

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 22nd October, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

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

The Speaker (Hon. Ethuro): Order, hon. Senators! I am told that we have a quorum. We may, therefore, commence with today's business.

COMMUNICATION FROM THE CHAIR

INVITATION TO CONSULTATIVE FORUM BETWEEN THE SENATE AND THE TRANSITION AUTHORITY

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

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

Thank you.

NOTICES OF MOTIONS

Sen. Muthama: Mr. Speaker, Sir, I beg to give notice of the following Motions:-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

GOVERNMENT SUPPORT TO TEA AND
COFFEE FARMERS

THAT, aware that Kenyan coffee and tea are the major agricultural export earners; further aware that Kenya is rated as the fourth largest tea producer and the second biggest exporter in the world and that Kenyan coffee is regarded as one of the best coffees in the World; concerned that in the recent past tea and coffee production has tremendously deteriorated due to lack of commitment by the Government in supporting the tea and coffee farmers in the cultivation of these two crops; further concerned that the government has not been keen in coming up with marketing strategy of these two crops; concerned that Kenyan farmers are suffering a great deal due to lack of mechanization of agriculture; the Senate urges the National Government to support tea and coffee farmers by providing subsidized fertilizer to boost production as is the case of wheat and maize and actively get involved in the marketing strategy of these two crops and further that the National Government makes budgetary provisions to buy and store coffee and tea when the international market prices are down in order to sell when the prices improve.

DEVELOPMENT OF FRUIT PRESERVATION
AND STORAGE POLICY

THAT, aware that Kenya benefits immensely from the global and local fruit market; cognizant that fruits are an important component for better health; noting that fruit production is seasonal in nature and that fruits are highly perishable leading to wastage and losses during the high seasons; concerned that the Government has not come up with adequate measures of curbing the losses as a means of protecting fruit growers; further concerned that Kenya imports fruits during low seasons; the Senate urges the national Government to develop a policy on fruit preservation and storage through modern refrigeration and to provide incentives to investors to set up fruit processing plants in order to ensure ready demand for fruits which would cushion farmers against losses.

STATEMENTS

MANAGEMENT OF OIL, COAL AND NIOBIUM
IN TURKANA, KITUI AND KWALE COUNTIES

Sen. (Dr.) Zani: Mr. Speaker, Sir, on 1st August, 2013, I requested a Statement on the management of oil, coal and niobium discovered in Turkana, Kitui and Kwale counties. However, this Statement has not been brought to this House. This is a reminder

because the Statement sought to find out the involvement of communities in the running of natural resources and on whether they are being informed even before licences are obtained.

The Speaker (Hon. Ethuro): Does that fall under the Committee on Agriculture, Lands and Natural Resources?

Sen. (Dr.) Zani: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Is the Chairman here? I see a distinguished member of the Committee known as Sen. Khaniri. He is also the Vice-Chair.

Sen. Khaniri, what is your response?

Sen. Khaniri: Mr. Speaker, Sir, we had requested for time for this Statement to come on Thursday, next week. This morning, the Committee had a meeting. We should be having a meeting with the concerned Cabinet Secretary on Tuesday, next week. I believe that by Thursday, next week, we should come here with a substantive Statement.

The Speaker (Hon. Ethuro): Indeed, I recall the request for that extension by the Chair. The Vice-Chair is affirming the same position.

Sen. (Dr.) Zani, the response to this will be given on Thursday, next week.

Sen. (Dr.) Zani: That is fine, Mr. Speaker, Sir. Thank you.

GOVERNMENT EFFORTS TO ENHANCE SECURITY FOLLOWING THE 2012 BARAGOI MASSACRE

Sen. Lesuuda: Asante sana, Bw. Spika. Naomba nizamngumze kwa lugha ya Kiswahili ili nione kama ujumbe utafika nyumbani ama Mwenyekiti wa Kamati ya Usalama na Masuala ya Kigeni ataweza kutoa jibu kwa swali ambalo niliuliza kuhusu eneo la Baragoi na Samburu Kaskazini. Niliuliza maswali kadhaa kuhusu swala hili wiki tatu zilizopita. Mwenyekiti wa Kamati hii alikuwa ajibu maswali haya Alhamisi wiki iliyopita lakini hakuwepo. Spika aliyekuwa kitini alisema swali hili lijibiwe leo. Bado sioni kama kuna mwanakamati yeyote wa Kamati hiyo.

Bw. Spika, hili ni jambo la kuhuzunisha kwa sababu niliuliza swali hili kabla vita havijatokea Baragoi. Kwenye runinga na magazeti, tumekuwa tukiona vita vimeanza tena katika eneo hili. Sijui kama tunachukulia mambo haya kama ya mzaha. Watu kutoka eneo hilo wafaa waambiwe masuala yao hayatiliwi manani.

The Speaker (Hon. Ethuro): Yuko wapi Mwenyekiti wa Kamati husika? Sen. Lesuuda anauliza swali ambalo alikuwa anatarajia majibu leo.

Sen. Leshore: Last week?

The Speaker (Hon. Ethuro): Sen. Leshore, hiyo ni historia. Sen. Lesuuda alikuwa anataka kupata uhakikisho kwamba taarifa hiyo itatolewa leo. Mwenyekiti hayupo. Je, naibu wake yuko? Kuna mwanakamati yeyote?

Hon. Senators: Ongea kwa Kiswahili!

Sen. Kembi-Gitura: Mr. Speaker, Sir, just because the enquirer spoke in Kiswahili, I do not think I am obliged to speak in Kiswahili. I belong to that Committee. The Chairman and the vice-chair are out of the country. I do not know anything about what they plan to do. But if you allow, we could respond to this issue next Thursday, so

that I can be able to report to the Chairman. As a Committee, we will be able to give an answer by that time, if that suits Sen. Lesuuda.

