

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 18th October, 2016

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

THE FOURTH ANNUAL CONFERENCE ON DEVOLVED GOVERNMENT IN KENYA

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication on the Fourth Annual Conference on Devolved Government in Kenya.

As you are aware, the devolution conference has since 2013 been organised on an annual basis, bringing together all implementers of devolved governance to celebrate the gains that have been made and identify the challenges that can be addressed collaboratively amongst all the stakeholders for the welfare of our country.

The participants of the annual devolution conference comprise, but not limited to the representatives from both levels of government, independent commissions, academia, policy practitioners, civil society organizations, the donor community, international organizations and the media. Participants of the conferences get an opportunity to deliberate on the successes of the devolved system of governance and how to take advantage of the emerging opportunities presented by devolution.

The first annual devolution conference was held in Kwale County in April 2014, the second in Kisumu City, Kisumu County in April 2015 and the third in Meru County in April 2016. The fourth is set to be held in Narok County from the 20th to 24th February, 2017. The proposed theme of the fourth devolution conference will be; ‘Devolution Transforming Lives, Tell Your Story’.

A total of 10 thematic areas have been selected to guide deliberations. These are;

1. Health- ensuring healthy lives and promoting well-being in a devolved system of governance.
2. Agriculture and agricultural transformation for food security, rural development and wealth creation.
3. Infrastructure, Roads and Energy - promoting accelerated investment and access to markets.

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4. Natural Resource Management – potential opportunities for natural resource management within the devolution context.

5. Education, gender, youth, sports, culture and social services – equality and inclusivity for sustainable development at the county level.

6. Urban Planning, lands and Housing – Building resilient and climate-smart cities for growth and sustainable development.

7. Trade and Cooperatives – Promoting economic diversification through an enabling business environment.

8. Elections- Preparedness for simplest transition

9. Media perspectives on devolution for development.

10. Corruption – Facing corruption as a drawback to the development agenda.

The theme and topics selected for discussions during the Fourth Devolution Conference go to the core of the mandate of the Senate as set out in Articles 94 and 96 of the Constitution. In this regard, therefore, Hon. Senators, I hereby invite you to attend and participate in this conference. Additional information on the arrangements for this event will be provided through the Office of the Clerk. Senators intending to participate in the conference are requested to give the confirmation in writing to the office of the clerk for planning purposes.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. You have given us similar communication before. The issue should not be about Senators who wish to attend. If it is a proper devolution conference, Senators are obligated to attend. Before we confirm our attendance we want an assurance from your office that this is not going to be another showbiz for governors. Senators should not go there to be humiliated the way we saw our distinguished colleague from Kisumu handled when the conference was in Kisumu and subsequently in Meru. We should not go there only to be statistics; that also in attendance were Senators. We want a very firm commitment from your office.

In the execution of our mandate, the Senate, particularly, the Committee for Devolution as our agent, must be involved in the planning *ab initio*, taking care of what the program looks like, the role of the Senate, the role of our Speaker and the role of the host Senator. So that, the host Senator, our distinguished colleague from Narok does not get there and stand on the periphery as people display things that are non-existent.

Sen. Njoroge: Mr. Speaker, Sir, in the last devolution conference, I personally accompanied you to Meru. I felt so humiliated when I saw the governor having water put on his table while they made sure your water was put on the floor. That forced me to walk out of that function. It was a humiliation of the highest order. Unless the governors turn to be different, it is not in order for Senators to attend these functions until things are put in order.

Sen. Murkomen: Mr. Speaker, Sir, we had already expressed these concerns before the last conference. My fears have been confirmed. I have never attended any of these conferences because even when I was the chairperson of the Committee on Devolved Government, I realised from the word go that it was not a place for an honest assessment of the performance of counties or an opportunity where there is clear critic of what we are doing and what we are not.

If we want to make it a devolution conference, we must be allowed, as stakeholders, both county assemblies and the Senate to participate. In Kisumu and Meru and even in Kwale, our responsibility was just to go and clap.

Mr. Speaker, Sir, we have a constitutional responsibility to oversight counties and allocate resources to those counties. We will not accept to be used as rubberstamps, particularly in the last year of assessing devolution before elections. We will not be willing to be the ones to rubberstamp mismanagement in the counties and lack of oversight and accountability. We would like your Office to get assurance from the planners that during the next devolution conference, we will have an opportunity where an honest assessment of performance on matters of devolution will be put forward and it will not be a Public Relations (PR) exercise.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I would like to contribute to this proposal for a devolution conference which is a good idea. It is only that the past devolution conferences have been poorly conceived and executed. What I am proposing is that while you are bringing our attention to the fact that there will be a devolution conference next year in February, you should appoint an appropriate planning committee which will be meeting with whoever has made that proposal.

Last time it was done too late and even governors did not positively respond to our proposals. I think it is early enough to have a planning committee with terms of reference from this Senate. The planning committee should sit down and plan for the next devolution conference which should be a true devolution conference with all the parties concerned about devolution owning the conference and providing the content.

Mr. Speaker, Sir, I take exception to the fact that the content of the devolution conference is already outlined before the input of the Senate. I think that is an anomaly. So, what should come to us is a proposal to establish a planning committee for a devolution conference whose components are the Senate, the Council of Governors (CoG), the national Government and the county assemblies. Those are partners in devolution and they are the ones who should plan such a conference. Anybody arrogating himself or herself the task of outlining the subject matter of the conference and bringing down to us *ex cathedra* is very wrong.

Sen. Hassan: Mr. Speaker, Sir, thank you for this opportunity. I appreciate what has changed since the last Devolution Conference to warrant our participation this time round but I believe nothing has changed. I join my colleagues; Sen. (Prof.) Anyang'-Nyong'o, Sen. Murkomen and the Senate Minority Leader, Sen. Wetangula, in saying that there is drastic change especially based on the experience of Sen. Njoroge who was humiliated. How can somebody humiliate Sen. Njoroge? Based on that, we need to take all these concerns because in my assessment, nothing has changed. This will be the last devolution conference and their report will be a subject of political campaigns. So, if we are party to it, then it becomes difficult for us to poke holes because we will be told that we should have expressed it there.

I am reliably informed that Sen. (Prof.) Anyang'-Nyong'o will be running for governorship. I am also reliably informed that Sen. Hassan Omar is running for governor. So, before we shoot ourselves on the foot, let us have an independent assessment---

The Speaker (Hon. Ethuro): Order, Sen. Hassan, I heard your words; Sen. Hassan Omar is running for governor. Who are you reliably informed by?

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(Laughter)

Sen. Hassan: By my conscience. Therefore, we must factor in that there must be a broad planning committee with a set outcome. Nothing has changed since the last Devolution Conference. We should maintain our stand. The conference must be a devolution conference by the Senate to assess progress with respect to Article 174 *en masse*. That should be organised by county assemblies and Senators who do oversight.

Sen. Bule: Mr. Speaker, Sir, how come we were excluded from any planning or development in counties from the beginning? Governors denied us the right to participate in the county development boards. Now they want us to go and celebrate with them. What are we going to celebrate with them? If you are not part and parcel of planning for something or dining table, how can you celebrate that you ate? We have not eaten anything.

Mr. Speaker, Sir, devolution is gradual. We are the team that Kenyans are looking up to, to change Kenya. We need to change our institutions. My governor is just running from place to place---

The Speaker (Hon. Ethuro): Order Senator, please conclude.

Sen. Bule: Mr. Speaker, Sir, while governors are jumping from place to place, our people are dying. What are we going to celebrate? I asked the Government to declare drought which the people of Tana River are facing a national disaster because people there are dying. There is nothing to be celebrated. It is disaster because our people are dying while governors keep on telling us to celebrate. We should not be celebrating but crying.

Sen. (Dr.) Machage: Mr. Speaker, Sir, “he who plays the pipe calls the tune”.

(An hon. Senator spoke off record)

(Laughter)

I studied medicine and not English. The issue is you do not always have to quote what somebody else said. Why can it not be my quotation?

Who finances that conference? What is the involvement of the Senate in the financing of that conference? If we are subsidiary on the same, then we should not expect to be given that latitude to be heard. In any case, who works on the programme? Who dictates on what the programme should be?

Mr. Speaker, Sir, as you have announced today that there will be that conference; let us, therefore, be involved in working on the programme. That is the only way we will know that the conference is all-inclusive for both the Senate and the executives in the counties. Unless that disclosure and transparency is made, then we have nothing to do with that conference. We have not attended those conferences for the past four years. Missing a fifth one will not have any weight at all. Thank you.

The Speaker (Hon. Ethuro): The last one is by Sen. (Prof.) Lesan in his capacity as the Chair of the Committee on Devolved Government. Please use that opportunity to shed light on some of the arrangements.

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Sen. (Prof.) Lesan: Mr. Speaker, Sir, first, I want to congratulate your Office and the message which you have given to the House this afternoon regarding the conference.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lesan, why are you shy? Do you congratulate an office or the office holder?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I am not shy. I appreciate the concerns of Senators who have spoken on this subject. Being a Senator who has had the same experience in the past three years, I appreciate that. From the concerns that have been expressed and what has transpired, I think there is some move to correct some of the things that happened. This House, through the Senate Sessional Committee on Devolved Government, is actually involved in the process from the very beginning.

Last week on Thursday, some clerk from your Office and I attended the First Steering Committee Meeting to organise the conference. As you are aware, this House is fully represented through the Committee on Devolved Government in the arrangement of the processes. Being involved from the very beginning, we have already started to deal with some of the issues. The first issue we dealt with during the first meeting was the issue of protocol and we have addressed that. We ensured that proper protocol procedures will be followed during the conference including your position during the actual day of the conference, sitting position and all those others.

The Speaker (Hon. Ethuro): Order, Senator, those are details but we will be happy if you just said that you are dealing with protocol issues.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, we are dealing with those protocol issues as I have said. We are also dealing with expanding the participation by insisting that county assemblies should be involved and that has been taken care of. We agreed that the Senator for the hosting county should also be involved right from the beginning. In fact, we have already suggested and proposed the role of the area Senator.

Mr. Speaker, Sir, we have also dealt with the issue of literature or papers being used bearing the letterhead of the CoG. The minutes of the first meeting we had did not have the title of the CoG because we want to move away from having the Devolution Conference as a governors' conference.

As one of the Members has stated here, we are also dealing with the issues of finance. For the information of Senators, the counties, through their governors, have donated Kshs2 million each. There is already Kshs94 million for that and there is a shortfall of Kshs150 million to be able to run the conference. The Senate and other institutions who will participate in the conference are urged to make some contributions towards that. We have asked other financiers to come on board. I am sure that there are also friends of the Senate who should make contributions so that we pay the piper and, therefore, have a bigger say because of the contribution being made.

Mr. Speaker, Sir, we have not been able to attend the previous conferences. As the Chairman of the Committee on Devolved Government, this being the last devolution conference and, given the level of our participation from the beginning, we should consider attending the conference. There will be an award session for some of the people or institutions such as the CoG, the Senate and all present institutions which have made contributions towards devolution. That will be a chance for the Senate to also recognise contributors.

Mr. Speaker, Sir, I urge Senators to participate in that through the Sessional Committee in the House, so that we take part in the conference. The conference will be held in Mara. It might be a chance to tour the Mara and enjoy the scenery of this country.

I thank you.

The Speaker (Hon. Ethuro): Order, hon. Senators! Chairperson, you did very well to explain things except for the last two. First, we are not in the business of domestic tourism. Secondly, Senators have not at any time, from where I sit, said they will not participate. They are only saying that the manner of participation must be clarified. The role of the Senate must be clear. All other stakeholders in the devolution family must be included.

(Sen. Bule entered the Chamber and took his seat while the Speaker was on his feet)

Order, Sen. Bule! You shall remain standing until I conclude whatever I am saying then we can make amends to the mischief that you have just conducted.

The point that Senators have said which the Senate must emphasize and which we will communicate through our team - our participation in the conference is led by the Sessional Committee on Devolved Government led by the Chairperson, Sen. (Prof.) Lesan. He is assisted by Sen. (Dr.) Zani. I have made those nominations to the planning committee. My instructions to them are very clear. Everything is in a state of flux.

These topics and themes are for consideration by that Committee. They are not cast in stone. Somebody somewhere had to start the necessary process for the rest of the Committee to dispose. Therefore, I assure Sen. (Prof.) Anyang'-Nyong'o that is the correct position. The first one should be about all the major players coming together to plan collectively.

Secondly, the other message we have made abundantly clear is that we must learn from the experiences of the last conferences. It is only the first and the last conference that we did not attend but we attended the second conference in Kisumu. There were lapses of protocol and logistics during that meeting. Those issues must be addressed.

Finally, devolution is not an opportunity for imperial presidency to be exhibited. The overall purpose of the new governance structure is that we unpacked the imperial presidency. It was not our desire to transfer any of that to the devolved governments. Our job as a Senate is to transfer functions. As far as I know, we have not transferred any such function to the county governments. This is not just a matter of political positions or politicking but devolution. It is not about the big man syndrome. We must work very hard to level everybody. We will continue engaging and informing the Senators on the progress being made by the Committee.

What is it, Sen. Khaniri?

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Sen. Bule breached our Standing Orders. You gave very clear instructions that he should remain standing until you finished your communication then after the communication he should make amends. As soon as you finished your communication, he sat down. He did not make amends you had instructed him to.

The Speaker (Hon. Ethuro): Thank you, Sen. Khaniri for being vigilant and observant.

Sen. Bule---

(Sen. Bule stood up in his place)

(Laughter)

Order, Sen. Bule! Our Standing Orders are very clear. I reminded you what you needed to do. I do not have to remind you again. Tell us what you did. Confirm and then make amends as you know.

Sen. Bule: Mr. Speaker, Sir, I am a human being. I apologise for whatever wrong I have done.

The Speaker (Hon. Ethuro): Order, Senator! You do not apologise for what you do not know. So, it cannot be whatever wrong. It must be a specific definite matter. What exactly did you do?

Sen. Bule: Mr. Speaker, Sir, I just entered, bowed, came in and took my seat.

An hon. Senator: The Speaker was on his feet.

Sen. Bule: Mr. Speaker, Sir, I did not notice that.

The Speaker (Hon. Ethuro): How did you notice your seat?

Sen. Bule: Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Sen. Bule! We will not engage on things that everybody saw. You cannot pretend to be blind to me! You bowed to whom? How did you get to your seat? Just go back to the bar and do the needful.

(Sen. Bule went to the Bar and bowed to the Chair)

Order, hon. Senators! We may now proceed. Sen. Bule has obliged and exceeded the brief by marching.

Next order.

STATEMENTS

RELOCATION OF KTTC FROM GIGIRI TO KENYA SCIENCE TEACHERS COLLEGE PREMISES

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Education regarding the notice to the Chairman of the Kenya Technical Training College (KTTC) Governing Council from the Cabinet Secretary for Education to relocate from its current location in Gigiri to the former Kenya Science Teachers College (KSTC) which is currently a campus of the University of Nairobi. In the statement, the Chairperson should address the following:

(1) What informed the decision by the Cabinet Secretary to relocate the KTTC from its current location to the former KSTC, currently a campus of the University of Nairobi?

