of the areas they will be looking at. They should look at each and every burden of diseases such as Malaria, Tuberculosis, HIV/AIDS, antenatal and postnatal care, mental healthcare, immunisation and other issues. They are all manageable within the budgets that we can provide.

One of the issues that the national Government must do is the timely release of resources to the county governments so that they can attend to some of these innovative centres. I know we are putting up some sophisticated cancer centres, but there are more people dying of other issues apart from cancer. I appreciate that we must do so, but we can save a lot of our population from these depressive disorders. This will make them become normal individuals walking around like proud Kenyans living in their country with ease and comfort.

Thank you, Madam Temporary Speaker. I second this Motion.

**The Temporary Speaker** (Sen. (Prof) Kamar): Thank you, Senator.

*(Question proposed)*

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me the opportunity to support this Motion by Sen. Kasanga and Sen. Chebeni, which seeks for the establishment of mental health and psycho-social support centres at the county level.

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

*[The Temporary Speaker (Sen. Lelegwe in the Chair)]*

Mr. Temporary Speaker, Sir, the WHO lists Kenya among the countries that do not have a separate budget for mental health. This is a serious problem because way back in 2016, the estimates were that about 11.5 million people were suffering from mental health illnesses. Some people do not understand this concept of mental health. I thank the Senator for Kisii County for demystifying the whole issue. Many people think that mental health is when you have gone completely cuckoo, and then the only place that you can be sent to is Mathari Mental Hospital.

Mr. Temporary Speaker, Sir, it is important that county governments are involved in supporting the welfare of the Kenyan people. The mental health welfare of our society is very important because every so often, all of us suffer some form of mental illness. Some of us are stressed on a daily basis; some go through depression while others abuse alcohol, all of which are forms of mental health illnesses. It is sad that in Kenya – where we fight so much and brag about having a huge budget focusing on health care – we cannot support people suffering from some forms of mental illness.

Mr. Temporary Speaker, I worry about the disabled in this country because that was not what they intended to be in life; it just happened to them. In addition to that, they also suffer some form of mental illness. If this country cannot come up with a separate budget dedicated to building these healthcare facilities, how will they support this economy? This is, therefore, an excellent Motion and I hope that the Ministry of Health is also listening keenly. If you look at the number of shrinks or psychiatrists in this country,

it is below par. Nurses who are trained to attend to people with forms of mental illnesses are very few. I read somewhere that they are only 427 in the whole country.

Mr. Temporary Speaker, I was saddened today to read something in the newspapers to the effect that county governments will lose most of their health budgets. This is absolutely ludicrous! We need to focus on building our healthcare facilities and the wellbeing of this country. What annoys me most is that even insurance companies in this country do not pay for mental illness, yet it is a form of health support. It is, therefore, very important that when we talk about coming up with policies in this country, we should consider these people who suffer from some form of mental illness. That is the only way that we can build this country.

Mr. Temporary Speaker, Sir, it worries me to read the Kenya Health Policy, which states that about 25 per cent of all Kenyans who seek outpatient treatment and about 40 per cent of the people who seek inpatient treatment suffer some form of mental illness. These Kenyans have nowhere to go for support because, as the Mover of this Motion stated, there are only 14 facilities in the entire country. If you asked some of us about where to go to seek some form of support, you will be shocked to hear that we seek it in computers. I have personally downloaded an application called “Calm” to probably calm me down from all the stresses of this work. Therefore, if all of us are trying to find a solution, yet we have a country with taxpayers and devolved services, but we do not want to accept that we have devolved them, it actually begs a lot of questions in terms of our priorities in building a healthy nation.

Some people, especially in rural areas, cannot access any form of support maybe from depression or stress. This escalates further to a point where they completely go cuckoo. The only place that their families can send them to is the Mathari National Teaching and Referral Hospital (MNTRH). This is something that has affected me personally and my family because at a young age, my brother was diagnosed with some form of depression. Since there was nowhere to seek support, he was sent to the MNTRH, which affected his quality of life. Most people in the rural areas or slums of this country end up suffering tremendously and their quality of life changes completely. This is because the Government has not developed a policy that creates a separate budget to cater for mental healthcare facilities.