The Speaker (Hon. Ethuro): Sen. Lesuuda, is that okay with you?

Sen. Lesuuda: Bw. Spika, tukiendelea kuomba muda, tujue ya kwamba watoto, akina mama na watu wa Baragoi tunapozungumza sasa, hawana usalama. Seneti, kama Bunge inayoheshimiwa, yafaa tuaihirishe kazi zingine zote ili tuzungumzie mambo ya usalama, hasa eneo la Baragoi.

The Speaker (Hon. Ethuro): Let me respond to that issue before I allow others. Sen. Kembi-Gitura, your committee needs to explain to the House on the failure to respond to the issue as expected. What confidence will we have that you will respond to the issue next week as you have promised?

Secondly, as the Senator is saying, the security situation is getting worse. Women and children are being killed, of course, not to mention men; I suppose those ones are expected to be killed.

(Laughter)

Sen. Kembi-Gitura, what is your response?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I appreciate the position that the people of Baragoi are in and the seriousness with which this matter must be taken. But I am just an agent of necessity right now because I stood up to report as a member of the committee that the Chairman and the Vice-Chair are not here.

Mr. Speaker, Sir, with your permission, I can make one undertaking because there is no communication. I will check with the clerk of the committee to see whether an answer has come. If it has, I undertake it to give it, on behalf of the Committee, tomorrow or Thursday this week. If it is not there, I regret there is nothing much I can do because what I have said from the Floor of this House is the only knowledge I have at the moment. I only stood up because you asked whether a member of the committee is present in the House this afternoon.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura, you can do better. As an agent of necessity, you can help us get the chairman and the rest of the committee so that we can get a response, at least by Thursday, noting that this is an issue of insecurity.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I will do whatever I can and give---

Sen. Leshore: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura, do you want to be informed?

Sen. Kembi-Gitura: Mr. Speaker, Sir, he can inform me, although I am not on a point of order.

Sen. Leshore: Your chair will not be here until after two weeks. He has gone to his constituency.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I thank Sen. Leshore for the information. I know that. I also know that the vice-chair is also not here. She will be here in the course of this week. That is why I can only undertake to follow up that issue---

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura!

Sen. Leshore, how useful is that information to us? There is a committee, fully constituted with a chair. If the chair is not there, there is a vice-chair. If the vice-chair and the chair are both absent, the committee can always elect one of the members to chair the committee. There are procedures in this House.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I have given my undertaking that I will follow up this issue. If it is possible to give an answer by Thursday, it shall be given. If it is not possible, I shall communicate that information to the House. That is the best I can do.

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

The Speaker (Hon. Ethuro): On the same matter?

Hon. Senators: Yes!

The Speaker (Hon. Ethuro): Let us first hear Sen. Wamatangi.

Sen. Wamatangi: Mr. Speaker, Sir, for quite a while we have had issues whereby some committees are not able to fully discharge the mandate that is bestowed upon them by this Senate. You are also aware that there have been efforts by some Senators in this House to have some of those committees split so that some Senators can take up the roles and share duties so that we do not have a repeat scenario like the one we are having with the issue that has been raised by Sen. Lesuada.

Up to now, we have not had a firm answer as to why some of these cannot be shared. It is not in order---

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! Are you implying that until you become the chair of a committee, that is the only time you can discharge responsibility in the committee?

Sen. Wamatangi: Mr. Speaker, Sir, with due respect, I have not mentioned about myself. But I am also capable. I am not disputing the fact that I am capable. On behalf of the other Senators, I am saying that it is important that these duties should be split and shared so that efficiency can be attained in this House. This is one way of improving efficiency in this House.

The Speaker (Hon. Ethuro): I am sure Sen. Wamatangi is fully aware that the Rules and Business Committee formed a sub-committee which has concluded its report. Only last week, the sub-committee presented this report to the Rules and Business Committee. We are working on it and we will definitely bring some proposals. I am not sure whether they will meet your expectations, but there is progress towards that direction. Just relax.

Hon. Senators, I would also imagine that if you have more membership in the committee, then it means absence of one or two members should not stall the process. It means there are more members to continue prosecuting the matter. In fact, it might be that because may be the numbers are not adequate enough, absence of one or two members, curtails the work. These are the many issues to look at. But I take your views and I have advised you on the process for the benefit of the House.

Yes; Acting Senate Minority Leader.

The Acting Senate Minority Leader (Sen. Abdirahman): Mr. Speaker, Sir, splitting the committees is not sufficient. We can imagine the sensitivity of the matter in Baragoi. We have witnessed the failure by committee chairs to respond on time to

various issues. The statements are replacing the questions we used to ask in Parliament. If we delay, time is wasted and we fail to achieve the objectives. My suggestion is that we set some benchmarks, that a standard procedure should be established in the House. For example, a statement should be responded to after, at most, a week. This concerns all statements that are sought. Cabinet Secretaries do not have to be interrogated in committee meetings. The various chairs and the office of the Clerk can write. We need to look for options. Could we, as a matter of practice, set up a minimum number of days within which we can have statements in the House?

Mr. Speaker, Sir, will you guide us?

The Speaker (Hon. Ethuro): There is nothing to guide there. You have made a good recommendation, which the committee will be looking into.

LACK OF CCTV CAMERAS IN MAJOR CITIES

Sen. Mohamud: Mr. Speaker, Sir, before we proceeded on recess, I cannot tell the exact date, I sought a Statement from the same committee regarding CCTV connectivity in the city. Up to now, I have not received an answer. I want to know why the Statement has not been delivered.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura, what is your response to this?