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(2) Was the decision subjected to public and stakeholder participation? Was the area Member of Parliament (MP) and the Nairobi City County Government involved in arriving at this decision?

(3) What is the acreage of land on which KTTC stands?

(4) Before the directive by the Cabinet Secretary for Education to relocate KTTC to KSTC, was the University of Nairobi consulted as the current occupant of the facility, KSTC?

(5) What will be the fate of specialised laboratories installed at the great public cost at the Kenya Science Teachers College (KSTC) Campus? More specifically, what will be the fate of the School Equipment Production Unit (SEPU) that has been based at the Kenya Teachers Training College (KTTC)?

(6) Is the Cabinet Secretary (CS) aware that the decision to relocate KTTC will interfere with and interrupt the learning programme of both institutions? More specifically, is the Cabinet Secretary (CS) aware that a large number of students of KSTC will be deprived of cheap, habitable, adequate and convenient university facilities provided accommodation and be forced to make their own accommodation arrangements which may sometimes lead students to abandon their studies due to lack of affordable accommodation in Nairobi.

(7) What is the Government policy on the development and protection of tertiary institutions in the country?

(8) Can the Cabinet Secretary (CS) vacate this misguided, unpatriotic and oppressive decision to protect tertiary institutions?

Thank you.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. Let me ride on the same regarding Machakos Teachers Training College (MTTC), which has been frequently closed and giving students 10 minutes to vacate the compound. Could the Chairperson explain what is taking place in the said college?

There is also a Technical Training College (TTC) in Kabarnet in Baringo County, which is being turned into a university by force. I thought we said that technical colleges should not be converted to universities. Could the Chairperson explain further what is happening with regard to the same?

The Speaker (Hon. Ethuro): Order, Senator! I disallow that one. It is too heavy to be carried. You can do a separate statement.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is not the first time that a Government in this country is being misguided. Kenyans will remember how the then Kenya African National Union (KANU) Government attempted to put up a 64-story building at Uhuru Park and the late Prof. Wangari Maathai single handedly stood and stopped the project. That Sen. Wetangula has brought this very important matter here, we have an opportunity as Members of Parliament (MPs) to stand our ground and remind the Executive that they cannot dictate upon Kenyans as and when they wish.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! That is a matter for when the Statement has been responded to.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, yes. The further clarification ---

The Speaker (Hon. Ethuro): Or else, you are working on an assumption and assuming some answer.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, given that this Government does not have a very nice track record about respect for public land, could the Chairperson tell us what will become of the current institution and the more than 100 acres that the College sits on. Could it be that they now want to take it and put it to personal use the way they did at the Lang'ata Road Primary School?

The Speaker (Hon. Ethuro): Chairperson, please, respond.

Sen. Karaba: Mr. Speaker, Sir, in two weeks' time, I will be able to deliver the Statement. However, could I respond now to Sen. Wetangula's Statement? I know some of the answers.

The Senate Minority Leader (Sen. Wetangula): They are not your answers that you are giving but those of the Ministry.

The Speaker (Hon. Ethuro): You sought for two weeks and then you have a change of mind.

Sen. Karaba: Mr. Speaker, Sir, no, I am saying two weeks' time and I wanted to correct *Mheshimiwa* Wetangula that Kenya Science Teachers College (KSTC) is not the one which --- We will talk and you will correct.

(Sen. Wetangula spoke off record)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You had your bit and you were supported by two others. Why do you want a fourth one?

Sen. Karaba: Mr. Speaker, Sir, I wanted to correct him.

The Speaker (Hon. Ethuro): There is nothing to correct. You will correct at that time in the Statement.

Sen. Karaba: Mr. Speaker, Sir, okay.

CORPORAL PUNISHMENT IN TRAINING INSTITUTIONS

Sen. Nabwala: Mr. Speaker, Sir, I rise to seek a Statement pursuant to Standing Order No. 45(2)(b), from the Chairperson of the Standing Committee on Education. This is in regard to corporal punishment in training institutions. In the statement, the Chairperson should explain:-

(1) Whether the Ministry of Education, Science and Technology is aware that a teacher injured a student at Nyabururu Girls' High School in Kisii County while administering corporal punishment on the student last week.

(2) Whether or not disciplinary measures have been taken on the teacher by the Ministry, considering that corporal punishment in schools is outlawed.

(3) What the Ministry has done to sensitize teachers against the use of corporal punishment in schools.

(4) Whether there are mechanisms that the Ministry has put in place to monitor cases of corporal punishment in schools and ensure they are reported and appropriate action is taken.

The Speaker (Hon. Ethuro): Chairman, when can you bring a response?

Sen. Karaba: Mr. Speaker, Sir, give me two weeks together with that of Sen. Wetangula.

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The Speaker (Hon. Ethuro): order, Chairman! Sen. Wetangula's matter had been disposed. Why do you have to keep bringing it?

Sen. Karaba: Mr. Speaker, Sir, give me two weeks.

The Speaker (Hon. Ethuro): So, directed.

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

The Speaker (Hon. Ethuro): What is it Sen. (Prof.) Anyang'-Nyong'o?

(Sen. (Prof.) Anyang'-Nyong'o spoke off record)

The Speaker (Hon. Ethuro): Sorry.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. You heard the way the Chairman was responding carelessly. This issue has been in the media, intensely debated and we hear that the Ministry had even intervened. Is it in order for the Chairperson to ask for two weeks? That is something that he can get even in a day.

Sen. Karaba: Mr. Speaker, Sir, initially, I thought that the House is proceeding on recess. That is why I thought that in two weeks' time, the House will have come back from recess. That is the timing in which I wanted to fix myself. I will have had enough time to talk to the Cabinet Secretary (CS) over the issues.

MISERY OF RESIDENTS OF KASARANI IN MALEWA
WEST WARD, GILGIL CONSTITUENCY

Sen. Wangari: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45(2)(b), to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights. This is in regard to the misery of residents of Kasarani in Malewa West Ward in Gilgil Constituency who are classified as residents of Naivasha and Gilgil constituencies in Nakuru County. In the Statement, the Chairperson should state:-

(a) Whether the Government is aware that the residents of Kasarani in Malewa West Ward in Gilgil Constituency are classified as Naivasha residents and yet the Ward is in Gilgil Constituency.

(b) Whether the Government is aware of the lost opportunities that residents in this area have had to endure in the Government recruitment drives for the National Police Service (NPS), the National Youth Service (NYS), the Kenya Defense Forces (KDF) *et cetera*, where mobilization is on constituency basis. They are literally chased from Gilgil and asked to go to Naivasha Constituency where they are also chased back to Gilgil Constituency.

(c) The steps that the Government will take to rectify this anomaly and ensure that the residents get their rightful share of opportunities.

Thank you.

The Speaker (Hon. Ethuro): To which Committee was the request for Statement directed to?

Sen. Sang: Mr. Speaker, Sir, that is an important Statement and so we request for two weeks to enable us get a comprehensive response.

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The Speaker (Hon. Ethuro): Two weeks is okay.

Hon. Senators, we move to the Statements to be issued. In the usual manner, we will start with Statement (a).

DISAPPEARANCE AND BRUTAL MURDER OF CHILDREN
IN CHESUE VILLAGE, NANDI COUNTY

Sen. Adan: Mr. Speaker, Sir, I do not have the Statement. I request to be given more time. The Ministry responded that they are still working on it.

The Speaker (Hon. Ethuro): How much more time?

Sen. Sang: Mr. Speaker, Sir, I appreciate that there were a number of outstanding clarifications from the Chair but my specific one was for her to indicate to us the status of the case against one of the arrested persons over the same. She was to tell us that the accused has been charged. I do not think the status of that case should not take more time. I do not think that it should have taken the Chair more than a phone call to establish it. The vice-chairperson should give us the information on the status of the case tomorrow.

The Speaker (Hon. Ethuro): What is your response to that specific one?

Sen. Adan: Mr. Speaker, Sir, I will try to give the status of the case against the individual tomorrow.

The Speaker (Hon. Ethuro): So ordered. Statement (b).

PERSISTENT TRAFFIC CONGESTION ALONG THE
NAIVASHA-NAKURU ROAD

Sen. Sijeny: Mr. Speaker, Sir, I request for two more weeks because the substantive Statement had been issued and the Member who requested was satisfied. However, there were other further clarification questions sought by other Senators which have not been provided. Therefore, I request for another two weeks.

Sen. Obure: Mr. Speaker, Sir, I confirm that there were various requests made. The Question was responded to satisfactorily. However, I am aware that other Members sought additional information and that is what remains to be provided.

The Speaker (Hon. Ethuro): Order, Senator. The issue here is about the time. You have not responded to it.

Sen. Obure: Mr. Speaker, Sir, as far as I am concerned, the issues that I had raised were substantially responded to and I am satisfied with that.

The Speaker (Hon. Ethuro): I am a bit at a loss. However, bring the Statement in two weeks' time.

STREET FAMILIES AND URCHINS IN KENYA

Sen. Wangari: Mr. Speaker, Sir, I had promised to give the Statement today. Unfortunately, we are not seized of the Statement. We have spoken to the Ministry and they said that they are compiling the data required. The confusion was that we forwarded the Question to the wrong Ministry. They redirected us to the Ministry of Devolution and Planning.

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We have resolved that we will invite the Cabinet Secretary to ask these Questions because it is long overdue. It has taken over five months and we will report back in a weeks' time.

Sen. Leshore: Mr. Speaker, Sir, last week the gracious lady Senator promised to bring the answer today. It has been five months down the road. If they cannot bring the Statement to the House, may I ask her to summon the two Cabinet Secretaries from the Ministry of Devolution and Planning and the Ministry of Labour, Social Security and Services so that we question them here?

Sen. Wangari: Mr. Speaker, Sir, I understand the frustration of Sen. Leshore. This Question has been long overdue. I promise that we will call the Cabinet Secretary to the Committee first in the next one week so that we get the response.

If need be, we can summon him to the House, if it is not satisfactory.

The Speaker (Hon. Ethuro): Order Senator. Are you calling him or you have already invited the Cabinet Secretary?

Sen. Wangari: Mr. Speaker, Sir, we have not invited him but we will. We have a meeting tomorrow.

The Speaker (Hon. Ethuro): You cannot summon if you have not invited in the first instance.

Sen. Wangari: Mr. Speaker, Sir, we have a meeting on these issues tomorrow. It will be in our agenda to invite the Cabinet Secretary.

The Speaker (Hon. Ethuro): The response to be issued in two weeks' time.

DISMISSAL FROM SERVICE OF PRIVATE
ABDIRRAHMAN OMAR MADEY

Sen. Adan: Mr. Speaker, Sir, this is Sen. Bule's Statement but he is not in the House. I do not know whether I should proceed.

The Speaker (Hon. Ethuro): He was here.

Sen. Adan: Mr. Speaker, Sir, since I have shared the Statement with him, I can proceed.

The Speaker (Hon. Ethuro): Since he may be in the neighbourhood, let us give him the chance. We will come back to it.

FATE OF TEA FARMERS WHO LOST MONEY IN THE
COLLAPSE OF THE IMPERIAL BANK AND CHASE BANK

Sen. M. Kajwang: Mr. Speaker, Sir, while the---

The Speaker (Hon. Ethuro): Order, Sen. M. Kajwang. Before I allow you, there are House procedures and you have been around long enough to know. You make a request, wait to be granted and then proceed to speak. You cannot just stand and speak. You have even withdrawn your willingness to speak.

Sen. M. Kajwang: Mr. Speaker, Sir, I am responding on behalf of the Chair of the Committee on Agriculture, Livestock and Fisheries. As you know, the Chair of the Committee is away in China, learning new tricks. So, I am a Member of the Committee

and I wish to respond but as you pointed out, I will wait for you to grant me the opportunity to respond to the matter.

The Speaker (Hon. Ethuro): Order, Senator. The opportunity is now. It is only that you did not give me an indication that you are the official responder. Secondly, you did not put the request so that I can recognise you.

Proceed.

Sen. M. Kajwang: Mr. Speaker, Sir, this Statement is ready. However, it is only today that we have shared it with the Sen. (Prof.) Lesan. The Statement contains about six tables. I have sought the indulgence of the good Sen. (Prof.) Lesan and he has requested that we allow him to internalise the response and then we can debate the matter tomorrow.

(Sen. (Prof.) Lesan) stood up in his place)

The Speaker (Hon. Ethuro): Order, Members! Sen. (Prof.) Lesan, I will not entertain you. Both of you have been in this House for a long time. I have advised on this matter severally, or repeatedly, if you wish, that such mundane matters; you agree on something, approach the Chair and we dispense with it. We do not have to make use of valuable plenary time. So, that Statement will appear on the Order Paper tomorrow.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. The Statement sought by Sen. (Prof.) Lesan cuts across all the tea growing areas and it affects many farmers. For example, Murang'a is the largest small-scale grower of tea in the country. Therefore, the farmers must be also very adversely affected. May I request for your indulgence---

The Speaker (Hon. Ethuro): Are they also the largest contributors to Imperial and Chase banks?

Sen. Kembi-Gitura: Mr. Speaker, Sir, that is a private affair. I do not know who the shareholders are in those two banks. Sen. M. Kajwang says the statement includes a lot of annexures. I would wish that it is tabled so that we get copies so that we intelligently interrogate it when it appears on the Order Paper tomorrow, or maybe on Tuesday, next week. That is my request.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir; on a point of order. I thought you were a bit harsh on me, but I do appreciate. I have just seen this statement and it has got a lot of figures. Therefore, I request the Chairperson to give us up to tomorrow to look at it, so that we can answer tomorrow. Since the Senator has said it, it is of interest then I am sure more copies would be made and then we can all interrogate. So, we accept that we be given an opportunity tomorrow.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lesan! Where is the harshness of the Chair there? All I said was that you are repeating what he had already told the House. Let us save ourselves from being repetitive which is in the Standing Order. Once Members have agreed on some issues, they will approach the Chair and we will process that matter.

Hon. Members, the request by the Deputy Speaker is valid since there is quite a bit of interest. This is a major cash crop in our country and definitely many of us will be very keen. It is the tradition of Parliament that sufficient copies of both Reports and Statements are made. So, let the response of the Statement be copied and be availed to

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Members from wherever you pick your documents. This will be tabled tomorrow for us to make copies. Tabling does not require a week.

MURDER OF MR. MUSA KOECH FROM
NANDI COUNTY

Sen. Adan: Mr. Speaker, Sir, I also do not have this Statement. I am requesting to be given one more week to respond to the Statement.

The Speaker (Hon. Ethuro): Once more, Sen. Adan versus Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, this was a very important Statement on the murder of one Mr. Musa Koech by police officers. With these kinds of statements, we would expect that the Cabinet Minister for Interior and Coordination of National Government who is in charge of internal security would take them more seriously.

However, we continue to see the Cabinet Minister commenting on extra judicial killings and such things casually out there. When we make formal request for information it appears that it is not forthcoming. I would have no problem with the extra one week, but the Cabinet Minister or the Chairperson of the Committee on National Security and Foreign Relations should come back to this House with nothing less than a response to this because it is such an important matter.