Mr. Temporary Speaker, it is important that when we talk of devolution, we look at it wholesomely and ask ourselves what we would want to have around us. A person from Narok County should not have to come to Mathari Mental Hospital to speak to a shrink if he is going through some form of depression. Similarly, someone from Samburu County should not have to travel all the way to Kenyatta National Hospital (KNH) in Nairobi to seek mental support. It is high time that the Ministry of Health listens to what this country is calling for. That is the reason why we are in this House. We want to ensure that all the 47 counties have at least one mental healthcare facility with all services available, including shrinks, nurses and even some training facilities. These facilities can come up with programmes to reach out to the rural areas, to speak to people who do not understand these things. It is imperative for us, as a country, to make healthcare – not only healthcare in general, but mental healthcare – part and parcel of our daily policy.

The situation, as it is, is saddening and I hope we will think about this nation in a more progressive and healthy way.

Mr. Temporary Speaker, Sir, I agree with the Senator from Kisii when he says that most people, including us, politicians, suffer from some form of mental illness and that we are depressed every day. If you look at your cell phones, you see a lot of text messages about people who have died and you are supposed to assist in their burials. You are supposed to carry the burden and pay school fees and so on. At the end, you become stressed. It is sad because at times you are unable to fulfill your family duties. Sooner than later, your wife divorces you because you cannot satisfy her needs. These are things which have totally driven us cuckoo.

Mr. Temporary Speaker, Sir, I support this Motion entirely and I want to encourage this Government to come up with policies that demand-

- (1) The establishment of these mental facilities in all 47 counties; and,
- (2) Demand that these insurance companies that are benefiting so much from Kenyans who pay millions of dollars towards healthcare, cover even mental illness.

Mr. Temporary Speaker, Sir, the poor people of this country, I dare say that most of them die out of depression; mental illness. However, it is very hard for us to ascertain that because they do not even have a place that they can go or any form of records that can show this number of people died out of this.

I want to conclude by stating the following: By establishing those mental facilities or healthcare facilities in counties, the Ministry of Health should also come up with a support programme for those few professionals who are in this country. A majority of them end up dying of depression because they do a terrible job in taking care of their own health. Those people who are tasked with the job of giving support to the people who suffer from mental illness, most of them also end up going cuckoo. This is because they just cannot stomach the fact that they really want to help these people, but it is very expensive for those people to come to them. So, when they go back to their rural homes, they are told that so-and-so died of stress. So, he sits down and thinks: "I was in Nairobi; I wish I had been here to save that relative."

With those few remarks, I hope that the national Government and the county governments will work closely together to be able to fully establish these mental health centres, fund them and support them. Once they do so, they will now encourage our youth to pursue careers in mental healthcare. I am sure if you ask some young people if they want to become shrinks, they will tell you: "Yes, I would want to be able to help somebody."

I want to commend the NGO world. Here in Nairobi I know of two that deal with mental issues. One of them is Amani Counselling Centre. It is an NGO. We pay taxes in this country. All work should not be left to aid. It is making us become beggars. It is actually putting us in a very awkward position. No wonder some of us choose to download applications that can help us sleep when we are so depressed because there is nowhere we can get help.

With those few remarks, I beg to support this Motion.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir. I also wish to add my voice to this very important Motion. I wish to thank Sen. Mercy Chebeni for bringing this

wonderful Motion. The issue of mental health and establishing psychosocial centres in the counties are long overdue. From what we have learnt today, there are only 14 centres in the whole country which deals with psychiatric related diseases. This is appalling. Where are these centres located? Most of them are located in the urban centres. For example, Mathari National Teaching and Referral Hospital is in Nairobi. This indicates that many of the people in the rural areas will not be able to access such centres.

With a population over 45 million people, we only have 25 psychiatric doctors. It is sad that 25 to 40 per cent of the population suffers from mental illness. It is a major challenge to this country because it had been neglected for a long time. It now 54 years since our country attained Independence, but we have not done much on this area. We started by getting rid of poverty, ignorance as well as diseases, but we have not fully succeeded. We are still talking about lack of enough facilities in the counties to take care of health issues.