Sen. Kembi-Gitura: Mr. Speaker, Sir, from where I am standing, I understand what my fellow colleagues are asking. I have had occasion to talk about it when I was privileged to sit where you are sitting. I can only reiterate what I said earlier. I know what Sen. Mohamud and Sen. Lesuuda have said. I understand the urgency of issues like that of Baragoi; that such statements should be given immediately so that they do not lose relevance. I will reiterate what I said, that I will do a follow up and give an answer hopefully on Thursday, whether in the positive or the negative. I will give an answer to see whether we have been able to get an answer from the relevant departments of the Government or not. I know it is very difficult for a Member. I hope that this is not something that will be repeated in this House.

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, as a House, we are concerned about matters of security. You are privy to the information and the truth of what happened in Baragoi a few months ago where our officers were killed and the Government went into negotiations with the criminals. A report is being demanded on matters of security and the relevant committee is dilly dallying. I have two matters seeking your direction.

One, is it not in order for the Senate Majority Leader to give us a statement on such matters by Thursday? We do not want to take what the member of the committee is saying: "That "maybe", he "maybe" able to give a statement, "maybe", if it is available--" May be there are negotiations going on again with criminals.

Secondly, as a member of this House, would I not be in order to demand that this committee be dissolved?

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, on the second point, you are completely out of order! Committees of this House do not get dissolved that way. You can dissolve the membership but not the Committee. The Committee is an important organ of this House.

On the other point, I think that is a fair request. Let us see how far the acting chairman of the committee will progress. Failure to do so, it will be necessary for the Majority Leader to make a statement, especially on the matter of insecurity in Baragoi.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, given how the Government failed to adequately respond to the problem at Westgate, given how a committee of Parliament went and absolved members of the military who were shown on television footage actually looting at Westgate, given that this Committee has again clearly shown us that they are not keen on addressing the issue of insecurity, could the Chair direct that the Senate Leader of the Majority, besides responding to the issues that I have raised, he should come here with a confirmation from the Jubilee Government, that the Government is still committed to giving security to Kenyans? Is this Senate also behaving like the Lower House which was used to clear those military people even before the Joint Committee of that House had concluded investigations?

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I honestly do not think this is a laughing matter, the way Sen. (Dr.) Khalwale seems to be taking it.

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

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, is the hon. Deputy Speaker in order to imagine, suggest and mention that I was laughing when I was addressing a grave issue of how the Government failed to protect the lives and properties of Kenyans at Westgate? I was addressing how the Joint Committee of the National Assembly cleared members of the military who clearly looted from Westgate? Could I possibly have been laughing? Probably you should allow us to also remind him the meaning of the word “laughing” in English.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I know the meaning of the word “laughing”. The sad thing is that the HANSARD will not show you laughing; that is the only difference. But the point I am making is that I do not think it is proper to impute improper motives on committees because we do not know as yet why the statement has not been given. If the chair or the vice-chair were here, maybe, they would have given a proper answer on this issue. But, like I indicated at the beginning, I am an agent of necessity. It is not like what my friend Sen. (Dr.) Machage mentioned; that this is just an issue of “maybe” or “maybe not”. On Thursday, all things being equal, if the chairman or the vice-chair shall not be here, I undertake that I shall stand here and indicate whether or not I shall be having an answer to the issues raised by Sen. Lesuuda. If there will be no answer, I will say so because I am not going to give an answer that is not there; it is not possible.

So, the point I am making is that I appreciate the urgency of this matter and that the Senator who raised the Statement is entitled to one. But if the Statement is not there, then this House can interrogate the committee or the Leader of the Majority on why the statement has not been issued. But as of now, I do not think it is right to impute improper motive, the way one of the Senators has done, against the Chairman and the entirety of that Committee. We know that it is important and imperative that this Statement should be given because that is the reason statements are sought. It is not that we are trying to shirk our responsibility on this issue. That is why I have said I will do my best in the circumstances to see to it that an answer is given if, indeed, that answer is available as of this Thursday.

The Speaker (Hon. Ethuro): Indeed, Sen. (Dr.) Khalwale, you started very well; I do not know where the rain started beating you. What Sen. Kembi-Gitura is saying is that since the Chair and the Vice-Chair are not there, he is just holding brief. Your kind of statement should have come when you get the Statement from the Chair when it is issued, then you can impute some other motives to the whole thing. For now, all we want to is ensure that we have the Statement. I would encourage you to wait because Thursday is not too far. When that time comes, I will give you all the time you need to prosecute the matter.

The Acting Senate Minority Leader (Sen. Abdirahman): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Abdirahman?

The Acting Senate Minority Leader (Sen. Abdirahman): Mr. Speaker, Sir, while we appreciate the responses from the Deputy Speaker, who is now the agent of necessity, the last bit of his Statement shows some little bit of uncertainty especially when he says that there may be no answer. That is the indication we are getting. This House deserves responses. If you are already giving us indications of uncertainty, then why are we here as a House? We must be given timely responses that will help Kenyans. Can he be clear and tell us why he is uncertain about what he is going to do on Thursday? Is he in order to tell us that he is not even sure whether he can bring something on Thursday?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I do not accept that I am out of order for the simple reason that I do not think that it is humanly possible for me to make a Statement better than the one I have made from the Floor of this House. I am not going to tell Senators that I am going to give a Statement on behalf of the Chairman of the Committee on Thursday or any other day soon thereafter. That, I am not going to do because I have not had sight of that Statement and I cannot therefore say that I will issue it. So, if that is what the hon. Senator is calling uncertainty, then there is uncertainty because I could very well come here on Thursday and say that I still do not have an answer. That is why I had asked to be given until Thursday next week but the Speaker ruled that we should have an indication about the Statement on Thursday. That is how I understood the Speaker on this issue.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I was listening very keenly to your ruling on this issue and at no time did I hear you say that the representative of the Chairman will give an indication to the availability of the answer on Thursday. Is he in order?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. Over one month ago, I stood on the Floor of this House---

The Speaker (Hon. Ethuro): Is yours separate from this one?