The Speaker (Hon. Ethuro): So ordered. The statement shall be issued in one week. Let us move to the Statement (g).

LEADERSHIP CRISIS AT MOI UNIVERSITY

Sen. Karaba: Mr. Speaker, Sir, I am reporting that right now the Cabinet Secretary for Education is having a meeting over this issue and my clerk is waiting outside his office. As soon as the meeting is over, I can get the report and release it to the House. So, I am still waiting. In the meantime, we will be pleading for another one week, if we will be here. Short of that, then we plead for the usual two weeks. I am sure it will be ready by tomorrow.

The Speaker (Hon. Ethuro): Order, Members! If there is a meeting on that issue today and the clerk is waiting at the door, why do you need a week? The Statement will be on the Order Paper tomorrow afternoon. It is the consequence of your statements and cannot be otherwise.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, on a point of order. Before we move away from the Statements, last week I requested the Chair of Security---

The Speaker (Hon. Ethuro): Order! Order Sen. Wetangula! I will still come back to you. I thought it was on the---

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, no it is within Statements.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Let us give Sen. Murkomen and then I will still come back to you.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. You heard the Chairperson for the Committee on Education say a clerk of the Senate is standing outside

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the Minister's office waiting for the Statement. With that kind of efficiency, if it is efficiency or commitment, can that clerk be established and identified and given a reward. If, indeed, we have the evidence, can the Chairperson confirm the evidence that the clerk is there? If it is true that clerk is standing by the door of the Minister, that clerk deserves a promotion or an award because we have been struggling in this House to get statements by all means.

The Speaker (Hon. Ethuro): Order, Members! I appreciate the statement by Sen. Murkomen, but we do not discuss clerks here. Sen. Murkomen should have confined this matter to commending Sen. Karaba for giving such instructions. For now, I am afraid Sen. Murkomen should be satisfied with the assertions of his Chairman for Education.

PLIGHT OF KENYAN REFUGEES FROM UGANDA CAMPING
AT THE ENTRANCE OF PARLIAMENT BUILDING

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, on Thursday, last week I made a request for a Statement in regard to a group of Kenyans who are picketing outside the Senate gate. There is a banner there indicating that they are refugees and returnees from Uganda. Since the Chairperson of National Security and Foreign Relations promised to bring a Statement later this week, the Speaker has directed that some remedial action be taken by the Government to remove those Kenyans from staying at the gate of the Senate day and night.

These are women and children who have not facilities. They do not have toilets and facilities for cooking. The number appears to be increasing and it is not good, first, for the image of Parliament, second, for the image of the country. Thirdly, they are Kenyans that deserve to be given some remedial measure, to be taken away from that gate as their case is being addressed. Sen. Haji, the Chairperson of the Committee promised that something would be done immediately. Could the Vice Chairperson, who is present, tell us why those Kenyans are still picketing at the Senate gate from last week?

The Speaker (Hon. Ethuro): Vice Chairperson.

Sen. Adan: Mr. Speaker, Sir, I believe you are aware that the Chairperson is out of the country. I have not followed up to check what the Government has done, but undertake to go to the Ministry this afternoon and find out whether they have taken any action, and respond tomorrow afternoon.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. The year 2017 will be the tenth jubilee since these people went to Uganda. Could something be done expeditiously, so that they do not *sherekea* the eleventh jubilee outside Parliament? I am saying this because I saw something about this being their tenth jubilee since they went to Uganda.

The Speaker (Hon. Ethuro): Sen. Orengo, I do not understand.

(Laughter)

Sen. Orengo: Mr. Speaker, Sir, I was out there and one of them told me that they went to Uganda in 2007. This year will be the ninth jubilee since they went to Uganda.

They hope not to celebrate their tenth jubilee without having any consideration from a Jubilee Government.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. With great respect to Sen. Orengo, can he confirm that he is talking about ‘anniversary’ and not ‘jubilee,’ for the sake of the HANSARD? ‘Jubilee’ has a totally different meaning from ‘anniversary’.

Sen. Orengo: Mr. Speaker, Sir, I am reporting to the House what I was told. I spoke to some of them and those are the words they used. They were trying to make a point. If you are not seeing the point I am trying to make, then woe be unto you. They were making a specific point about this being “their jubilee”. I do not know why a political party is also called ‘The Jubilee Party’.

The Speaker (Hon. Ethuro): Order, Sen. Orengo! All of us in this country have reason to believe that you are quite a good communicator. Even if you were told what is wrong, I am sure that you would not want to transmit the same, especially to your colleagues. If you are quoting, I believe you also know how to do so. What you are attempting is obvious to everybody, but the message has been conveyed.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. I heard the Vice Chairperson clearly respond by saying that the Chairperson is out of the country and that she undertook to go and handle the issue today. It is almost a week since those people came here. We see children playing and crying on daily basis. You will find them even as late as midnight. The responsible department should be sensitive enough to realize that these Kenyans require a decent shelter, like a tent, where they can wait. This is a serious issue that should be treated as an emergency.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I rise on a point of order in line with Standing Order---

The Speaker (Hon. Ethuro): Order! I will come to you.
Vice Chairperson.

Sen. Adan: Mr. Speaker, Sir, as I said earlier, I do not have an answer right now. I promise that I will go to the Ministry and give feedback to the House tomorrow afternoon.

The Speaker (Hon. Ethuro): Order, Members. That is a fair request; let us give the Vice Chairperson another 24 hours to respond to the House.

Sen. Abdirahman.

PAYMENT OF SALARY AND ALLOWANCES TO ISSA OMAR HUSSEIN

Sen. Abdirahman: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45 (2) (b) to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding payment of salary and allowances to Inspector Issa Omar Hussein, who has been serving the police force for the last 28 years.

In the Statement, the Chairperson should state:-

(a) the employment status of Inspector Issa Omar Hussein, Personal No.88065783;

(b) why Inspector Omar Hussein was removed from the police payroll since November, 2012; and,

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(c) what the Ministry will do to reinstate payment of salary and allowances to this officer who had served the police force diligently for 28 years.

Sen. Adan: Mr. Speaker, Sir, I will respond in two weeks.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. (Prof.) Anyang'-Nyong'o.

NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO. 33

STATUS OF THE NORTHERN COLLECTOR TUNNEL PROJECT IN MURANG'A COUNTY

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, in accordance with Standing Order No. 33, I would like to move that this House adjourns to discuss a matter of national importance.

Realizing that Article 96 of the Constitution gives this House the responsibility of promoting, defending and articulating the interests of counties;

Recognizing that the Murang'a County Government commissioned a thorough review of the Northern Collector Tunnel Project and that a report of the technical Committee has already been availed by Murang'a County Government;

Noting further that the County Assembly of Murang'a has equally been seized of this matter and has raised pertinent issues on questions regarding the availability and accessibility of fresh water to the people of Murang'a and the counties along the Tana River Basin;

Realizing further that this matter has provided debate in the media and within the political class, a debate that this Senate should be seized of, and from the point of view of facts and issues pertinent therein, take a stand as a Senate in line with Article 96 of the Constitution;

Cognizant of the fact that the problem of accessing fresh water is a major global problem, not just national, and an environmental issue to other nations;

Now therefore, This House would, therefore, like to discuss this matter of the Northern Collector Tunnel so as to understand the pertinent issues and to defend the interests of the counties concerned.

(Several Senators stood up in their places)

The Speaker (Hon.) Ethuro): Order Members. We are lucky as a House that somebody's opinion is immaterial. It is the Standing Orders.

STATEMENTS

There was a matter on Statement (d) which will be dropped and then the Member can petition the Chair.

DISMISSAL FROM SERVICE OF PRIVATE ABDIRAHMAN
OMAR MADEY

(Statement dropped)

On the matter of Statement (c), I thought I saw the Chair enter.

STREET FAMILIES AND URCHINS IN KENYA

Sen. Madzayo: Mr. Speaker, Sir, we received a response from the Ministry of Labour Social Security and Services and they indicated that the Statement did not belong to the Ministry.

The Speaker (Hon.) Ethuro) I am sorry Sen. Madzayo. Sen. Wangari, is this the question that you handled?

Sen. Wangari: Yes, Mr. Speaker, Sir.

The Speaker (Hon.) Ethuro): It has been handled. That is the end of Statement Hour. We will go back to Order Nos. 5 and 6 on a matter that was brought to the attention of the Speaker.

Sen. (Prof.) Lesan!

PAPER LAID

REPORT ON APPEALS FOR TRANSFER OF FUNCTIONS
BY COUNTY GOVERNMENTS

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Sessional Committee on Devolved Governments on the Appeals for Transfer of Functions by Various County Governments.

(Sen. (Prof.) Lesan laid the document on the Table)

The Speaker (Hon.) Ethuro): Order No. 6.

NOTICE OF MOTION

ADOPTION OF REPORT ON APPEALS FOR TRANSFER
OF FUNCTIONS BY COUNTY GOVERNMENTS

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

THAT the Senate adopts the Report of the Sessional Committee on Devolved Governments on the Appeals for Transfer of Functions by Various County Governments laid on the table of the Senate on Tuesday, 18th October, 2016.

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The Speaker (Hon.) Ethuro): Order Members.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MUTHUANI PRIMARY SCHOOL, KITUI COUNTY

Hon. Senators, I wish to recognize the presence of visiting pupils and teachers from Muthuani Primary School, Kitui County. They are seated in the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

Thank you.

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

The Speaker (Hon.) Ethuro): What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, would I be in order to request that you order your office to always inform you when the Gallery has people or not because you were introducing visitors who were not there.

The Speaker (Hon.) Ethuro): Order Members. I think the point raised by Sen. (Dr.) Machage is valid but since they were there and we were proceeding with some business I think that recognition was deserved even if they were not there. You can always be recognized in absentia. It is even better now that they are back. They know they have been appreciated. Your point is noted. The worst part would be another delegation.

We can use the Supplementary Paper which is in circulation. We now move to Order No. 8 as per the Supplementary Order Paper.

What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, as we move to Order No. 8 would I be in order to seek your guidance on how we handle Motions and Bills in the House? How would you guide the House in a situation where the mover of a Motion or Bill becomes absent continuously when his or her Motion is being debated without even delegating to any other Member to sit and hear the discussion?

The Speaker (Hon.) Ethuro): Order Sen. (Dr.) Machage. That is ambush and it has nothing to do with Motion No. 8. Wait for the relevant Motion and then raise that matter. Clerks could you call out the Motion?

MOTION

ADOPTION OF REPORT ON APPEALS FOR TRANSFER OF FUNCTIONS BY COUNTY GOVERNMENTS

The Speaker (Hon.) Ethuro): The Chairperson, Sessional Committee on Devolved Government.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I beg to move that the Senate adopts the Report of the Sessional Committee on devolved governments on the appeals for transfer

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of functions by various county governments laid on the table of the Senate today, 18th October, 2016.

In the last one year, various functions have been requested and transferred to the counties. The last time all the 47 counties requested for the transfer of functions, they were granted those functions and they were gazetted.

However, there were nine counties that had appealed on the transfer of these functions and it necessitated that Senate looks at the Bill and consider the merits and the demerits of the requests that were made by the various counties. These counties included Embu, Murang'a, Kiambu, Lamu Marsabit, Migori, Nyamira, Tharaka-Nithi and Siaya counties.

Mr. Speaker, Sir, after consideration, Kiambu County withdrew the appeal and the rest of the eight appeals were considered by Senate. We took time and arranged a stakeholders' meeting including the governors of the counties who had made the appeal. They came forward and appealed for the functions they had required to be transferred. These included functions in agriculture, county roads, environment, rural electrification and library services. Those were the main ones that were requested by the various counties.

The Sessional Committee on Devolved Government considered all these appeals and made recommendations which I have just tabled. I am going to ask the Senate to consider and adopt the recommendations that were made in the Report to enable these functions to be transferred to the counties and be formally gazetted.

Mr. Speaker, Sir, the request for transfer is in conformity with the Constitution where when counties feel it is necessary, appropriate and of better service to the public, they can appeal to have some functions to be transferred to the counties from the national Government. The considerations that we have made in the appeals meet that criteria in that the counties that have made these requests have shown the capacity to make deliveries on these functions.

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

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

Mr. Deputy Speaker, Sir, the Committee was careful when they were considering this because of certain concerns that it noted. The Committee is still worried about the application and implementation of the functions that we give to the county governments. One of the considerations that we have seen is those of the assets and liabilities. We are aware and noted that counties have been requesting that assets be transferred to them. Unfortunately, they have been selective.

They have required that we transfer the assets to them but they have not been keen to have liabilities that go along with these assets to be transferred to them. Regarding the assets that we have transferred to them, the Senate is concerned about the many assets that were held by the Transition Authority (TA). The TA was unable to complete the process of transferring these assets and they are currently neither in the hands of the governors nor in the hands of TA because TA does not exist.

Mr. Deputy Speaker, Sir, the Devolution Committee is a worried lot in terms of the security of these assets that are spread all over the country and that should be in the hands of the governors or the county governments. We are aware that the county governments do not have a register of these assets. These assets are valuable because they includes assets like land, mechanized equipment and other assets which we thought and we are considering transferring them in a structured manner so that they do not get lost.

However, for the assets that have been appealed by the eight counties, we have considered them and made recommendations that this request be acceded to and the functions that have been requested be transferred. I, therefore, ask the Senate to consider recommendations that we have made and allow the counties to receive the functions that we have transferred to them.

I want to ask Sen. Murkomen to second the Motion and make observations on what transpired as a Member of the Devolved Sessional Committee.

Sen. Murkomen: Thank you, Mr. Deputy Speaker, Sir. This is one of our serious responsibilities as Senators. I want to thank the Chair for leading this House in ensuring we expeditiously deal with the transfers that came from various counties. There were various appeals related to clarification on matters related to environment like forests. Some of those appeals came in just before we passed the Forests Act. In this Report, we have observed that those concerns have been taken care of under the law. This is also a recognition – and I want to thank the counties that made the appeal – of the awareness they have on matters related to their functions as county governments.

Mr. Deputy Speaker, Sir, if you notice in these appeals, various counties like Elgeyo Marakwet County wanted to be part and parcel of the county that shares the resource of Chebororwo Agricultural Training Centre with the other counties. It has been captured there that all the counties including West Pokot, Trans Nzoia and Turkana are going to be beneficiaries of that institution.

If you look at Embu County, for example, most of the counties were dealing with matters related to grain storage and we said agriculture is an exclusive mandate of the counties and that National Cereals and Produce Board (NCPB) should not hinder any county that is willing and ready to spend resources to build a storage facility. For example, if a county like Tana River had stored grain and they had strategic grain reserves within the county, the county government would have bought the grains and distributed to their residents at this time of drought. That applies to Kiambu County that appealed on the same issue.

On the rural electrification, there was an interesting appeal on matters of it that came from Kiambu County. You can notice that this is a concurrent matter and we have encouraged the counties to have a joint implementation framework that is related to distribution and reticulation of energy as provided for in the Fourth Schedule (1) and (2) of the Constitution as a concurrent function that is affecting both levels of government.