From these statistics we are even informed that five to six Kenyans normally never access treatment because psychiatric cases at times can be violent cases. As my colleagues have mentioned, some psychiatric cases are attributed to witchcraft and are treated by soothsayers. Although Kenya has a big problem in terms of health issues, devolving the health sector without providing facilities, medicines and medical personnel will not help much. When it comes to psychiatric cases, it becomes a major challenge and a great nightmare for this country.

I have just come from a meeting today where I was told that before we are able to achieve affordable healthcare we have to ensure that we get the actual data of the number of doctors and nurses in this country. That begs the question; if we are not sure right now of whether we have a sufficient number of healthcare workers that means we are very far away from achieving the pillar of affordable healthcare.

While other diseases may be caused by bacteria and viruses, psychiatric diseases and mental diseases are normally caused by issues of depression and stress. We, as politicians, also require psychiatric treatment at times. Immediately after the nominations in 2017, we had somebody who went into depression for two weeks, suddenly collapsed and died. That is a clear pointer that psychiatric condition is a major killer of people in this country.

Mr. Temporary Speaker, Sir, I was coming from a meeting where I was told that there are 10 million youth that are unemployed right now. They can easily resort in taking drugs and other substances. If somebody continues to abuse drugs and substances for many years, he ends up having mental illnesses. In addition to that, universities are churning out many graduates who are not absorbed by the job market. When they do not get employment, they become very good candidates for psychosomatic illnesses. It is time for Kenya to look for more solutions to reduce poverty by providing jobs for our youth and affordable healthcare for every Kenyan, because it is a basic right for all.

Mr. Temporary Speaker, Sir, this Motion will ensure that we have at least one centre in the counties. The people who are not able to access facilities in cities or large centres will now access psychiatrists with ease and get treated. As my colleagues have said, this is one of the diseases that should be treated free of charge. This is because, as we have been told, everyone suffers from some form of a psychiatric disease.

With those few points, I support and say that the establishment of psychosocial centres and mental health centres in counties is long overdue. The Government should support this Motion and devolve such centres together with funding, to ensure that that they are fully equipped.

**The Temporary Speaker** (Sen. Lelegwe): Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to this important Motion. Mental health is very important. The Big Four Agenda cannot be achieved if the citizens of this nation are not mentally healthy. Even the Sustainable Development Goals (SDGs) that every nation is fronting aim at ensuring the wellbeing of every person in the world. As a country, we have to anchor our developments on the SDGs. I am saying this because, as a nation, we do not want to be left behind. Just as other nations are concerned about the well being of their citizens, this nation should also be concerned about the mental well being of its citizens. When we talk of mental health, we are looking at a situation where someone is physically and mentally stable to do whatever they are supposed to in this Republic, so that we add to the development of this country.

I commend the two Senators who have come up with this Motion, that is, Sen. Chebeni and Sen. Kasanga. They say clearly that the Mental Health Act was enacted in 1991. After 1991 there has not been a council that is mandated to carry out the functions of the board. It means that this board is a toothless bulldog. It does not have the teeth to perform its functions. Mental health is a county issue because counties are supposed to provide the ambulances, health facilities and medics.

This Motion is very relevant to this House. As Senators, we have to be keen to find out what exactly is happening in the counties. Are counties doing anything to ensure that Kenyans are mentally healthy? The Senators have clearly said there are only 88 psychiatrists and 427 nurses qualified in this area. This is a very serious statement; that a nation like Kenya with a population of over 40 million has only 88 psychiatrists and 427 nurses who are qualified. There is need for the Government to be serious in order to achieve one of the Big Four Agenda items, which is health. Mental health affects the lives of Kenyans. If this situation is not arrested or addressed we will have many people getting into depression because of the mental illness.

The Motion also says that one in every four Kenyans suffers from depression, which is a statement we cannot take for granted. Also, four out five suicide cases are caused by depression. Life is important. Article 26 of the Constitution is clear that every citizen has a right to life. There is need for us to anchor whatever we do to the Constitution. It is important for governors to take seriously the issue of health and ensure that they devolve the services, so that they reach the common man.

We have been elected for the purpose of serving the citizens of this country. That demands that we commit to the work we do. All the issues that we bring to the Floor of this House are not issue we can joke with. They are serious issues that affect the citizens of this country and the Government should ensure that they are sorted out. We have been employed for the purpose of bringing these issues to the Floor of this House and ensuring that the Government implements them. This will ensure that devolution serves the common man.