Sen. (Prof.) Lonyangapuo: Yes, but related.

RAID BY CATTLE RUSTLERS AT APUKE
IN WEST POKOT COUNTY

Mr. Speaker, Sir, I had sought a very urgent Statement regarding a tragedy that took place in my county at a place called Apuke where bandits came and killed people and took away many livestock. The Statement was so urgent and the Committee requested for one week to respond. To date, no response has come and between that time and now, three more raids have taken place at Nauyopong, Apuke and Ndombolion. I do not know what will make this Committee treat this thing urgently. How many people are they waiting to be killed for them to wake up and treat it as urgent? How much property must be destroyed for the Committee to treat the matter as urgent? I do not know what to tell my people because even the hospital bills have been brought to my home and yet it should be dealt with by the Government. I seek to hear what the Committee is up to and how they can handle this situation.

The Speaker (Hon. Ethuro): Same Committee?

Sen. Kembi-Gitura, are you still willing to be an agent of necessity?

Sen. Kembi-Gitura: Yes, I am indeed and I will continue to do that. I remember the Statement that was sought by Sen. (Prof.) Lonyangapuo and I will say the same thing that I have said. Again, I could give an indication this Thursday. It is now clear to the House that neither the chairman nor the vice-chairman is at the precincts of the Senate.

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

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

The Speaker (Hon. Ethuro): Is it related or different? I will allow you if it has a distant relationship but Sen. (Dr.) Khalwale's intervention might reduce the distance. I am bringing it even closer. So, why can you not allow Sen. (Dr.) Khalwale to conclude this one, then you can come in?

Sen. Karaba: Now that I am here, let me go on.

(Laughter)

The Speaker (Hon. Ethuro): You are not going to be a permanent feature of that position. So, you can just resume your seat and you will come back.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, what is playing out now and over the last few months that we have been in this House is that it is now clear that no Member of the Committee including the Chair and the Vice-Chair are responsible for whatever we ask them to respond to. It is quite clear that this Committee is not responsible for giving security to Kenyans or ensuring that there is security. I am standing on a point of order to request the Chair that since the House is now having a relook at our Standing Orders, we provide that Cabinet Secretaries come to the National Assembly and the Senate to

personally respond to issues because we want to oversight the Government. We cannot do so when we are oversighting fellow colleagues in the names of Chairpersons of Committees.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, while I appreciate your frustrations, I think taking that drastic measure of inviting Ministers directly to respond has certain challenges in terms of our constitutional arrangement. I think it is also too early to start thinking which way is the right way. Let me direct this way: First, I want to thank Sen. Kembi-Gitura for stepping in due to the absence of the leadership of the Committee. We do not know how the Committee has progressed with the issues raised starting with Sen. Lesuuda's issue on Baragoi insecurity, Sen. Halima's on CCTV in Nairobi and thirdly Sen. (Prof.) Lonyangapuo's query on raid by cattle rustlers in Apuke.

Since we are all recognizing that they have taken a bit of time, I wish to direct as follows: That, the Committee submits responses to all those issues by, latest, Thursday this week. Failure to do so, the Senate Majority Leader must make a Statement, as originally requested by Sen. (Dr.) Khalwale on Tuesday. If both parties fail to do the needful, I will be more than willing to allow the House to take the necessary sanctions. In matters of security, just to borrow the CCTV example and the link on Westgate attack, you can really appreciate the importance of such a matter. I know the leadership of the Committee is responsible and even the Committee in its entirety whether they are few or many, according to Sen. Wamatangi. We will call upon them to work between now and Thursday afternoon to ensure that the House gets responses to all those Statements.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. Have you forgotten me?

The Speaker (Hon. Ethuro): I have not forgotten, I am still trying to bridge the distance.

Sen. Orendo: On a point of order, Mr. Speaker, Sir. I am further seeking your direction without going back to your ruling. Unfortunately or fortunately, I belong to this Committee. So, I stand accused. If you look at Standing Order No.43---

The Speaker (Hon. Ethuro): Sen. Orendo, please just clarify. Do you belong to the Committee?

Sen. Orendo: Yes, I belong to the Committee.

I just wanted, for efficient operations of this Committee, when matters of Statements arise, if you look at Standing Order No.43, the request is made to the Chairman of the Committee which is mandated with those particular responsibilities, but under those Standing Orders, there is no requirement that the matter is placed before the Committee. I am saying this as a member of that Committee because the issues have not arisen in the Committee although I have tremendous confidence in the leadership of that Committee. For better operation of this Committee, there should be an understanding that once a request is made to the Chairperson of that particular Committee, then the Committee should be seized of the matter because there is no such thing under the Standing Orders.

This matter also arose at some time when a member of the Opposition was required to give a Statement on behalf of the Government because these statements are made on behalf of the Government. I know that Jubilee would not want me to speak for it on a matter as sensitive as this or I would not even want to speak for it on a matter as

sensitive as this, because I would want to take a position as part of the Opposition. So, I think Mr. Speaker, you need to guide us that once a request is made to the Chairperson, then the Committee should be seized of the matter and further that whenever that Statement is made, it is not a Statement by the Committee because if it is a Statement by the Committee, then the Government will not bear any responsibility. So, the Statement is actually by the relevant Government Ministry or department, which is being made through the Chairperson and not through the Committee necessarily. If it was the Committee, then it would not be the Statement for and on behalf of that particular Government Department or Ministry.

(Loud consultations)

This is a very important thing although my colleagues are not listening but I think this is a very important description. Otherwise, one day, I can stand up and speak for Jubilee and they would be wiser if I did.