Mr. Deputy Speaker, Sir, we have also noted that on matters of library services, these were already transferred to county governments. The issue that is bothering them is implementation. Unfortunately, many counties want to feel the part of saying a function has been transferred to them. If you go to many places, one of the functions that counties have neglected is the function of library services.

You will find that many counties are rushing and they want to be given national Government functions that do not fall under their mandate. These include issues like funding of primary or secondary schools which is not a function that is transferred. However, many counties are arguing to be given that responsibility while ignoring important functions like library services.

So, in our observation, this is a question of implementation. We have recommended that the county should go ahead and build community libraries that are going to be useful and used by the community and the people of the county to access knowledge. So, we noted in many instances that these are matters related to county governments.

Mr. Deputy Speaker, Sir, if you come to roads, there are many counties that talked about it. As you are aware, in our first transfer of functions, we noted that class A, B, C should be a national function; classes D and E and unclassified roads be county functions. This is a concurrent function. This was something that was dear to the late Sen. Gerald Otieno Kajwang who was then the Senator for Homa Bay County. I remember debating how we can deal with this Roads Bill. We ended up saying in the first transfer functions that we needed a legal framework that will make proper classification.

The Roads Bill is under consideration by a Committee of this House chaired by Sen. Chiaba – I cannot notice any of the Members here – but it is an important Bill capturing the concurrence function. It says this function be transferred to the necessary institutions. This report is very critical in clarifying what is a concurrent and what is an exclusive function of a county *vis-a-vis* the exclusive function of the National Government. It also advises the counties on what they need to do or which law they need to consult when it comes to matters of transfer of functions based on the legislation that we passed here after debating them with a lot of commitment. I thank our Committee for a job well done.

This is a report that we should not stay with it for too long. Being a Member of the Rules and the Business Committee, we thought we should prioritize it today so that we have a Division tomorrow and conclude it. That will transfer these functions. The counties can, therefore, continue putting structures and institutions in place for implementation of the functions that are being transferred to them in the last part of this year before the elections.

It is good to remind ourselves that there are things that are not transferred to the counties. Corruption, the big man syndrome and dictatorship have not been transferred to the counties in this report. Service is what has been transferred. It will be implemented by servants and not lords. We expect the leadership at the county level to focus on being servants of the people. Previously, a lot of focus has been on the big man. People have focused on things such as, who will speak first or who will speak last. There have also been debates on what people own and what they did instead of the service that has been rendered to the people.

Devolution is a chain. There are many players in that chain. I have attended meetings where people think that Senators are like flower girls or page boys in the devolution process. Sen. Wako and Sen. Orengo will tell you that the counties would not be getting money if we did not fight for the role of the Senate in 2013 in so far as transfer of money is concerned. I say this because when you attend meetings in our counties, you

will hear some governors say the money would still come, whether the Senator is there or not. The question is which money would have come?

You will all remember that if we did not assert our constitutional duty as the Senate in 2013, we would not have reached a situation where the Executive and the National Assembly respected the amount of money that is going to the counties. The debates in this House together with the work of the Committee on Finance, Commerce and Budget have played a key role in determining the amount of money that goes in the counties. In my report card to the people of Elgeyo-Marakwet County, I can say without any fear of contradiction that I have ensured that the amount of money that is shareable to the counties is more, thus Elgeyo-Marakwet gets more money. I have a legitimate responsibility and role under Article 96 to go back to my county and ask how the money is being used.

Elgeyo-Marakwet County and its neighbour, Baringo County, are facing challenges on matters of security. Security is a national function, but the county governments should provide enabling mechanisms of dealing with security by providing an environment where our youth are kept busy. There should be access roads that enable security officers and the people of the county to access all areas for security enforcement. A Governor cannot, therefore, sit and say that they have no role in facilitating the security team to do its work. This is because we have transferred to them the cluster roads, thus they should allocate money to ensure that these roads are accessible. The counties cannot say that security is not their role because they have the enabling responsibility that facilitates the functioning of that role.

Agriculture is a devolved function. There are a lot of watermelons that are being grown along Kerio River valley. Developing Kerio River and that area is a function of Baringo, Elgeyo-Marakwet and West Pokot counties. They are supposed to put resources to ensure that the youth who would have engaged themselves in cattle rustling and acts of violence are having an alternative thing to do. Therefore, there is something that our counties can do through devolution to facilitate an environment that averts a possibility of violence going forward, and this could be through farming.

The politicians are taking advantage of idle youth on the ground because devolution has not become an answer to their problems. I urge my colleagues, including the Baringo and West Pokot Senators and Governors to be agents of change. That is better than saying that you came to this House and succeeded in life. It is not right for us to go back and tell children of poor people in Elgeyo-Marakwet, West Pokot and Baringo counties that they shall remain there practising cattle rustling and fighting over land when we know that our children have better opportunities of education. That is why investing in the right environment in so far as devolution is concerned is the only way for us to move forward.

That is the reason as to why Sen. Anyang'-Nyong'o and Sen. Sang have received a different call from the one they received in 2013. They now want to serve as governors in their counties. As an example, the Senators should be willing and ready to go and implement what we discuss here because I do not know if the current governors and MCAs are doing so. This is a very good document for our colleagues who will be governors.

They must implement the things we are talking about here so that those of us who come back to play the role of oversight, should say that we had men and women who worked with us here, preached access to services, democracy and change and are now the change that we have been waiting for. They should have the respect that we want for this House and should be ready to be servants and not lords over the people of this Republic.

With those many remarks, I beg to second this Motion.

(Question Proposed)

Sen. Abdirahman: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Motion. After listening to Sen. (Prof.) Lesan and Sen. Murkomen, I thought of not supporting it, because of the expressions they made with regard to performance in the counties or the failure by the Transition Authority (TA) to effectively transfer all functions that are designated for counties, as well as the passive nature of the successor to the TA, which is the Intergovernmental Relations Committee.

Devolution is still at its embryonic stages for the fourth year running. A number of things have not fallen into place. Management of resources in counties, planning and prioritizing projects is still an issue. Public participation in identifying what the issues are in the counties is another factor. We thought devolution would help our local people in terms of meeting their demands. However, it is yet to realise its full results. I say so because at some point, there was a Bill sponsored by Sen. Sang on the County Development Boards. It failed to take off because of the interference of courts in this country.

I am not saying that what is in the Constitution justifiably should not be given to counties. However, we should have looked at performance in the counties with regard to resource management. We should also have looked at the impact of the resources that we are channeling to counties. We do not have an elaborate plan, for instance, a mid-term review. By last year we should have known whether the billions we have channeled have given us value for monies that were spent in counties.

We are going into the fifth year; the final lap. We should have reviewed the current Budget that is being spent by counties on recurrent or development projects. As the national Government, Members of the Senate and communities that are supported through these funds, we should rate them and get some consensus on how best these things should have been carried out. From an overall position, there is an indication that a number of our counties have not performed effectively, and I am deeply concerned. We may want to transfer functions, but are they being handled as expected?

The issue of service delivery has not been brought forward. Many county executives assume that putting up a physical structure is as good as service delivery. Service delivery is quite different from putting up a hospital, a maternity wing or a dispensary. Putting up a classroom for an Early Child Development (ECD) class may not necessarily translate into improved enrollment or good performance. Therefore, putting up a physical structure is not the same as service delivery. A number of Senators, including me, have moved around several counties. When we see very huge structures put up by governors, we always imagine that they have done very well. We do not look at the actual ingredients with regard to service delivery.

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I will support this Motion because of the specific county governments - the eight or nine that we are told - have made this request and their appeals, which our Committee has listened to. I have run through the recommendations of the Committee and feel that we should grant these eight because they are not major. However, we must look at the major issues.

We should not keep on allocating funds to counties without holding them accountable. We are trying our best through our County Public Accounts and Investments Committee. County governors have been held to account severally. However, I call upon state agencies to act on where there was impunity in terms of haphazard hiring of people, trying to please cronies and political affiliates. There was no seriousness on the part of a number of county governments. As the Senate, God and even our own communities will hold us responsible for this. We must come out clearly and speak against these vices that happened in the county governments during our tenure.

Finally, we also need to prop up the Intergovernmental Relations Committee. I do not feel its presence all. The TA under Kinuthia was much better.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura) Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Motion. First of all, I would like to commend the Committee that worked on this Report that contains some proposals. Having had an opportunity to follow the workings of the Senate from outside for the first three years of devolution, I have a better understanding. There is the benefit of observing the Senate from outside; reading through newspapers, watching the debates of this Senate, as well as listening to other public participation functions.

This is an extremely important piece of information. It goes into the depth and breadth of the challenges that our county governments are facing. For the first time as a House, we should move away from a victim mentality, where at the slightest of opportunity we take a swipe at the governors and other people working in the county governments. We need to appreciate that some of the inefficiencies that we see in our county governments are not so much to do with the person of the governor, but with the structures and systems put in place. It is the first time that this system of government is being implemented.

I read some of the final reports that the TA did at the end of their tenure before handing over fully to the county governments. One of the key areas that county governments are most challenged in is in terms of capacity. The people who run different departments, say, procurement and agriculture are not well qualified. Some of the top professionals from different communities were not sufficiently convinced that there is good reason to leave the comfort of Nairobi and other major towns and go somewhere deep in Turkana, Samburu and other places. Therefore, the locals who had minimum or no experience at all got the chance to serve in some very senior positions in our county governments. This has affected the work being done at the counties.

I am privileged to be a Member of the Standing Committee on Finance, Budget and Commerce. If there were well trained and experienced procurement professionals serving in the counties, 99 percent of the petitions that come to our committee could be avoided. As time goes by, some of these things will be taken care of by nature. Sen.

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Murkomen alluded to the fact that people receive different calls at different times. That is why we have Senators who have expressed interest. They have said they feel better prepared to serve in the county governments as governors and not as senators as was the case in the previous elections.

My only request, as a Senator who still feels that my call and duty remains to be in this House, is that they should not go and be an embarrassment and start being part of some of the things we have been seeing lately. I can see one of them seated here. I want to tell them that we will be even harsher on them. When we will be going through some of the petitions that will come, they will not have the chance to tell us that they did not know these things because they will have served in this House.

They should remember that they used to legislate and speak very harshly when county governments let down the dream of devolution. To add on a political note, for those who might get the call next time, you will set a very bad precedent whereby it will be known that when people move from this House to go and occupy office space, for example, at Delta House which is to mean that they have succeeded in becoming governors--- I urge them to go and set a very good example.

Some of the functions that were supposed to be transferred to counties such as agriculture have not been fully implemented. I do not know of a county that has the capacity to take up a particular role that was performed by the national Government. Are county governments thinking of alternative solutions? What is it that they can do by, for example, putting up a building that will be properly used within a certain county without causing the taxpayers of that county a lot of money unnecessarily but still offer economic value?

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support. I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, did you request the Floor?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I was going to contribute to this debate but somebody has just stolen my copy of the report. That is bad manners in the Senate.

The Deputy Speaker (Sen. Kembi-Gitura): Would you like to come later? I can give you time to look for it if you wish.

Sen. (Prof.) Anyang'-Nyong'o: I had looked at it but this idea of pinching documents is not good manners in the Senate.

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

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order? Are you the culprit?

Sen. Sang: Mr. Deputy Speaker, Sir, is Sen. (Prof.) Anyang'-Nyong'o in order to make an assertion that would give the indication or presumption that we have thieves in this honourable House? He said that somebody has stolen instead of using a more appropriate word like somebody must have picked or something like that. The word "stealing" gives the impression---

The Deputy Speaker (Sen. Kembi-Gitura): Do you want him to baptize the word "stealing?"

Sen. Sang: He should use a polite word. I am not the culprit of picking, stealing or whatever it is. Is he in order to use such a tough term?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o did not use the word "stealing." I listened to him carefully and he used the word "pinching."

Sen. (Prof.) Anyang'-Nyong'o, did you use the word "stealing?"

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I used the word "pinching" but when they raised objection, I said "stolen". I discovered that maybe they did not understand the meaning of "pinch."

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, you know that using the word "stealing" is not Parliamentary language.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I apologise and withdraw. Let them not pinch my documents next time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, I request you to withdraw that.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I apologise and withdraw.

Mr. Deputy Speaker, Sir, the report on the appeals for transfer of functions by various county governments is a very important report. When I was in the Committee on Devolved Government, I raised it when we met the then Cabinet Secretary (CS) for Devolution and Planning, Ms. Anne Waiguru. In some of our very early meetings, I asked her when the Government will implement Transitional and Consequential Provision No.17 that provides that provincial administration will be reformed or restructured to conform to the system of devolution within five years of the coming into effect of the Constitution.

Mr. Deputy Speaker, Sir, if I were to ask the Government today how the system called provincial administration has been restructured to conform to the system of devolution, I will probably be told that now we have regional commissioners instead of provincial commissioners but that is all because the chiefs and assistant chiefs are still there. Nobody ever said that the chiefs and assistant chiefs should lose their jobs but the transitional and consequential provisions provide that the system of provincial administration should be restructured to conform with devolution.

One of the reasons why we have insecurity in the rural areas and counties is because the function of security which was an important function of the provincial administration has not been restructured to conform with devolution.

Mr. Deputy Speaker, Sir, the County Governments Act is very detailed in the extent to which devolution should be structured. It begins from the foundation of devolution in the village where it provides that there shall be a village council and village administrator. If you read the County Governments Act, the functions of the village council are so fundamental to security that if we were to implement devolution to the letter, the role of chiefs and assistant chiefs would have to be structured to conform with devolution.

At the moment, many counties have not established devolution in line with the County Governments Act. Even if they have, the functioning of the foundation of devolution at the village level is weak. In Tanzania, if you are in a neighbourhood, the system of security and intelligence will know that you are a *bona fide* visitor whose security must be guaranteed and protected and you are not somebody who is in that particular neighbourhood for ill intention.

Secondly, I the reason I am very particular about the foundations of democracy and devolution is that a village council is extremely important not only for implementing the planning project of development and devolution, but also implementing them in terms of popular participation. If counties do not have structures up to the village level that enable and facilitate popular participation as envisaged in the Constitution as well as the County Governments Act, then, indeed, we are not serious about implementing devolution.

Therefore, this report that appeals for the transfer of functions to various county governments is extremely important. The national Government should be filial to the Constitution and the transitional and consequential provisions because this country is a rule-based country as a constitutional democracy. What is glaring in counties is that certain institutions have not been transferred to the county governments and that must be done expeditiously.

Mr. Deputy Speaker, Sir, let me take the area of agriculture which is a county government function. Therefore, all the functions that were resident in the national Government before the coming to be of the present Constitution ought to be transferred to the county governments. For example, one of the reasons why we went to court to stop the Government from privatizing the sugar mills is because we realised that privatisation was being done without taking cognizance of the County Governments Act and the Constitution.