Mr. Temporary Speaker, Sir, we have different kinds of depression. Depression can be arrested in good time before we end up having suicide cases or walking zombies. The Bipolar Disorder is a mental disorder that has to do with mood swings. Sometimes, when a person gets bad news, he or she gets happy at one point and then unhappy the next point. If the mood swings persist, a person can get into depression which can lead them to commit suicide. We need to address this in this House.

Another form of depression is anxiety. Sometimes people fear losing their jobs, *et cetera*. However, these fears can easily be sorted out. There is also the clinical depression which is a situation where someone loses interest in all activities. I am bringing out these different kinds of depressions because I want to make it clear on the Floor of this House that it is possible for us, as a nation, to sort out and manage them so that citizens do not commit suicide and die because of feeling un-attended to or unloved. These cases of depression can be sorted out if we decide, as a nation, to work towards ensuring that counties build capacity in this area.

Mr. Temporary Speaker, depression can also be caused by biological factors. For example, it can be genetic. However, the fact that someone in a particular family had depression does not mean that someone else in that generation will have it. It might be one case out of many.

Another cause of mental illness is use of drugs and alcohol. Most youth abuse drugs which in turn causes depression. If someone went through difficult early childhood experiences and it is not arrested, they can have mental disorder. There is need to counsel youth who do not have jobs and create jobs for them so that they become productive citizens of this country. There is also need to build capacity in this area in all the 47 counties and train psychiatrists and nurses on how to handle victims of depression.

Depression is a problem that is across the board and there is need to build capacity in this area. I also suggest that we establish a kitty for the purpose of doing this. There is no way health centers can be established if a kitty is not set aside. There is also need to oversight the kitty to ensure that money that is set aside is used for the purpose for which it is intended, so that citizens of this Republic can benefit from the funds that will be disbursed.

I strongly support this Motion that has been brought by the two Senators and hope that it will go to a higher level where it will eventually become a policy that will translate into law.

I thank you, for giving me the opportunity to add my voice to this noble Motion.

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to also contribute to this important Motion. From the onset, I congratulate my two sisters, Sen. Chebeni and Sen. Kasanga for having thought about this group of people who are rarely recognized and thought about by many people in the country.

Mr. Temporary Speaker, Sir, mental cases in our country and most of our communities are always referred to as social misfits or people who have been bewitched or cursed by their ancestors. Therefore, guardians, parents or families of people with mental illness suffer stigma which is a difficult situation. It is also costly to treat people with mental illnesses. My colleagues have said that there are 14 facilities in the county which treat mental cases but I only know of Mathari Hospital which for many years, I

thought was a jail because when a mental patient is taken there, it is like they have been condemned and are locked for some time. Therefore, the thought of having mental health facilities in our counties is a great idea. That is why I thank the two Senators.

Health being a devolved function, it needs to be encouraged and supported by all our counties. County governments must have these facilities. Their health facilities cannot be complete if they only treat normal patients while some mental health patients cannot access medication. Therefore, our county governments should have a budget that is sensitive to matters of mental health and a human resource that can handle mental cases. We need to have a training facility for mental expertise and a health facility that is equipped with drugs to treat these kinds of disorders.

Mr. Temporary Speaker, Sir, our counties must not only have these facilities, they must also have a database of these kinds of patients so that we know where they are and how they can be treated for free. Our counties should also have guidance and counseling sections for the guardians of these patients. This is because many times, some of these families are not able to handle these kinds of patients. Some of these patients are docile while others are even dangerous because of the kind of exposure they get in the community they live in. Therefore, people with these kinds of patients as well as the patients should be given guidance and counseling services within our health centres.

Mr. Temporary Speaker, Sir, we need to build the capacity of the medical staff who handle these kinds of patients. We do not need to have a specialized unit for them only. Everyone who is doing medicine in this country should be trained on how to handle mental health patients. Therefore, we call upon county governments to have a budget for this and to also look for funding from development partners. Many of our counties may not be able to put up all these facilities at the same time, but they can partner with the private sector and other international organizations so that they can have this infrastructure in place.