The Speaker (Hon. Ethuro): Hon. Senators, I think that we have spent a lot of time on this matter and I have actually ruled that we can only use the Standing Order raised by Sen. Orengo, just to really fortify my ruling. If you look at Standing Order No.43 (2) (b) it reads:-

“(2) During the Statements Hour-

(b) The Senate Majority Leader or the Senate Minority Leader as the case may be, or their designees may make a statement relating to their responsibilities in the Senate or the activities of a Committee.”

So, when I said “failure by the Committee to respond, then the Senate Majority Leader should,” I had that in mind.

Standing Order No.43 (2) (c) reads:-

“(2) During the Statements Hour-

(c) A Senator may request for a statement from a Committee chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the statement to be made or direct that the statement be issued on the same day.”

So, the Standing Orders actually allow me to ask the Chairperson to make the Statement immediately, assuming that the Chair, of course, is fully conversant with the issues, being the Chair of the Committee. Secondly, the practice has been that we have allowed the Senator requesting the Statement and the responding Committee to agree on the most convenient and suitable time, just appreciating our own small democracy within the House. That has been the practice. By the time the Senator comes back for a reminder, it is actually on the basis that the responding Committee had already committed itself to a particular time. I think that, that should be the way to go, except when they fail to observe the time that they had agreed.

But when you look at the mandate of the Committee--- I know that this matter has been canvassed in the House for a long time and we agree that since this is a new thing, we are all trying to see how best to do it, including the point that Sen. Orengo raised; whether a Member of the opposition can do so. This is a matter that the Senate

Majority Leader had occasion to pronounce himself on, very categorically, emphatically and professorially, if I may add. But you need to look at the Chairperson relating to matters under the mandate of the Committee. So, these are matters under the mandate of the Committee.

Therefore, my reading of this is that the Chairperson can actually handle the matter, if it comes and he or she feels comfortable or he can actually convene a Committee meeting, because there could be matters for the Committee to address regarding the issue being sought. This is why we have the flexibility to allow the committees to do it. But the committees do not have the flexibility of making time elastic. That is now where we must invoke the responsibility of the committee leadership and the Senate Majority Leader for that matter.

That is my advice for today. We will get the answers from this Committee on all those outstanding issues by Thursday. I am saying so for the benefit of the agent of necessity. So, it is not an indication; but they are responses. Failure to do so, the Senate Majority Leader will do the needful. That is well within our Standing Orders. Failure for both parties, then the House is under your direction on further sanctions.

Thank you and I am happy that the Senate Majority Leader is here.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. It is almost as if you have made a ruling on what I wanted to raise. But given the situation that we find ourselves in now, I have been made to fear to even demand for a Statement from the Chairman of the same Committee regarding Kirinyaga which is facing a lot of insecurity. Several kidnappings have taken place and my fear is that if I request for the Statement, it will take another two weeks to get it. Now that you have given the Committee up to Thursday, I will demand for a Statement and make sure that it is given by Thursday.

The Speaker (Hon. Ethuro): Order, Sen. Karaba! Have you demanded for the Statement or are you going to do it on Thursday?

Sen. Karaba: Mr. Speaker, Sir, I wanted to demand for it today, but I feared that your ruling would rule me out of that. I will write it tomorrow, so that it can be included.

The Speaker (Hon. Ethuro): As you wish!

POLLUTION OF ATHI, GALANA AND SABAKI RIVERS

Sen. Wamatangi: Mr. Speaker, Sir, last week but one, I sought a Statement from the Standing Committee on Health, Labour and Social Welfare. This was as a result of a notice which was issued by the National Environment Management Authority (NEMA) after a Committee, which I serve in, that is, the *Ad hoc* Committee on Royalties, paid a visit to Athi River, as it passes through the Fourteen Falls in Thika. It was noticed that the entire sewage of Nairobi is being diverted into three rivers, that is, Rivers Galana, Athi and Sabaki. After that, NEMA issued an alert warning all people in the Republic not to use any water from those rivers.

Mr. Speaker, Sir, millions of people depend on those rivers and that is why I sought a Statement from the Standing Committee on Health, Labour and Social Welfare. Last week expired and even as I speak, innocent people downstream, across several counties, still consume that water. We do not know how many of them have probably

died or will die from waterborne diseases. This is a serious matter of national concern. That Statement is yet to come.

The Speaker (Hon. Ethuro): Chairman of the Committee on Health, Labour and Social Welfare!

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I really sympathize with the situation and what the hon. Senator has said is true. He sought a Statement and we had said that we would be able to deliver it. One of the promises that we made to the Senator was that we were going to visit the place ourselves.

Sen. Kivuti: On a point of order, Mr. Speaker, Sir. I would have imagined that anything to do with the environment should be under the Committee on Agriculture, Land and Natural Resources.

Mr. Speaker, Sir, I seek your direction.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I share the same rivers with Sen. Wamatangi. A statement on contamination of the two rivers was issued by the NEMA, giving warning to residents who live close to the rivers not to use that water. We discussed this statement with Sen. Wamatangi and an undertaking was given that a Statement would be issued in two weeks. As we are talking, young men are diving into those rivers and the cows and other livestock are drinking water from those rivers, when actually a warning was issued by the Government. Therefore, this issue should be addressed quickly. Are we here to safeguard the lives of our people or just play games and talk? This is a very serious issue. What would be my business in this Senate if I cannot protect my people?

Mr. Speaker, Sir, the Chair should give an undertaking and firm commitment on when we are going to discuss this issue.

The Speaker (Hon. Ethuro): Let us hear from the Chair of the Committee on Health, Labour and Social Welfare, because he had already committed himself.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I stand here to apologize that this Statement was not given as directed earlier. A visit to the place could not be arranged as we had intended. I will give this Statement on Thursday.

The Speaker (Hon. Ethuro): Which Thursday?