Land and agriculture are county functions. I am the Chairman of the County Public Accounts and Investments Committee (CPAIC). Factories are an investment on land and agriculture in counties. If the structure and ownership of that investment will change, we must involve ourselves in the discussion. The aspect of Government responsible for land and agriculture must express its interest and how it will be done.

The ability to take a quantum leap into the new Constitution and do things in a different way has become rather difficult for the Kenyan Government. When it comes to the nitty-gritty of transferring functions except the obvious, then there is reluctance to do so. This delays development, job creation and expansion of the economy.

Mr. Deputy Speaker, Sir, another area is infrastructure. There is no God given law that stops any county from establishing a rail system or says that communication within a county will forever be by road. Earth roads are in the long run very expensive to maintain. You have to grade them every year and pay people to do so. If you compute the amount of money that a county government will spend over five years grading county roads, it is much cheaper in the long run to establish light rails in counties and have rapid transit systems using coaches than travelling by road.

In more civilized countries, rail road transportation is the in-thing. In most cities of the world, light rail system can be used by deploying commuter trains. I was in the little city of Poznan in Poland in May. They use electric buses running on rails. That little city is not bigger than Kisumu but the importance of using rail transport where rail cars run is cheaper and secondly, environmentally friendly. With the rate at which population growth is taking place in our country, particularly in the urban areas, within the next 25 years, majority of our people will be living in urban centres. They will need transportation. Thinking that we will rely on road transportation with a lot of petroleum products is short sightedness.

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Therefore, when it comes to communication, the Kenya Urban Roads Authority (KURA), the Kenya Rural Roads Authority (KeRRA) and so on must realise that their responsibility lies more in counties where urban centres are growing. The sooner the county and national government work together to ensure that we move away from road based transportation towards rail or electric powered transportation, the better.

There is evidence that very soon we might be one of the countries that produce a lot of petroleum products. The use of petroleum products is finite. It cannot be there forever. So, thinking 100 or 200 years ahead is much better than thinking in the immediate. Some of the rail roads in Europe, India or South Africa were built many years ago. They are still functional. Improving them is much cheaper than investing in roads. I am not saying that we abandon road transport all together but if we will rely on road transport, we must rely on bituminized roads. This means that you have to import bitumen which is a petroleum based product. Very soon, when we discover enough oil, we will, of course may find that making bitumen is much cheaper.

Mr. Deputy Speaker, Sir, under the Intergovernmental Relations Act, this transfer of functions should be done expeditiously. We should look at functions that can make counties grow fast, reduce recurrent expenditure and make sure that they are given to the counties. The counties should use these functions efficiently for the purposes of rapid economic growth. Unfortunately, during the first five years of county establishment, many county governments have paid more attention to recurrent expenditure than development expenditure. This was the case because they needed to survive, and, therefore, they had to spend on recurrent expenditure. That is understandable but at the same time, thought must have been put to investing in development so that we invest in the future. Some counties have done it.

The recommendations of this Committee, particularly urging the national Government to respect the proposals made by the Transition Authority (TA), especially over the recording of assets and liabilities of counties - a job which is still in progress - must be finished soon. We have been assured by the Intergovernmental Relations Technical Committee that together with the Intergovernmental Budget and Economic Council (IBEC) – whose job is the finalizing of the record on county assets and liabilities - that the exercise should be over by February next year.

I appeal to the national Government, especially the National Treasury, to cooperate with the Intergovernmental Relations Technical Committee to ensure that this job is finished by February next year. Counties cannot work well if they have no proper records of their assets and if they are not sure what liabilities are due unto them and to the national Government.

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

Sen. Sang: Mr. Deputy Speaker, Sir, I rise to support this Motion. It is part of the greatest mandate that this House has in ensuring that we support our counties. The drafters of the Constitution, in their wisdom, allocated functions between the two levels of Government. It is very clear in terms of functions reserved for the national Government and those that go to county governments. There are functions that are of concurrent responsibility or mandate to both levels of Government.

It is important to note that whereas the concept in the Constitution initially provided for a situation where there is asymmetrical devolution, it means that we should

have evaluated the capacities of each county so that functions are given to counties once we have assessed that they have the capacity to carry them out. That is the concept captured in the Constitution. It talks about asymmetrical devolution. This will ensure that we do not have situations where a county government is given a function that it is unable to perform.

However, consciously, this House agreed that we would not go in that direction: Politically allocating responsibilities to different counties; having a situation where one county or a set of counties are given a function and another set of counties are denied that function. However, with the benefit of hind sight, the drafters of this Constitution had a point in talking about devolution that was not symmetrical.

As we speak, we have counties that have been unable to carry out some of the core mandates as per the Constitution. What is even more astonishing is that those counties are unable to carry out functions given to them by the Constitution but you see them attempting to carry out national Government functions.

Within the education sector, universities, secondary and primary schools remain the responsibility of the national Government. Early Childhood Development (ECD), village polytechnics and homecraft centres are the responsibility of county governments. We have seen county governments expending their resources and energy towards establishment of public universities, while they are unable to build ECD centers. This kind of misplaced priorities where county governments in their wisdom – or evident lack of it – allocate resources and spend their energy---

You see a governor running around for one or two years in the name of championing the establishment of a public university. If you visit primary schools where ECD centers are, they have built just one class room. We know that unlike our days and many of those governors', ECD was only one class. You went to an ECD class for only one year and then graduated to Class One. Nowadays, ECD takes three years. If you have to support ECD, then you have to build three class rooms.

If you went to a primary school anywhere in this country, the most likely dilapidated classroom would belong to ECD. The temporary structure made with *mabati* or timber will most likely be an ECD center. That is why the Constitution gave that responsibility to county governments. However, many county governments have neglected that exclusive mandate and then run around talking about infrastructure in secondary and primary schools, just because they seem to have in their minds that it is more politically rewarding to go for certain functions than others.

That is why as we even discuss and approve this Report that seeks to finalise that process of transfer of functions as anticipated within the Constitution, we must remind county governments that they have their 14 core functions given to them by the Constitution. Before they can satisfy themselves that they have carried out those 14 functions – unless there is serious justification – county governments should be expending all their resources in sorting out and addressing their 14 functions.

Mr. Deputy Speaker, Sir, one of the other aspects within counties that we must address is that even as they are given the 14 functions, there is need for some order of priority. I appreciate that markets is one of the functions of county governments because trade and development is one of the functions given to counties. Therefore, within trade and development, you have several aspects to it including markets. However, it does not

make sense that counties allocate resources for doing a huge perimeter fence around a market and yet within that market, traders do not have stalls. This is a clear case of misplaced priorities.

Sanitation is important. However, to find a county government allocating, for example, Kshs3.5 million to a market not to provide water or electricity but to build some pit latrines. If you were to do a census, you would find seven or eight pit latrines already within the same shopping centres. This is a clear case of misplaced priorities. Counties must have proper priorities.

As they also engage in delivery of their 14 mandates, the other element is value for money. One of the aspects that the 47 county governments, without exception, have perfected is the art of corruption. Counties seem to have imagined that one of the functions devolved to them which they are working so hard to fulfill and they are implementing with meticulous precision is corruption. If you go to counties and ask questions, you will be told that devolution in county governments is a new concept. Therefore, county assemblies are still learning. That is good and quite persuasive. Therefore, the public might not ask for very serious delivery on the mandates given to county governments.

However, when it comes to corruption, they have perfected the act and they are not on a learning curve. So, how is it possible that on service delivery, you are learning and you expect leniency but when it comes to perfecting the art of corruption, you are doing exceptionally well? It would have made sense to tell us that you are still learning in terms of how to deliver services expected from county governments but we should also see amateur corruption activities within counties.

These are issues that counties must appreciate because if you looked keenly at the choice of the functions given to counties, those are the functions whose impact is felt by the ordinary citizens in the village. This is because devolution was about resources; taking resources and power to make decisions closer to *wananchi* and giving counties an opportunity to make the right priorities for themselves.

What we are seeing instead is perfection of corruption, tribalism and nepotism. How possible is it that a public service board that is supposed to be independent of the executive at the county assembly would allow a governor to employ his cousin, nephew, girlfriend and the so-called county first lady to run a whole programme in a county without accountability? You also find County Executive Committee (CEC) members, chief officers and directors have their concubines and girlfriends and even boyfriends working in the county governments. This kind of nepotism and ways of addressing issues in counties ---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Sang. Hold his time.

Sen. Lesuuda, what is your point of order?

Sen. Lesuuda: Mr. Deputy Speaker, Sir, Sen. Sang is making a valid point on issues to do with corruption and how members of the public are employed in our counties. The terms “girlfriends” and “concubines” have been used continually to demean women who are employed on merit in some of our public offices.

Is he in order to continue to perpetuate what we have been trying to fight against for a long time?

The Deputy Speaker (Sen. Kembi-Gitura): I do not think Sen. Sang is referring to women who are employed using the right procedure. I do not think so. I think that is taking the argument too far. I do not believe that he is bracketing himself. I may ask him to substantiate but I do not think he is bracketing himself---

Sen. Lesuuda: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Just a minute. I want you to consider what I am saying because I do not want to take the issue too far. He is talking about girlfriends and boyfriends, as the case may be. So, I do not believe that he is talking about people who have been employed on merit.

Do you still have a point of order?

Sen. Lesuuda: Mr. Deputy Speaker, Sir, yes.

The Deputy Speaker (Sen. Kembi-Gitura): Let me hear you.

Sen. Lesuuda: Mr. Deputy Speaker, Sir, I will then further ask Sen. Sang to substantiate whether there are girlfriends and concubines - he did not mention boyfriends but he used the two - in any particular county which we are not aware of.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, you look amused. What is your take on that?

Sen. Sang: Mr. Deputy Speaker, Sir, I do not know whether Sen. Lesuuda is the only visitor in Jerusalem. What is happening in counties is that whereas we appreciate that Kenyans have employment opportunities through the county public service boards in free and fair transparent processes. However, when you go to a county government, there are county public service boards which are supposed to carry out employment but opportunities are created which avoid the legal channel of employing staffs. You hear staffs being employed in acting capacities because that can be done by the governor or the county executive without any reference to the county public service board.

When you ask about these acting positions, in most cases, you hear that one is a nephew or a concubine to the governor. Concubines are known. Someone has a wife and he also has a side person who has been given a contract or employed in acting capacity in a certain office. These things are happening.

Mr. Deputy Speaker, Sir, the reason why I used concubines and girlfriends is because all the governors are men and only a few deputy governors are women. Unfortunately, most of these deputy governors have no executive powers. So, let us not trivialize this because it is a fact. The county executives are misusing and avoiding the law to find opportunities not only for employment but also for contracts.

The Deputy Speaker (Sen. Kembi-Gitura): I think your point is made. You can now go back to your debate.

Sen. Sang: Mr. Deputy Speaker, Sir, most of the contractors are beautiful women. You ask yourself; is it a coincidence that all these contracts are given---

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sijeny, what is your point of order?

Sen. Sijeny: On a point of order, Mr. Deputy Speaker, Sir. Is the Senator in order to assume that the women contractors have no qualities yet he knows that the National

Construction Authority (NCA) does prequalification assessments? Is he in order to insinuate that they are not qualified?

The Deputy Speaker (Sen. Kembi-Gitura): I think we need to understand the context. Personally, beautiful or not, I think we must understand the context. If I understand Sen. Sang, he is discussing corruption, nepotism and favouritism. That is what I understand him to be talking about. So, if a woman, beautiful or not, as the case may be, is awarded a contract otherwise than through proper procurement, if I understood the context, that is what he is referring to. I do not want us to belabour this point too much.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I do not have a problem with the way Sen. Sang was proceeding. When you told him to go to his original point that is where I have a problem. Is he in order that at the end of his argument, he said that there are too many beautiful women suppliers in the counties when we passed a law that guarantees at least 30 per cent of the contracts to be awarded to the marginalised groups including women? We are encouraging more women to be suppliers in the counties. Is he in order to insinuate that the more the women suppliers the greater the probability that they are the governors' concubines. I do not think that, that is correct.

Sen. Sang: Mr. Deputy Speaker, Sir, that was not the case. However, it raises eyebrows when virtually almost all the women contractors are beautiful when we know that in this country---

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, can you explain to me whether you are talking about a specific county or counties in general. You seem to be quite clear.

Sen. Sang: Mr. Deputy Speaker, Sir, most of the examples are from my county. However, we have discussed this issue in this House.

The Deputy Speaker (Sen. Kembi-Gitura): I am not stopping you but when you go to too much specifics, like you are trying to, then you must tell us. I do not think it has gone to the level where I can demand substantiation but it appears like you are talking of a specific county. I do not think you are talking of the 47 counties.

Sen. (Prof.) Lonyangapuo: On a point of information, Mr. Deputy Speaker, Sir. Sen. Sang may not be wrong. If you go to Nandi County, God placed a beauty culture. I do not know if you have peculiar eyes different from what we have. The ladies there are all beautiful. I know that. Therefore, you should be grateful that they are more beautiful than the ones we know. So, do not belabour the point.

Sen. Sang: Mr. Deputy Speaker, Sir, I want to avoid that line. However, I know beauty lies in the eyes of the beholder but some beauties are conventional. It is important to note that the beautiful and the less beautiful women are entitled to the contracts. It does not make sense when you have only a particular---

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, I might have to stop you now. You might be going overboard. The law talks about 30 per cent contracts to women,

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youth and people with disabilities. It does not give any superlatives. It does not talk about the beautiful and the less beautiful. It does not also talk about one disability against the other. So, you got to be careful now when you start trending on dangerous grounds.

Sen. Sang: Thank you, Mr. Speaker, Sir. I stand guided. It is only that I was speaking for those who in the eyes of the county executives may not look beautiful and they are locked out of that particular process. That is fine. However, county governments must conduct their work and ensure--- Is my time up? Please, give me one minute to conclude.

The Deputy Speaker (Sen. Kembi-Gitura): Take one minute to compensate for the time.

Sen. Sang: Mr. Deputy Speaker, Sir, it is important for counties to have proper priorities. They must be reminded that corruption is not one of the devolved functions. When we are given an opportunity to start a county government like the current governors, the expectation is to lay a firm foundation for the future generations.

With those few remarks, I support this Motion and ask all county governments to focus on their mandate.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Considering that Sen. (Prof.) Anyang'-Nyong'o had requested for a Motion on Murang'a, am I in order to request that we reduce the contribution time to five minutes so that we get time to debate that other Motion? I see Sen. (Dr.) Zani, Sen. Madzayo and Sen. Lesuuda are all nodding in agreement.

Sen. Sang: Mr. Deputy Speaker, Sir, on a point of order. That application coming from a Member who has already contributed to this particular debate in my thinking is that---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Sang! The point of order by Sen. Murkomen has merit because all of you were here when I gave direction that this House will adjourn at 5.30 p.m. to debate the Motion by Sen. (Prof.) Anyang'-Nyong'o. We have less than 18 minutes to conclude this Motion. I have full request for the Floor, including the Member replying. So, it is a reasonable request because everybody would like to be heard. In fact, it is will not be five minutes, but four minutes so that we accommodate all the four Senators who want to speak to this Motion.

Sen. Madzayo, you have four minutes.