Mr. Temporary Speaker, Sir, they also need to benchmark. Every other time, I hear that Members of County Assembly (MCAs) and County Executive Committee (CECs) Members have gone out to benchmark on different kinds of studies. This is an area of study that we need to take seriously. We need to benchmark in other developed countries to see how they normally treat these kinds of patients. Additionally, we need to have centers that can detect and treat these kinds of illnesses.

Finally, Mr. Temporary Speaker, it is high time our counties mainstreamed all types of health conditions into their budgets. This will ensure that we have health facilities that will cater for nutrition, mental, maternal health and also for medication. We need to equip these facilities fully so that we can enjoy being citizens of this country. We should reduce the cost of treating these patients, including avoiding the cost of travelling with them to Mathari National Teaching and Referral Hospital in Nairobi just because we cannot afford such kinds of facilities in our counties. Therefore, I urge my two colleagues to look into the possibility of coming up with a Bill on this issue. We can even go further and come up with a caucus to look into this very important issue. This is an important Motion and because we already have devolution, we must rally our counties to implement the recommendations.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, there being no other requests from you, I request the sponsor of this Motion to reply.

Proceed, Sen. Chebeni.

**Sen. Chebeni:** Thank you, Mr. Temporary Speaker, Sir. I rise to reply to this Motion. I would like to thank all Senators who have contributed and given recommendations to this Motion. We will take into account all the issues they have raised concerning this sector. These include issues of resources like qualified trained personnel, budgetary allocations, increasing the level of mental health awareness among Kenyan citizens and also psycho-social support centres or institutions in our country.

Mr. Temporary Speaker, Sir, mental health is, indeed, a major issue that has been neglected. It is time for the Senate to champion for a change in attitudes towards the administration of mental health illnesses. We cannot talk about health without acknowledging the mental health aspect. Therefore, I would like to thank the Senators who have contributed to this Motion.

Mr. Temporary Speaker, all mental illnesses are treatable and this country has the capacity to handle all cases at all levels, both at the national and county. We should not limit our budgetary allocations to only two or three per cent, yet we can take care of this problem as a country. We should not let our people to continue suffering and yet it is an issue that we can deal with. I, therefore, echo the sentiments of my fellow Senators in calling for a separate budget when it comes to mental health issues. Some Senators have raised the issue of coming up with a database for patients, free treatment and capacity building to ensure that we increase the number of professionals. It is sad that we only have 88 psychiatrists to deal with 45 million Kenyans. This is not fair and we will take that into account. We have also heard from Sen. Seneta on the issue of benchmarking. As a country, we need to learn how to deal with mental health issues in all aspects. We need to go out there and see what developed countries have done with regard to mental health issues.

Without saying much, Mr. Temporary Speaker, Sir, I kindly request Senators to vote in support of this Motion to enable us to move forward with the recommendations they have given us.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, pursuant to Standing Order No.73, I determine that this Motion does not affect counties. Therefore, voting shall be by acclamation.

*(Question put and agreed to)*

Let us move on to the next Order.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, I defer the following Motions in Order Nos. 12, 13, 14, 15, 16, 17 and 18.



FRAMEWORK TO PERMANENTLY ADDRESS  
EFFECTS OF FLOODS

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues to rise by the day, and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things

- (1) developing and enforcing regulations for preventing the obstruction of
- (2) riparian reserves and natural water courses; and preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant government agency to execute this task submits a report to the Senate within three months of the adoption of this Motion.

*(Motion deferred)*

THE STATUS OF EDUCATION IN NORTHERN KENYA

THAT, AWARE that Article 43 (f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b) provides that every child has the right to free and compulsory basic education;

ALSO AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

FURTHER AWARE that education is a shared function between the National and the County levels of Government with the National Government being responsible for Primary, secondary and Higher

education while the County Government is responsible for pre-primary education, village polytechnics and home craft centres;

COGNISANT that both levels of Government complement each other in promoting sustainable education;

CONCERNED that the intake, uptake and quality of education in the Northern Kenya have adversely been affected owing to discrepancies in public resources allocation, insecurity, skewed staffing and teacher training in the region;