Sen. (Dr.) Kuti: This coming Thursday, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Kuti, I also do not think that you need to visit to get an answer. If a report was made by a Government agency, then the first thing that you need to do is get them to come and brief you. From there, you will know who else you want to talk to, so that even if you visit, it will just be to confirm some of the issues that you will have already flagged out.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I will not mind if my colleague, the Chair of the Committee on Agriculture, Land and Natural Resources, could join too.

Sen. Wamatangi: Mr. Speaker, Sir, thank you for your indulgence. Indeed, as you have correctly ruled and I thank you for that, the issue of a public body issuing a statement that people of this country should not consume water from rivers, because they will fall sick or suffer health hazards, is also a matter of health, as much as it is a matter of environment. I am happy with your ruling, but I would like to add that this is a matter that is causing serious concern, especially in my County of Kiambu.

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! We have already made those arguments, and I really allowed you to ventilate when you were just doing a reminder. There is no amount of ventilation that will make the response come. Wait until Thursday when they will bring the response and then you can react to it.

Sen. Wamatangi: Most obliged, Mr. Speaker, Sir. I will wait until Thursday for that Statement to come. I still hold the view because it is my democratic right, as an elected leader, to air my view as I see it; that---

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! I will allow you to exercise that democratic right on Thursday to air your views. For now, we are just talking about when the Statement can be ready, just like it is the democratic right of people to elect you, but they do not elect you every year. They elect you every five years.

Sen. Wamatangi: Mr. Speaker, Sir, what I only seek from you is a ruling, like you gave in the other matter, such that we are sure that come that Thursday, we will have a Statement and not an excuse.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Would I be in order if I reminded you that there is Standing Order No.107 that addresses irrelevancies and repetitions?

(Laughter)

The Speaker (Hon. Ethuro): Indeed, Standing Order No.107 is entitled “irrelevance or repetition.” It reads:-

“The Speaker or the Chairperson of Committees, after having called attention to the conduct of a Senator who persists in irrelevance or tedious repetition either of the Senator’s own arguments or the arguments used by other Senators in debate, may, after having first warned him or her direct that the Senator discontinue his or her speech.”

So, whoever suspects that he may be a culprit to this one, you are highly recommended--- The Chair would not want to go that way; do your own self censorship.

Let us conclude this matter; I do not think it is a big issue. I want to agree with the observation by Sen. Kivuti that this matter, having actually been raised by the National Environmental Management Authority (NEMA) which falls under environment, should have gone to his Committee. However, given the sensitivity of this matter and because of the related component in terms of public health and the affected population downstream of the rivers - the Committee on Health, Labour and Social Welfare took up the matter. I urge that the two Chairs come together, then look at this matter, and bring us the report as promised on Thursday.

What is it, Sen. Kivuti? I thought it was obvious; and it is what you requested.

Sen. Kivuti: Mr. Speaker, Sir, you are right in directing, but may I request that today being Tuesday, we have only one day in which to consult the Ministry of Environment, Water and Natural Resources to give us an answer to table on Thursday, which I think is a bit too short. I would request your indulgence so that we look into this matter collectively so that we get my Committee – and I can assure you that the Ministry of Environment, Water and Natural Resources has been very, very proactive; if I put it

that way. This matter is not only about the environment, but it also touches on water resources because we are talking of catchment areas and, maybe we need to address it in a broader sense and not just the health hazard alone.

For that reason, Mr. Speaker, Sir, I would request that the Ministry I oversight be given at least a week in which we can get something tangible; something which is acceptable to this House. It will be supplemental---

The Speaker (Hon. Ethuro): I have heard you.

Sen. Kivuti: It will be supplemental to the health concern.

The Speaker (Hon. Ethuro): I have heard you, Chairman.

Sen. Kivuti: Thank you.

The Speaker (Hon. Ethuro): I have heard you; but when Statements are sought, they are very specific in nature. So, I would not entertain a Committee trying to do more than its brief.

Secondly, you can always work in a way that you give us some tentative report of your findings. If the report was actually by a Government agency known as NEMA, then it has information. since another Committee had already embarked on this particular process, you add whatever value you can add, come here on Thursday with a report; in the same report you can tell us other areas that you may wish to consider afterwards. But, really, in terms of urgency, issues of public health, just like those of security, require immediate attention.

(Applause)

Sen. Kivuti: I am much obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Thank you.

What is it, Sen. Kiraitu?

MANAGEMENT OF 99 YEAR-OLD LEASES
BY THE GOVERNMENT

Sen. Murungi: Mr. Speaker, Sir, I am rising on a point of order to seek your guidance in a case where a Committee persistently ignores the directions of the Chair.

Mr. Speaker, Sir, the Committee on Agriculture, Land and Natural Resources – which is chaired by Sen. Kivuti, who is here today – has refused or neglected or otherwise failed to respond to my request for a Statement regarding expired 99-year leases, which was requested for before the Senate went for recess. This is the fourth time I am reminding the Committee through the Chair. Last time, the Chairman slipped out of the House before he could give the Statement, and now he is asking for more work.

So, Mr. Speaker, Sir, can you say something about it, because I do not want to call for the Committee to be disbanded.

(Laughter)

(Sen. Muthama stood up in his place)

The Speaker (Hon. Ethuro): What is it, Sen. Muthama?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. With your previous ruling on the issue that was raised by Sen. Wamatangi, may I kindly ask the Chair to give – I do not know whether I want to say “orders” or “undertaking” – from the two Chairpersons, since the report is coming on Thursday for Sen. Wamatangi and myself to visit the areas, because it will take us only 30 minutes on Thursday morning before the report is brought here at 2.30 p.m. in the afternoon?

The Speaker (Hon. Ethuro): That should be arranged; the two Chairpersons, get in touch with the two Senators and make a visit to the place.

Sen. Kivuti: We are very much obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Lenny Kivuti on the issue by Sen. Kiraitu. Remember also that there is an outstanding issue by Sen. (Dr.) Zani.