Sen. Madzayo: Bw. Spika, asante sana kwa kunipa nafasi hii ili niweze kuchangia Hoja hii. Kwanza, nina shukuru Kamati yetu ya Ugatuzi au ya serikali za mashinani kwa kuwasilisha ripoti hii muhimu mbele ya Seneti. Kaunti zote zinahitajika kupewa uwezo zaidi wa kusimamia barabara, mashamba, misitu na mazingira kwa jumla. Tunaona vitengo vingi sana vimeweza kuchukuliwa na Serikali ya Kitaifa. Jukumu la Seneti liko katika Kipengee 99 cha Katiba ya Kenya. Ni lazima kipengee hicho kizingatiwe kwa makini sana. Sisi tuwepewa uwezo na mamlaka ya kusimamia serikali zetu za mashinani. Hata hivyo, ni dhahiri kuwa Serikali ya Kitaifa inasimamia barabara, misitu na mashamba katika kaunti zetu. Uwezo huu ni wa serikali za mashinani. Seneti ni lazima ihakikishe usimamizi huu umepelekwa kwa kaunti zetu. Barabara za vichorochoroni ni kazi ya serikali za mashinani.

Ni huzuni kuona wananchi hawaelewi kazi ya Seneti. Lakini sisi tunajua kazi yetu ni muhimu sana hapa nchini. Ni lazima tuhakikishe serikali za mashinani zimepewa pesa

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za kutosha za kufanya maendeleo. Bila Bunge la Seneti hakuna senti zinaweza kupelekwa katika serikali zetu za mashinani. Kwa hivyo, ni muhimu watu kuelewa kwamba Bunge la Seneti ndilo Bunge linaloweza kuangalia ugavi wa pesa zinazokwenda katika serikali zetu za mashinani. Kwa mfano, barabara ya kutoka Mtwapa hadi Malindi kuna sehemu ambayo imeharibika sana. Ikiwa Serikali ya Mashinani ya Kilifi inaweza kupewa pesa za kutosha inaweza kuikarabati vilivyo.

Bw. Spika, ni matumaini yangu ikiwa ripoti hii itapitishwa na Bunge hili la Seneti, basi vitengo vya kutengeza barabara, kuangalia mashamba au misitu itakuwa mikononi mwa serikali za mashinani. Wananchi wetu watakuwa na maendeleo mengi sana kule mashinani.

Tunaona mara nyingi watu wengi katika Kipengele cha (99)---

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Did you notice what Sen. Cheruiyot and Sen. Sang did? They bowed somewhere in the middle here.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Cheruiyot, can you stand where you are?

Sen. Murkomen: Mr. Deputy Speaker Sir, they bowed somewhere here and then went to form a Kamukunji there, having broken the law twice.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Can both of you do the right thing?

Order, Sen. Murkomen! Sen. Madzayo.

Sen. Madzayo: Bw. Spika, natumaini wakati wangu utaongezwa kidogo kwa sababu ya dakika zilizochukuliwa na yule kitinda mimba katika Seneti hii.

(Laughter)

Uunajua vitinda mimba wako namna hiyo kila siku.

Itakuwa vyema kama serikali za mashinani zitapewa pesa za kutosha ili zijenge maktaba ya kuifadhi vitabu vya watoto wetu ili waweze kusoma. Huduma hii ya vitabu wakati huu iko mikononi mwa Serikali ya Kitaifa. Huduma kama hii isimamiwe na serikali za mashinani maanake mtu anayevaa kiatu anajua pale kile kinamuuma zaidi.

Bw. Spika, hata elimu ya msingi inaweza kusimamiwa na serikali za mashinani watoto wengi kule mashinani wapate elimu bora.

Kwa hayo machache, ninaunga mkono Hoja hii kwamba huduma za barabara ziwe chini ya serikali za ugatuzi ama serikali za mashinani.

The Deputy Speaker (Sen. Kembi-Gitura): Asante sana. Sen. Madzayo. Sen. (Dr.) Zani, you have five minutes.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I also stand to---

Sen. Madzayo: Mr. Deputy Speaker, Sir, I do not know whether I heard you right. In your earlier order, you said that the contributions will be four minutes. I do not know whether it is because my sister Dr. Zani who is one of our learned ladies from the Coast is very beautiful if I was to quote what my brother Sen. Sang has said. That is why you have added one extra minute.

The Deputy Speaker (Sen. Kembi-Gitura): Are you accusing me?

(Laughter)

Sen. Madzayo: Mr. Deputy Speaker, Sir, I am seeking a clarification whether that is the position.

The Deputy Speaker (Sen. Kembi-Gitura): I am controlling the time. I can see that I have ten minutes ahead of me, because you did not finish your four minutes. I only have Sen. (Dr.) Zani and one other Senator who has sought the Floor before 5.30 p.m.

(Sen. Madzayo spoke off-record)

The Deputy Speaker (Sen. Kembi-Gitura): I will not bother to ask you to withdraw and apologize. It is okay.

Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I will try to use less time so that we can go to the other Motion. I remember with a lot of excitement sometime in August 2013 when we all had sub-committees that went to different counties and engaged directly with governors. At that time it was to look at the functions that had been devolved. There were appeals from 29 counties about devolved functions that they felt should have been devolved to the counties. They are clearly stipulated in the Fourth Schedule of the Constitution.

At that time, there was a lot of interest across various areas. Most Senators looked at areas to do with libraries, agriculture and roads. The other day I was going through documents in my office and I came across that report. One, I was impressed about the work that we did. Second, I thought about how far we had gone and what happened to that initiative. At that point, we wanted to ensure all these functions get devolved to the various counties.

I also want to acknowledge that at that time when we went round, we had the assistance of various clerks. At this moment, I would like to mention, in a specific and important way, Ms. Joyce Aluoch, who rested last week and whose fundraising we will be going to shortly. She was one of the clerks who participated in this process and gave a lot of energy towards getting this report out. Unfortunately, the Attorney-General at that time said that he could not gazette the transfer of these functions. That was quite disappointing for us because we had expected the process to be straightforward.

There had been a lot of hope exhibited by the governors that we would be able to give them all the 14 functions and ensure that they had been devolved appropriately to them. That did not happen and it became a legal process. Afterwards, an order was put to the Attorney-General that he cannot question the decision of the Senate, which was an important thing.

Every time the Senate has had a situation which has ended up in a legal process and the Judiciary coming in, it has stalled the work. Almost towards the end of our term in the Senate, we still have a situation that all the functions have not been fully devolved to the counties. Even more dangerous, the counties are also coming up with other functions that have not been devolved to them and taking a lot of the resources that are being sent to the counties to those particular functions. They are, therefore, deviating from the key functions that they should concentrate on.

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

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

As has been mentioned by other Members, there is the issue of corruption within the counties. There was a reason for the 14 functions to be devolved. For example, issues of policy, primary and secondary school education are handled at the national level. We have had discussions with many counties and they have explained how they have been caught up in this situation. This sort of clarity is key. We need to first solve the problems of the specific 14 functions and then go to the other functions as an extra. Come 14th January, 2017, we will have a set of nine counties who have made an appeal. It is a good thing because it shows that they have faith in the Senate. This is properly contextualized within the Senate. It is our key responsibility to ensure that these functions are finally devolved and the recommendations that have been made should be followed through.

Mr. Temporary Speaker, Sir, there are specific recommendations which are important. For example, the national Government is to transfer all exclusive functions under the Fourth Schedule. Through Sen. Murkomen we need to stamp our authority. We need to follow the recommendation that the national Government should transfer all the functions to the Schedule. If possible, we need to follow it before the end of the term of this Senate. The other key recommendation is that the functions that are transferred should be well resourced. The issue of resources following the functions needs to be followed through. Giving the functions without the resources is as good as not giving the functions, because they will not be implemented.

On rural electrification, the Energy Act Cap.314 addresses the issues of these Petitions which should be put in place. Lastly, appeals that have not been covered need to be considered in the future. This report needs to be canvassed through carefully, so that we attain the goal of devolving these functions properly.

Mr. Temporary Speaker, Sir, thank you for that extra time. I wonder whether it is on the basis of beauty or something else.

(Laughter)

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Zani, what have you just said?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I am advancing the argument that had been put across by Sen. Madzayo on the previous ruling by Sen. Kembi-Gitura when he was sitting on the Chair. It is on a light note.

The Temporary Speaker (Sen. Sang): Sen. Lesuuda. Of course, it is not based on any other consideration than that there is a request from Sen. Lesuuda.

Sen. Lesuuda: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion. I am a Member and Vice Chairperson of the Committee on Devolved Government. As my colleagues said earlier, this was an important process for our counties. We extensively looked at the proposals of the appeals that were tabled before our Committee. We found that many of them hold water and it was important for these functions to be transferred to our counties.

As it has been said, one of the key functions had to do with agriculture. This is an important component of our counties, among the many other functions that were recommended to be transferred. The other recommendation that we made is that resources have to follow the functions. We have continued to raise this issue in the Senate; that it is not important to just transfer the functions; the counties need to have resources so as to implement some of these functions that are fully devolved. We also realised that on many of the functions, we had met the requirement, as the Senate. They were transferred before March this year and were fully operational in our counties.

The reason these functions were transferred, according to the spirit of our Constitution, was for services to be closer to the people. It is not in order to devolve these functions to the counties and yet, the people of those counties are not receiving the services. Services are meant to be closer to the people. In your contribution you said that our counties are sometimes obsessed with big tenders and cases where money is involved. Some of the counties just build rooms with no proper services and call them dispensaries. The same case applies in Early Childhood Development Education (ECDE) where some counties just put up small structures and call them ECDE classrooms.

Interestingly, some counties use so many resources to open those small structures, more than even the amount of money that was used to build them. We actually need three classrooms for our ECDE, but some counties build just one classroom in the middle of nowhere, without doing a survey as to whether children can access it. They then hire a convoy of 50 vehicles, using county resources, to open that one classroom. It does not make sense to say that we have transferred the function and build ECDE centres when we do not know whether or not they are functional.

Now that we have leaders who come from those counties and want the best for their children, those ECDE classrooms should look like kindergartens in the cities. It is leaders from those particular counties who are in charge of the future of their children. The whole aspect of Early Childhood Development (ECD) is the function of the county, and most of those are some of the resources that have gone to the county.

Mr. Temporary Speaker, Sir, agriculture and water resources functions have also gone to the county. I hope we will discuss that in this House, since we are already seeing a looming drought in our counties. We know a lot of issues to do with food security have been devolved to the counties.

There is an issue that one of our colleagues mentioned and said that we are just trying. It is the first thing. There is also another notion that has been in our counties as we go into the campaign time where they say: "Please stop asking us about the 15 per cent". They are even lying to the public that this Senate has only devolved 15 per cent of the monies that should go to the counties while it is over 40 per cent.

They always tell us to go and ask where the other percentage is. As much as it is important to account for the money that is still being held by the national Government, it is important for the residents of the counties to know that the sole mandate of this House is to oversight the resources that go down to the counties.

As we devolve these functions we will also be devolving the resources which will follow those functions. Our counties have to be accountable to the people so that it is not just transferring, but to ensure that the services which are supposed to reach the people happen in our counties.

I support.

The Temporary Speaker (Sen. Sang): Since there is no other interest to contribute to this Motion, I call upon the Mover to reply.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I have listened to the contributions of my colleagues and appreciate the fact that each of us is very much concerned about not just the transfer of the functions but how that function is being implemented and the resources that follow such functions. Interestingly it is not functions that follow resources, but it is the resources that follow functions. Our counties must be able to do what they need to do to ensure that---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary, Speaker.

The Temporary Speaker (Sen. Sang): What is your point of order?

Sen. (Prof.) Lonyangapuo: Mr. Temporary, Speaker, Sir, my neighbour, Sen. Murkomen told me that there was no need to indicate my interest to speak because my immediate neighbour, Sen. Lesuuda was replying. I have now realized that it is not the case, and he now has my two minutes. Is he in order?

The Temporary Speaker (Sen. Sang): The Chair was not party to those discussions, therefore---

Sen. Murkomen: Mr. Temporary, Speaker, Sir, for the record, indeed that is what I told Sen. (Prof.) Lonyangapuo but it was not before I was advised that we needed someone to reply so that the necessary Standing Order is applied in the next request which I am about to make. It was expected that Sen. Lesuuda was to reply but it was going to be replied to by the mover.

The Temporary Speaker (Sen. Sang): Do you regret that kind of indication?

Sen. Murkomen: Mr. Temporary, Speaker, Sir, it is not that I regret, because it happened after. Since I still have two minutes, I can give Sen. (Prof.) Lonyangapuo two of those minutes so that he can make one or two comments.

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Lonyangapuo, this should not be a practice in this House.

Sen. (Prof.) Lonyangapuo: Mr. Temporary, Speaker, Sir, he is a very good neighbour and that is why he has shared the minutes. As my colleagues have indicated, of the 14 functions that were devolved, the last one which is No.14 says:-

“Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.”

Governors and the leadership in the counties have forgotten this to the extent that local issues that are supposed to be solved locally jump to the national Government and end up exhausting time for leaders at the top. For example, we have a problem at Kerio River between Pokot of East and West Marakwet. The moment the three governors chose to go and convert the boys that are giving us a problem along the river into farmers by giving them water pumps to plant water melons, some of these problems would cease. However, because there is no political mileage in this many have abandoned this project. Because associating yourself with a secondary school gives credit, that is why this is the case.

We need to continue seeing how our counties can be supported but we also need to read about how they are implementing the functions that they been given, however little they are.

I support.

The Temporary Speaker (Sen. Sang): Sen. Murkomen, make the necessary comments to conclude.

Sen. Murkomen: Mr. Temporary, Speaker, Sir, my neighbour has made a useful addition in so far as our neighborhood is concerned. I only ask him that we should continue sitting together and pursuing peace.

I beg to reply and request you to defer putting of the question on the Motion to a later date pursuant to Standing Order No. 54(3).

The Temporary Speaker (Sen. Sang): It is so granted and ordered.

(Putting of the Question deferred)

Hon. Senators, you remember that a request was made by Sen. (Prof.) Anyang-Nyong'o for an Adjournment Motion to discuss the Murang'a County Northern Collector Tunnel which was scheduled for 5:30 p.m. We have eaten into that time. I, therefore, call for the next order.

Sen. (Prof.) Anyang-Nyong'o: Mr. Temporary, Speaker, Sir, I would like to move this Adjournment Motion.

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

STATUS OF THE NORTHERN COLLECTOR TUNNEL PROJECT IN MURANG'A COUNTY

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, in accordance with Standing Order No. 33, I would like to move that this House adjourns to discuss a matter of national importance.