FURTHER CONCERNED that both the school completion rate and the national examination outcomes in region are poor and that the number of students from Northern Kenya who qualify for core courses in universities, colleges, technical schools and village polytechnics is minimal compared to other parts of the country;

NOTING WITH CONCERN that due to insecurity and other related concerns, the Teachers Service Commission (TSC) which is the body responsible for the employment and deployment of teachers, has in the recent past, taken steps to transfer non-local teachers from the northern region of Kenya to other parts of the country;

CONCERNED THAT, the transfers have led to shortage of skilled teachers which has been a major cause of the dismal performance in examinations in schools in the region;

NOW THEREFORE, the Senate resolves to task the Standing Committee on Education to conduct an inquiry into the challenges facing the education sector in Northern Kenya with a view to

1. evaluating the effect of the teacher transfers from the region and recommending to the Ministry of Education, policy measures to address the challenge;
2. evaluating the status of the education infrastructure in the region and proposing solutions to mitigate the current and looming challenges;
3. proposing mechanisms for enhanced resource allocation at both levels of government to facilitate improved education facilities; and
4. assessing school intake compared completion levels in the region in order to ascertain the impact of the challenges facing the schools and how these disadvantages the region compared to other parts of Kenya and proposing ways of addressing the challenges.

And that the Committee submits a report to the Senate within three months of adoption of this Motion by the Senate.

*(Motion deferred)*

STANDARD POLICY REGULATION FOR CONSTRUCTION AND  
MAINTENANCE OF RURAL ACCESS ROADS

THAT, AWARE that infrastructure development and specifically, construction of roads is a key pillar of Kenya's vision 2030 whose objective is to spur movement of people and goods, promote trade and economic activities, encourage development and attract investments;

NOTING that there is a very strong correlation between a country's economic development and the quality of its road network;

CONCERNED that Government's efforts to expand the roads infrastructure are mainly focused on the urban and peri-urban areas of the country thus leaving rural areas with dilapidated or no access roads;

FURTHER CONCERNED that fifty-five years since independence and over five years after institutionalization of devolution, the country's roads infrastructure is to a large extent still underdeveloped with only slightly above 9,000 kilometres of the about 178,000 kilometres of roads paved;

COGNISANT that, Part Two of the Fourth Schedule to the Constitution of Kenya (2010) mandates County Governments to manage county transport, including; roads, street lighting, traffic and parking, amongst other county public transport matters;

DEEPLY CONCERNED that, County Governments are continuously prioritizing routine maintenance works over sustainable and durable road quality works due to budgetary constraints;

NOW THEREFORE the Senate calls upon the Ministry of Transport, Infrastructure, Housing and Urban Development to develop and adopt standard policy regulations prescribing modern, eco-friendly and inexpensive technologies to be applied across the 47 counties for construction, upgrading and maintenance of rural access roads in order to ensure durability and sustainability of the access roads and also to reduce maintenance expenses.

*(Motion deferred)*

ADOPTION OF REPORT ON THE FIRST EXTRAORDINARY  
SESSION OF THE FP-ICGLR IN KINSHASA, DRC

THAT, this House adopts the Report of the proceedings of the First Extraordinary Session of the Plenary Assembly of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FPICGLR) held in Kinshasa, Democratic Republic of Congo from 19<sup>th</sup>-20<sup>th</sup> March, 2018, laid on the Table of the Senate on Tuesday, 15<sup>th</sup> May, 2018.

*(Motion deferred)*

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF  
KAJIADO COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Kajiado County Executive for the Financial Year 2013/2014 (1st July 2013 - 30<sup>th</sup> June, 2014) laid on the Table of the House on Thursday, 10<sup>th</sup> May, 2018.

*(Motion deferred)*

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS  
OF NAROK COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Narok County Executive for the Financial Year 2013/2014 (1st July 2013 - 30<sup>th</sup> June, 2014) laid on the Table of the House on Thursday, 10<sup>th</sup> May, 2018.

*(Motion deferred)*

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS  
OF TURKANA COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Turkana County Executive for the Financial Year 2013/2014 (1st July 2013-30<sup>th</sup> June, 2014) laid on the Table of the House on Thursday, 10<sup>th</sup> May, 2018.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m.; time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 17<sup>th</sup> July, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.