Sen. Kivuti: Thank you, Mr. Speaker, Sir. If you give me a chance, I can answer all of them.

The Speaker (Hon. Ethuro): Do you want to respond now?

Sen. Kivuti: It is possible, because today in the morning, we already had a meeting and we discussed about all these issues, except the one by Sen. Muthama, which I may also wish to comment about, with your permission.

The Speaker (Hon. Ethuro): I appreciate your brain capacity, but for purposes of record, it would have been nice to see some documentation with you.

So, you are ready on Sen. (Dr.) Zani’s Statement?

Sen. Kivuti: Mr. Speaker, Sir, I wanted to make some comments which have been raised and which are already in my head, unless you direct that I go and write them up.

The Speaker (Hon. Ethuro): It is better that way. Give us something written and then, tomorrow afternoon, I will allow you to respond to all of them.

Sen. Kivuti: Mr. Speaker, Sir, I beg for your indulgence---

The Speaker (Hon. Ethuro): For your information, Chairperson, even the Chair needs a copy of what you are going to inform the House.

Sen. Kivuti: The reason is because Sen. Kiraitu was not here last Thursday, when you directed that the answer be brought here in two weeks; which is Thursday next week. That is already in the HANSARD.

Mr. Speaker, Sir, by today, we had not received a response from the Cabinet Secretary (CS) and we decided to issue a summons for her to appear before the Committee on Tuesday next week. That will be before the date which we have been given by you, to bring all the answers. That will be the same with Sen. (Dr.) Zani’s Question, which also we discussed today. Some of the Cabinet Secretaries are not difficult; they have been co-operative, but we have not had any response from the Cabinet Secretary for Lands, Housing and Urban Development and, for that reason, the Committee decided to summon her to appear before us on Tuesday next week. There are three issues which we will discuss; the 99-year leases, the issue of Masongaleni land allocation, and there is also a third issue. There are actually three issues which are still pending in the Ministry of Lands, Housing and Urban Development.

According to the emerging issues, which, Mr. Speaker, Sir, you are aware of - about the reorganization of the Ministry of Lands, Housing and Urban Development; and also the three million titles. All these issues were discussed in our Committee, and we need to get answers from the Cabinet Secretary.

As concerns Sen. Muthama's question about our involvement in the answer the day after tomorrow, my understanding, Mr. Speaker, Sir, is that you have said that we should get the comment which was made by NEMA and see how it fits with the answers being brought by the Committee on Health, Labour and Social Welfare so that we add value to the answer from this Committee. Then thereafter, we may interrogate that answer further to see how water quality and environmental concerns can be met all over the country.

Thank you, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

The Speaker (Hon. Ethuro): Sen. Kiraitu?

Sen. Murungi: Mr. Speaker, Sir, I am agreeable to your proposal of giving the Chairman of that Committee one more chance to give us the Statement on the 99-year leases on Thursday next week. But if he does not do so, then dire consequences should be visited on that Committee.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Indeed, on the issue of Sen. (Dr.) Zani and Sen. Kiraitu Murungi, the Chair had actually sought for that extension last week, and we allowed it; which was repeated in the case of Sen. (Dr.) Zani this afternoon by the Vice-Chair. So, we should proceed that way. And then also that one of Sen. Wamatangi and Sen. Muthama, why do you not wait for Thursday?

(Sen. Muthama stood up in his place)

Yes, Sen. Muthama; you should be very brief.

Sen. Muthama: I will be very brief, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I want to thank Sen. (Dr.) Machage for reminding us of Standing Order No.107.

Sen. Muthama: Mr. Speaker, Sir, you heard the Chair of the Committee on Agriculture, Land and Natural Resources say that they should wait for the report from NEMA so that they can see what value it will add on the report that will be brought by the Committee on Health, Labour and Social Welfare.

Mr. Speaker, Sir, I want to tell the Chair, through you, that already a stern warning has been given by NEMA, which means that the people should not touch - forget about looking at - that water. It is dangerous and it is a health hazard; so what other report would we be expecting instead of saying "yes, we go on Thursday;" if he wants to take a bath, I will get him a swimming costume to taste that water and see how Kenyans are suffering.

Mr. Speaker, Sir, there is no report that we are waiting for to add value---

The Speaker (Hon. Ethuro): Order! Order, Sen. Muthama!

Sen. Muthama: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Wamatangi, you have only one minute.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I assure you that I will not be repetitive.

Mr. Speaker, Sir, in pursuit of what the Chair has said and in the pursuit of getting facts, that water has already been taken to the Government laboratories for testing; the results are out; that the water is highly contaminated. That report is available for the Committee to take up and act expeditiously and fast to bring this matter to rest.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, hon. Senators! This is all useful information and should be forwarded to the Committee. We cannot transact business here that would better be transacted at the committee stage. I plead with you and it is important that we agree. By the time the Chairperson starts pursuing the matter, you should be the first people to give all the information that you have regarding it. The Chairpersons will then come on Thursday afternoon to inform the rest of the House. I also want you to volunteer the information you have to the committees so that they come here with a considered report.

Let us leave this matter at that level. We cannot keep on discussing it the whole afternoon.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Mine is an issue of addressing the Constitution on the failure of the system. Since March, when this Senate was elected, we have seen deficiencies that exist in terms of transacting business in this House by the Government.

Indeed, the Government has demonstrated total failure; one, with regard to orders from this House to the Government; and, two, with regard to orders seeking information from the Government.

Would I be in order to make this statement and say that the Constitution has failed with regard to this issue? An amendment of the relationship between Parliament and the Government should be looked into amongst other amendments so that they are put through a referendum.

The Speaker (Hon. Ethuro): Sen. Machage, you are completely out of order to declare that the Constitution has failed. You need to withdraw those words. Until the Committee Chairpersons come back to us, as a House, since you have given them that responsibility, you have to wait. You need to come and say that you sought certain information from a certain source but it has not been forthcoming. That is when the House can take a considered decision. You should not just give opinions.