REALIZING that Article 96 of the Constitution gives this House the responsibility of promoting, defending and articulating the interests of counties;

RECOGNIZING that the Murang'a County Government commissioned a thorough review of the northern collector tunnel project and that a report of the technical Committee has already been availed by Murang'a County Government;

NOTING FURTHER that the County Assembly of Murang'a has equally been seized of this matter and has raised pertinent issues on questions regarding the availability and accessibility of fresh water to the people of Murang'a and the counties along the Tana River Basin;

REALIZING FURTHER that this matter has provided debate in the media and within the political class, a debate that this Senate should be seized of and from the point of view of facts and issue pertinent therein, take a stand as a Senate in line with Article 96 of the Constitution;

COGNIZANT of the fact that the problem of accessing fresh water is a major global problem, not just national, and an environmental issue to other nations;

NOW THEREFORE This House will like to discuss this matter of the northern collector tunnel so as to understand the pertinent issues and to defend the interests of the counties involved, including the County of Nairobi.

Sen. (Prof.) Anyang-Nyong'o): Mr. Temporary Speaker, Sir, first and foremost, before giving the background to this issue, I would like to Table for the use of this House this very important Report entitled: Murang'a Government Report of the Technical Committee on the Northern Collector Tunnel Project.

(Sen. (Prof.) Anyang'-Nyong'o laid the document on the Table)

This Report is extremely important to this House and I hope that if these discussions are consigned to a particular committee or committees of this House, they will find this report a useful resource document.

I would like to give a background to this issue so that the House may be informed of what we are talking about. Not long ago, Murang'a County got seized of the fact that there was the Northern Collector Initiative Tunnel. I have left a very important document. It is important that we get the facts correct because we do not want to speculate.

On 3rd December, 2014, Murang'a County Government was informed and knew that the Athi Water Service Board (AWSB) proposed to construct a dam to Ichiche by the name Maragwa Dam to supplement water supply to Nairobi and its satellite towns. An environmental impact assessment was undertaken for the proposed Maragwa Dam.

Mr. Temporary Speaker, Sir, the overall cost benefit analysis of this option was not feasible. Due to this, the project was abandoned. Secondly, AWSB further proposed the extraction of underground water in Gatanga Sub-County and Ruiru in Kiambu but the wells could not yield the required 140,000 cubic meters of water per day. Consequently, this second option was also abandoned.

Finally, the Northern Water Collector Tunnel was proposed to be the most feasible option to supplement the water requirement for Nairobi residents. The project proposes to draw water from three main rivers namely; Irati, Gikigie and Maragwa rivers. These three rivers are the main tributaries of Maragwa River which forms lifeline of Murang'a County residents with approximately one million people as per the Kenya Population and Health Census of the year 2009.

Mr. Temporary Speaker, Sir, the proposed tunnel shall drain water into river Githika in Gatanga Sub-County which flows into Ndakaini Dam. The tunnel – and this is important because this is where the environmental issues come – which if clearly understood and accounted for, would make sense. If not understood and accounted for, it can be dangerous in the future. The tunnel will cover 11.8 kilometres and a diameter of three meters and proposed depth of between 20 to 250 meters below the surface, subject to the terrain. The tunnel is designed with hardy bottles and drop shaft from Irati intake whereas an intake at Maragwa, Gikigie and Irati, the project envisions to extract flood waters from the above said rivers. There will be an out fall and energy and inspection structure at Githika River near Makomboki, upstream of the existing Ndakaini Dam.

Mr. Temporary Speaker, Sir, according to documents tabled before the Murang'a County Assembly Committee, the project is scheduled to be carried in five phases. The Committee found that this will adversely affect the livelihoods of the people of Murang'a. I do not need to go to the specific phases, but more to the issue. The concern of the County Assembly and of this Senate is that the implementation of this project will adversely affect the livelihood of the people of Murang'a. That is the issue raised.

The Northern Water Collector Tunnel is a new raw water transfer in three meters diameter tunnel along the eastern flinches of the Aberdares Conservation area, approximately 60 kilometres north of Nairobi. The tunnel will transfer raw water from intakes at the Maragwa, Gikigie and Irati rivers to an outlet at the Githika River near Makomboki upstream of the existing Ndakaini Dam in Gatanga and Kigumo sub-counties. Those are the facts.

Mr. Temporary Speaker, Sir, what did the Assembly find in their inquiry? First and foremost, I think the government should come out clearly on this, both the Senate and Murang'a County Assembly representing the people of Murang'a and the Nairobi County Assembly representing the people of Nairobi because all these counties are affected by this project. What did the assembly find out? So far, the Assembly says no approval of the project has been issued by the Water Resource Management Authority (WRMA) as it is pending licensing by the National Environment Management Authority (NEMA) in accordance with the Environmental Management and Coordination Act, 1999 and the Environmental Impact Assessment Regulation, 2003.

Mr. Temporary Speaker, Sir, this project was being implemented without the necessary licensing from the relevant bodies. This is a breach of the Constitution and the law. The Senate together with the Murang'a County Assembly would like to know why this happened. If it was an oversight, those regulatory authorities should explain to us why such an important project was implemented without the proper and necessary licensing from Government agencies.

Let me go further to the recommendations by the County Assembly on this matter because we have little time to go into details but I just want to give the facts. The Committee's recommendations for the proposed Northern Water Collector Tunnel were many. I just want to zero in on three because of time. The Committee recommends that 40 per cent of the treated water shall be supplied to the people of Murang'a as a condition precedent to the implementation of the project. This is understandable if you remember Sen. (Dr.) Zani's Bill which said that in the use of natural resources, the people or counties from which that natural resource is extracted should share in the benefits of the natural resource. As to whether it can be 40 per cent or any other percentage, that can be discussed.

Secondly, the current proposal to abstract 140,000 cubic meters of water is unsustainable in view of the demand for water downstream. The Committee, therefore, recommends that the abstracted water should be reduced by 50 per cent in order to safeguard the environment. These proposals are important, and I think they should be taken into account. Those percentages proposed can be varied but the project cannot continue to be implemented if the proposals are not implemented. These are very scientific and understandable proposals made by Murang'a County Assembly and the technical committee.

Finally, Mr. Temporary Speaker, Sir, among the important recommendations made by the Assembly; the Committee recommends that the project provides for resources and develops a work plan for rehabilitation, reforestation and restoration of the Aberdare Forest which is the catchment area for the Northern Water Collector Tunnel. Remember, when we were in the Coalition Government, the Prime Minister fought so hard for the Mau Forest as a water tower to be preserved. The same might be done to Aberdare Forest. It is clear that this project will affect Aberdare Forest as a water tower.

From my own reading, I have read substantially about these tunnels across the world about where they have been built. There are cases where they have been abandoned halfway because studies reveal that they are adversely affecting aquifers or the underground water tanks on which we survive from our rivers and which replenish the soils above. It must be understood that in our need to extract water underground, we do not deplete the undergrounds tanks. I call them tanks and they are aquifers because I think the word “tank” is easier to understand. If these tunnels of the extraction of water are going to affect those aquifers, we should be reassured by those implementing the project.

It has been said in the document that the waters going to be collected are only flood waters. Again, this technical report by Murang’a County Government has raised certain questions and issues about these flood waters. To what extent are these rivers going to get flood waters in the future? Secondly, what are the sources of these flood waters? Are these flood waters enough to sustain the collection of water for the consumption of the growing urban areas in Nairobi and satellite cities? What about water for irrigation in Murang’a County and the counties that lie along the river bed of the Tana River?

Mr. Temporary Speaker, Sir, it is important that we take into account the needs of the rural dwellers as well as the needs of the urban dwellers because given the fact that the rain patterns are becoming unpredictable because of climate change, agriculture is going to rely more on irrigation rather than rain water. Therefore, when undertaking such projects, we should take into account the need for irrigating agriculture because that is the future. That is how we are going to get to increase agricultural production other than just focusing on the consumption needs of fresh water in the city.

This is a fact. It is known that only 3 per cent of water available in the world is fresh. Of that 3 per cent, 2.5 per cent are locked up as frozen water in the North Pole and South Pole thus not accessible to human beings for consumption. We only have 0.5 per cent fresh water availability globally and this is not very dangerous. What is more dangerous is the fact that we are engaged in projects of urbanization, industrialization and infrastructure which reduce access to this 0.5 per cent fresh water available in the world. Let us be very careful.

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Anyang’-Nyong’o, your time is up!

Sen. (Prof.) Anyang’-Nyong’o: I beg to move.

The Temporary Speaker (Sen. Sang): Move your Motion that the House do now adjourn?

Sen. (Prof.) Anyang’-Nyong’o: Sorry, Mr. Temporary Speaker, Sir. I beg that the House do now adjourn.

Sen. Orendo: Mr. Temporary Speaker, Sir, I was not here at the beginning. How many minutes do I have?

The Temporary Speaker (Sen. Sang): This is an adjournment Motion pursuant to Standing Order No.33. In accordance to the Standing Order, you have five minutes.

Sen. Orendo: Thank you, Mr. Temporary Speaker, Sir.

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): What is your point of order, Sen. Muthama?

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir. Looking at the time, we have about 40 minutes and we only have four Senators. Could we each have ten minutes instead five minutes so that we debate on this matter exhaustively?

The Temporary Speaker (Sen. Sang): We will go by the Standing Order. You know what you always do when your five minutes have expired.

Sen. Orendo: Thank you, Mr. Temporary Speaker, Sir. This is a very important Motion for Adjournment. The starting point is the Constitution of Kenya. This Constitution enthroned issues of environment to the Chapter dealing with the Bill of Rights. When we talk of environmental matters and resources of this country, they are not held in any other Chapter of the Constitution, but in the Chapter that is dealing with the Bill of Rights and that is Chapter five of the Constitution. The Constitution itself devotes the second part of that Chapter on issues dealing with environment and natural resources. How the State is required and is obligated to deal with matters to do with environment and resources.

With regard to the Motion that is before us, there are the twin issues which have been articulated very well by Sen. (Prof.) Anyang' Nyong'o in relation to the protection and conservation of the environment and the utilization of water as a resource. The Constitution requires that we should not only ensure sustainable exploitation and utilization of those resources while protecting the environment, but that we should also monitor and audit the impact of any project that we carry out that may affect the environment. When utilizing the natural resources which include water, we must ensure that it is for the benefit of all the people.

The other important pillar of these provisions that affect resources and environment is the issue of public participation. We should never have a conversation or a discussion about our resources in secret. It is not a lie - if I may use that word though I may be subjected to its being unparliamentary - but it is true that the conception and implementation of this project has been done in secrecy. We have seen the government going all over when implementing projects even those by the counties, which include opening of water points and water kiosks. We have seen the Head of State going to such projects.

However, this project was being held and implemented in private and outside the conversation of the important issues that concern the people of this country until the former Prime Minister, hon. Raila Odinga came out with this discussion in public. It is not lost on the people of Kenya and that is something that we must deal with. The local leadership in Murang'a including the Members of Parliament were not sufficiently involved and it is now that they are being made aware of the impact of this project.

One thing that I found odd when the Cabinet Secretary was talking to the leadership in Nairobi about this project is that he was offering Kshs50 million and he was offering something else that I do not know. This is what is coming to us in public. They were being offered Kshs50 million each to compromise a bigger danger and problem that the people of Kenya may face in relation to this project if it is not implemented in the way that the Constitution and the law requires.

Water rights are not just for the people downstream and upstream. All the interested parties must sit down to ensure that everybody involved whether upstream or downstream have their rights protected in that discussion and the implementation of the project. It is very clear that the scientific analysis that has been done is not adequate and this matter must be looked into unless some people are making some big money out of this and that is why they are rushing it.

Could I have two more minutes?

The Temporary Speaker (Sen. Sang): You will realize that we are likely to have more Senators interested to make their contribution to this matter. Two more minutes will be sufficient. We cannot work with the ten minutes.

Sen. Orendo: Mr. Temporary Speaker, Sir, part of Kenya is currently suffering because of the bad implementation of projects that was done before. If you look at Kajiado County, it is suffering from water deficit because of the activities that surround the water towers in Kenya such as the Mau, the Aberdares and the utilization of water which affects the entire county. The flower farms that have come up have no regard for availability of water to human beings. We have occasionally seen livestock being brought into the city because people are looking for water for the animals.

When somebody comes up with a matter of a serious nature like the way the former Prime Minister, hon. Raila Odinga did, we should not politicize it. The Jubilee side has run away from this House and by their absence, they are trying to politicize this very important matter. Even the Senator for Murang'a who has raised very valid and legitimate issues has run away from this very important discussion.

The Temporary Speaker (Sen. Sang): Order, Senator. You cannot use the term "run away" especially with regard to the Senator for Murang'a, the Chair whom I took over from. As the Chair, I know, he excused himself because of a specific engagement that he shared with me. That is why I am seated here.

Sen. Orendo: Mr. Temporary Speaker, Sir, if there is a matter concerning your county you cannot take off. It follows. The other day there was a matter raised about Machakos and I was to travel with the Senator for Machakos. I tried to wait for him but I had to go because he had to wait until that matter was prosecuted. If you listened to Sen. (Prof.) Anyang'-Nyong'o, this thing raises very important legitimate questions that we should look into as Kenyans without running away from it. Instead of politicizing it based on who has raised the issue, we should look at the issues that are being raised. The generality of the public, including the people of Murang'a are not satisfied that the Government is dealing with this project in the interest of the Kenyan people, more particularly for the people upstream including the people who live in Murang'a.

Mr. Temporary Speaker, Sir, I greatly support this Motion. I hope something will be done.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I came running because I was involved in mobilizing colleagues to support Sen. (Prof.) Anyang'-Nyong'o, the Senator for Kisumu. If you look at the history of water in this country, we have been classified by the United Nations Environment Programme (UNEP) as a water deficit country. That makes it imperative that we jealously protect our water sources.

I laud my brother, friend and co-principal in CORD, the former Prime Minister Raila Odinga for raising this issue. I encourage those who are reacting in a haphazard and erratic manner to pay attention to the message instead of looking at the messenger. What does the message say? It says that the project is not environmentally advisable. It will cause a disaster not only in Murang'a but in all riparian counties downstream up to the Indian Ocean.

Mr. Temporary Speaker, Sir, I heard somebody making a very simplistic rejoinder that the water will go into the Indian Ocean, anyway. I am also sad that our colleague, the Senator for Murang'a is not here. I talked to him personally and told him that he had to be here to support this Motion because I have heard him make very positive statements about this but what are we seeing now? In the media today, we are told that Members of Parliament (MPs) from Murang'a have been given money by the Government – Kshs50 million each – to convolute their thinking and corrupt their mind so that they do not raise any issue about this project. This is state money. Nobody has money to give anybody for free.

In fact, when Sen. Njoroge brought the matter here, I urged that we want a full audit of public water projects in this country. Without even focusing on the environmental issues of this tunnel, the cost is an issue. Last night, I met some friends from Murang'a County and they told me that they fear for their county because all the streams that are being tapped at source, ostensibly to fill up Sasumua Dam, are going to dry up. Therefore, tea, maize and potato growing will suffer and no animal will drink any water any more. All this is to satisfy, not the provision to the people of Nairobi County but the greed of those involved in taking kickbacks.

Mr. Temporary Speaker, Sir, I have gone even further and asked the Governor for Nairobi County whether he is aware of this project since the water is coming to his county. He has never been involved even once. He has never been called to any meeting, neither does he know the conception of the project or the cost. All he hears is that there is a tunnel tapping water to fill up the dam to provide water for Nairobi County. We have said here before that before the water comes to Nairobi County, even the people of Murang'a County deserve to be given water but nobody wants to pay attention to that.

Instead, what are we hearing now? The Governor for Murang'a County, who escaped by a whisker here on serious corruption charges, is now the one who is hurling rocks at Hon. Raila for raising the issue. He says that Hon. Raila is playing cheap politics. We are not playing cheap politics. We are concerned about the future, environment and children of this country. We are concerned about Kenya as a country.

This idea of putting self before the country will destroy our country. I saw the Cabinet Secretary (CS) for Water - poor young man - reading a rehearsed text content he did not even seem to have understood or appreciated. You could even see from his body language that he did not believe in what he was saying. But because he has to protect his

job, he is behaving in a manner that will erode the little respect that he has. This callous behaviour in the country has to stop.

Mr. Temporary Speaker, Sir, please give me one more minute.

Kenyans must stand up and resist all these. Sen. (Prof.) Anyang'-Nyong'o, I do not know if you know that they are also planning to build a dam in your constituency at Koru at a cost of Kshs16.5 billion. Which dam would cost that amount other than just stealing public funds? When you ask them, they say that they want to supply water to Kisumu County which sits on the largest fresh water lake in the world. You do not need to take water from Koru to Kisumu County.

I laud the Professor for bringing the Motion. I support.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I also rise to support the Motion. In the Fourth Schedule No.22 under the Distribution of Functions Between the National Government and County Governments, the Constitution says:-

“Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular –

(c) water protection, securing sufficient residual water, hydraulic engineering and the safety of the dams.”

Again, let me take you to Part 2 of the same Schedule, under the Functions and Powers of the county, No.10 says:-

“Implementation of specific national Government policies on natural resources and environmental conservation, including –

(a) soil and water conservation.”

Mr. Temporary Speaker, Sir, the Motion on the Floor of this House has to do with the Northern Collector Tunnel to bring water to Nairobi City County from Murang'a County. We have made it very cheap when it comes to things that we wrote down about protecting the environment. Yesterday, Cabinet Secretary (CS), Mwangi Kiunjuri, told the country that we are now staring at drought and death. I was surprised to see a dead buffalo. Animals are normally the last to die. Human beings and domestic animals must die first before the wild animals. However, wild animals do not die because of lack of water.

Mr. Temporary Speaker, Sir, let us not make it cheap that there are the Coalition of Reforms and Democracy (CORD) and Jubilee sides. To this extent, this is a serious matter. The people of Kilifi, Tana River, Murang'a and Kitui among other Counties need water. Kajiado County which is now a desert is a living example yet everybody is migrating to this desert.

What does it cost to sit and open up to consult and display the agenda of the National Government and the county government as well? Is it not two years ago when the grand plans were unveiled by the Jubilee Coalition Government, where I am, to irrigate one million acres of land in Tana River and Kilifi Counties? What will become of the irrigation scheme if we interfere with water flow from Mt. Kenya to Tana River?

Mr. Temporary Speaker, Sir, we need water everywhere. I was on the border of Baringo and Samburu Counties last Saturday. The only flowing river is River Amaya. However, it is drying. This means something needs to be done in the surrounding environment in order to protect water. If we want to get water, we should consult. We have a huge dam under construction in my county. It is called Kapsait-Siyoi Dam. As the

Senator of West Pokot, we needed this during your time because it started in 2006 and rolled to the Grand Coalition Government. Prior to its implementation, it “switched”. We did not know what was taking place. The water is supposed to serve our people yet there are billions spent there.

It is simple that elected leaders and the stakeholders must be consulted. The Government has not done any harm by planning projects in Murang’a or any other county. However, the trouble is when projects are done in secrecy. We are demanding that if Members of National Assembly were given Kshs50million in Murang’a County, we need ours too. Whatever they were given, we want to see the people being consulted or given money for community social responsibility.

They should start with supply of water for them and then any other agenda that may follow. Let us not trivialize this. I am not saying that my colleagues are not on this side of this House because of this but the matter is as serious as the way they are discussing. This is the beginning. Many more may come but we are putting the information forward that we must consult at all times. It must be displayed so that we make progress.

I support.

Sen. Muthama: Bw. Spika, nashukuru. Naunga mkono mjadala huu kwa hali na dhati. Maajabu hayaishi Kenya yetu. Nina shangaa nilini tutapata viongozi kama marehemu John Michuki. Katika Bunge la kumi, mradiwa maji wa Murang’a uliletwa Bungeni. Katika taarifa ya uwazi, marehemu John Michuki alisema mradi huo utajengwa akiwa kaburini. Maneno yake yametimia kwa sababu aliaga na mradi unatimizwa. Jambo la kuhuzunisha na kushangaza ni kwamba, nilini viongozi wa taifa letu wata fikiria na kufanya mambo ambayo yana lenga masilahi na mahitaji ya wakenya pahalipo pote walipo.

Bw. Spika, kiti unachoka kimeekaliwa tangu mwaka wa 1963. Kabla hujazaliwa, chanzo cha maji mahali unawakilisha ni pahali pale ulipowacha baada ya miaka 53.

Hivi sasa, maji ya mto Athi yanatoka hapa mpaka baharini. Ni kilomita 18 kutoka Nairobi unapata maji ya mto Athi. Kutoka mto Sagana mpaka hapa, ni kilomita 78.

Haya maji yote yanaelekea baharini na sisi tunaenda Murang’a kuchota yale maji machache na kuyalete hapa Nairobi. Watu wa Murang’a ambao ni majirani wangu hawana hata tone moja ya maji. Swali ni hili: Je, Serikali ya Jubilee inawafanyia kazi Wakenya walio na shida ya maji? Ni maendeleo gani imefanyia Wakenya kwa jumla? Mambo yao ya kuleta maendeleo ni kuumiza yule mnyonge ambaye anastahili kusaidiwa. Hii ni kishashe na sarakasi.

Bw. Spika, jambo la kuhuzunisha ni kwa kwamba maji ya Murang’a inakusudiwa kutumia katika Jiji la Nairobi. Ni nani mpaka leo ameweza kuishi bila maji katika mji huu? Sisi tunaishi hapa na hatujasikia hata sauti ya mtu mmoja akisema hana maji. Leo tunashangaa Serikali ya Jubilee inakopa Kshs835 milioni kila mwezi kuendeleza miradi ambayo haimfaidi mwananchi wa Kenya hata kidogo.

Reli ambayio inajengwa kutoka Pwani hadi Nairobi haisaidii mwananchi wa kawaida. Kwa mfano, ukisafirisha magari yako hadi Nairobi inamsaidia aje mwananchi wa Nandi na hana chakula, mahali pa kupeleka watoto wake shule na hata hospitali. Ni mradi tu. Huko tunasema Serikali ya Jubilee imefanyia kazi ya kusaidia Wakenya. Hii ni miradi ambayo haifai wawachane nayo ikiwa wanataka kuwasaidia wananchi. Wakati

kiongozi Raila Amolo Odinga anaposema miradi hii inaathiri mwananchi na inaumiza wananchi wa Kenya, sisi wengine tunataka kufanya siasa. Fikiria ya kwamba Waziri Wa Maji mhe. Eugene Wamalwa, anasema ya kwamba atatoa Kshs50 milioni kwa kila Mbunge ili wanyamaze. Haisemekani kwamba hiyo pesa inapeanwa katika sehemu ya uwakilishi wa Bunge, ni dhahiri na wazi inapewa Mbunge ili anyamaze. Ni ukweli wamenyamaza kwa maana hata wale watu wanatoka Mkoa wa Kati ambao wanapiga siasa chinichini wakizungumzia huu mradi, hakuna hata mmoja yuko hapa. Wote wametoka na kwenda ili kuonyesha ya kwamba wanaunga Serikali ya Jubilee mkono.

Serikali na maendeleo ya wananchi ni tofauti. Mtu akisimama na kusema ya kwamba analinda Serikali yake anafaa aangalie hii Serikali inasaidia watu wake namna gani. Mnyonge Kenya yuko hatarini. Mnyonge Kenya hana sauti. Kwa mfano, watu wa Murang'a tumeona wakiongea kupitia vyombo vya habari. Mwananchi wa kawaidia anauliza itakuwa aje Serikali inachukua maji kutoka Murang'a na kupeleka Nairobi na sisi hatuna hata tone ya maji. Lakini hawepewi jibu kama hilo. Tunachosikia ni ya kwamba maji yanakuja Nairobi. Gavana wa Nairobi hana habari kamwe kama kuna maji yanayoletwa Nairobi kutoka Murang'a.

Bw. Spika, naomba dakika mbili au tatu.

The Temporary Speaker (Sen. Sang): One more minute because of the interest of this matter.

Sen. Muthama: Bw. Spika, nashukuru. Nitachukua dakika moja. Gavana wa Nairobi hana habari kwamba maji yanakuja. Kwa hivyo, namwambia Mhe. Rais na Serikali yake atumie hiyo pesa kusafisha Mto Athi ambayo iko karibu na alete hapa Nairobi. Mto Sagana utengenezwe ili maji ije Nairobi. Maji iko hapa Tana River na Masinga Dam. Hii mito tatu inatosha kutupatia maji hata ya kufanyia kilimo katika taifa letu nzima. Kwa nini kuenda mahali hakuna maji na kunyanyasa wananchi?

Naunga mkono. Nashukuru Sen. (Prof.) Anyang'-Nyong'o kwa kuleta Hoja hii hapa.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. You heard my colleague, Sen. Muthama, say that even the Governor of Nairobi has not been consulted. Is the Senator in order to tell us about things they might have discussed elsewhere without evidence? Could he table a written document to that extent because this is a serious matter?

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Lonyangapuo, that matter was raised by the Senate Minority Leader. You should have risen on a point of order at that particular point. He clearly indicated that he talked with the governor. We will leave it at that; we do not need to substantiate.

Sen. Sijeny, you have five minutes.

Sen. Sijeny: Mr. Temporary Speaker, Sir, I beg to support this Motion. Water is an important aspect of life. In fact, water is life. If we do not handle it properly, we will send this country into serious calamities. The effects of climate and environmental changes shall be devastating and this will definitely affect the economy of our beautiful country. Already, global warming has affecting the country. People have cleared forests and the country is suffering due to that. If we now go underground and clear all the water in massive projects like these, without proper consultation of all the stakeholders, we are

digging our graves. We could as well bury ourselves. We have seen what happens in Turkana and some parts of Kitui.

Mr. Temporary Speaker, Sir, if you fly in a chopper, you will see how the land is barren in some areas. If we do not properly utilize the little water that we have, we will just kill ourselves. I stand up as a woman because it is the women who suffer most when water is not available or sufficient. I have just learnt with utmost sadness that one of the women who are camping at the gate delivered a baby without the necessary facilities. We have raised this issue but nothing has been done about it.

Lang'ata Constituency, where I have special interests, is suffering because of lack of water. South C Estate gets water only twice a week, which is not sufficient. Why should we allow this?

Mr. Temporary Speaker, Sir, I support and congratulate Sen. (Prof.) Anyang'-Nyong'o for coming up with this Motion, which needs to be interrogated thoroughly.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. Let me start by congratulating Sen. (Prof.) Anyang'-Nyong'o for bringing this important Motion for Adjournment. Secondly, I wish to congratulate our party leader, the Rt. Hon. Raila Amollo Odinga, for raising this issue. He raised this issue at the national level, as an issue that concerns all Kenyans. It is an important aspect of our lives; environment and natural resources.

There are two key articles that we need to put into consideration as we debate this Motion. First, our role as the Senate, under Article 96, properly contextualizes this issue to be discussed here. Therefore, it is disappointing that the other side of the House is completely empty. We are in charge of the counties as the guardian angels. Anything that happens in the county level is our concern.

Secondly, Article 69 is very clear about matters natural resources. It states clearly that the exploitation, utilization, management and conservation of resources needs to be put in such a way that it accrues equitable share and benefits to all concerned, and that the issues of public participation are very key.

Mr. Temporary Speaker, Sir, looking through the way this project was implemented; initially it started with an agreement that was done on 3rd December, 2014 in Murang'a when they were thinking of the Maragwa Dam and later on when they were thinking about extraction of water and building wells. That was the way the project was initially meant to proceed. First to ensure that there were enough wells and dams that were put in place so that as the tunnel was being put into place, there would be enough water for daily use.

Sen. Sijeny has expounded very clearly the use of this water. If you have rural communities who are not able to even survive because the water is being diverted without any mercy to them about how they are going to conduct their livelihoods for them and their animals, it is very disappointing. That is why from the onset, the issue of public participation was going to be very key. There was also the issue of what processes would happen, one after the other, to ensure that even if the Northern Collector Tunnel is going to be started later on, these rivers, Irati, Githii and Maragwa are going to be collected and processed to Ndaka-ini Dam. The phases of this project would be well articulated and there would be agreement.

Looking at the response, in Kenya we sometimes want to make something look like a miracle and complicate a straightforward thing. Right from the onset you heard the people who initially spoke from Murang'a including the Senator ascertaining that there are certain key benefits that should have been put into consideration and thought through before the implementation of this project. These were facts and after that, we even heard Members of the County Assembly talking about very serious issues that had not been done, for example, the environmental impact assessment report. There is an order in the way it should be done. It should be public, focused on people, discussed by people and agreed on. That was not effectively done. Already the project created a situation where its application affects people.

Mr. Temporary Speaker, Sir, we have to remember that there are implications not just for the people of Murang'a. The effects of this project extend to areas like Tana River and Kitui. When people react to a situation by saying that it is not the right way to approach things, we need to get into discourse and agree on such issues. Sen. (Prof.) Anyang-Nyong'o mentioned the idea of sharing resources which has been a key debate that we have had in this Senate including the Benefit Sharing Bill that came to this Senate and is now at the National Assembly, that some benefits accrue to the national community and at the county where the resource originates.

I remember at that time when Sen. Kembi-Gitura made his contributions, he actually asserted that it is very important that this resource benefits the people of Murang'a. Such an arrangement has not been put into place. The sudden coalescing, saying that this is okay defeats the whole purpose. This discourse needs to be opened in order to listen to more voices of Murang'a County from the common *mwanaanchi*. This is because it is an issue for the common *mwanaanchi* where others at various levels are going to benefit in terms of mandatory resources, but when it comes to *mwanaanchi*, he or she presents a situation of viability and vulnerability.

The consultation that should have taken place within the various relevant bodies did not take place. The approvals that were meant to be made, for example, from the water management authority, were not made. There is, therefore, no doubt at all about the secrecy in the way this project has been implemented. Unfortunately, it has ended up causing political divisions and arguments. Whichever position you belong to, it is the people who finally suffer. This must stop.

The Temporary Speaker (Sen. Sang): One minute for you.

Sen. (Dr.) Zani: No thanks. Mr. Temporary Speaker, Sir.

ADJOURNEMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, the House was Adjourned at 5.30 p.m. by dint of this Motion. The House will resume sitting tomorrow, Wednesday, October, 19th, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.