I am not aware if you are one of the Chairpersons of this House. You are making those statements on the Floor of the House just because we have moved on in terms of our democratic gains. I wish to remind you that in the 1970s, such statements would land people elsewhere including the Chair.

An hon. Senator: Nyayo House!

Sen.(Dr.) Machage: Mr. Speaker, Sir, it would not be the first time for me to land there. As a matter of principle, I will not withdraw.

The Speaker (Hon. Ethuro): Sen.(Dr.) Machage, I will give you the last chance to withdraw.

Sen. (Dr.) Machage: Mr. Speaker, Sir, our Constitution has failed to address a lot of matters that need to be seen critically. I will not withdraw.

The Speaker (Hon. Ethuro): In that case, Sen. (Dr.) Machage, you may withdraw from the Chamber for the remainder of the day.

(Sen. (Dr.) Machage withdrew from the Chamber)

The Speaker (Hon. Ethuro): Just before I invite Sen. (Prof.) Kindiki, Senators, you have an opportunity to interrogate the Government or the people that represent the Government like the Senate Majority Leader every Thursday. Your Standing Orders have accorded you that opportunity. However, you do not do that. You want to do it when it is completely unnecessary.

When the Senate Majority Leader comes to give you the programme for the week, that is a good opportunity for you to interrogate those issues. I will invite you to be keen so that the next time that the Senate Majority Leader comes up with a weekly programme, you ask him about the performance, deficiencies and all other questions. This is a House of rules. You cannot just be speaking out of turn without any supportive evidence and give an opinion on a grave matter like the Constitution.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir thank you for that direction.

On a point of order, Mr. Speaker, Sir. Given what has just transpired in this Chamber, which is quite unfortunate, there is a difference between an attack on the Government which is a political entity and an attack on the Constitution of our country. I think we need a bit of guidance in future. I am saying this because I have seen the way we interact here; both sides of the House, and in our submissions. We need to have some code of conduct because attacking the Constitution is like attacking the entire nationhood and that is extremely serious.

However, I want to seek your guidance but not particularly now. Some of the challenges we are facing with regard to the relationship between the Office of the Senate Leader of the Majority and the Chairpersons of Committees are extremely systemic problems. There is no linkage, whatsoever; given the practice we have had for the last six months. I have no relationship with Chairpersons of the committees and this should be created because I am the default mechanism.

For instance, as I walked in, Mr. Speaker, you gave orders that you require certain answers with regard to about five Statements related to national security by Thursday. My inquiry tells me that those requests for Statements have been there for many months.

Secondly, my inquiry tells me that both the Chairperson and the Vice-Chairperson are out of the country. So, unless there is a way in which the Senate Majority Leader, being the person who bears the default responsibility, can receive information from the Committee Chairpersons--- I require support so that I carry out the responsibility.

It is a bit unfair to require the Senate Majority Leader to have the default responsibilities while there is no obligation for the Chairpersons to tell me that they are

facing difficulties, for instance, that they are travelling out of the country and there is a responsibility to be discharged. I need to know that. Otherwise, I am afraid that I do not know how responses to the five statements will be found.

We need a bit of guidance before we lose direction on this matter.

The Acting Senate Minority Leader (Sen. Abdirahman): On a point of order, Mr. Speaker, Sir. I stood here, this afternoon, to suggest something that seemed to be a possible solution to this problem. The assertion of the Senate Majority Leader will be like abdicating responsibility.

It is incumbent upon the Senate Majority Leader and Chairpersons who purport to represent the Government to prepare and liaise with the Speaker's Office and the Office of the Clerk. All they need to do is to liaise with the Office of the Clerk and ensure that those things are done on a routine basis. That is why the Office of the Senate Majority Leader is there. If only they could build some mechanisms along with the respective offices of the Senate, we would not have problems. There is a clear indication that the Executive is failing. It is not the Constitution that is failing. It is the implementers who are failing. What do we need to do, therefore? We simply need to put up standards and, as you told us, this can only be done through the House Rules and Business Committee, if I got you right this afternoon. So, they must be held accountable.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to agree with you and with the Senate Majority Leader that we cannot challenge the Constitution when repeatedly, in this House, we refer to the same Constitution. We have even gone to the Supreme Court on matters that were vexing between the two Houses.

However, should we allow the Senate Leader of Majority to get away with what he is saying; that he does not see any nexus between him and the Chairs of the Committees? The Senate Majority Leader has been given a deputy so that anything that this House expects from the Government, he is aware about. When he is away either on a call of nature or whatever it is, his deputy is there.

It might be lost to some that on many occasions, we do not have the Senate Leader of Majority in this House. We do not have his Deputy here and neither do we have the Chief Whip or the Deputy Chief Whip. It is only the Senate Leader of Minority, Wetangula, who was sitting in this House. How I miss Wetangula!

Sen. Elachi: On a point of order, Mr. Speaker, Sir. Is my Senator in order to say that he has not been seeing me in the House and yet I am always here? I am even the one who closes most of the sessions after he has left.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. The last statement by the Senator for Kakamega has revealed that, perhaps, he wanted to make a point that he is missing the Senate Leader of Minority. We wish him all the best.

Having said so, the Senator for Kakamega is out of order, in my view, because the Senate Majority Leader is always in the Chamber and when he is not there, he arranges with his Deputy, the Chief Whip or one of the Committee Chairs to stand in for him. There is always someone on duty on the Majority side. However, In relation to the issue raised by Sen.(Dr.) Khalwale on whether I should get away with what I have said here, I will insist that I have stood on this podium, severally, trying to impress upon the Chair to

direct the Chairs of Committees to create a relationship with the Office of the Senate Majority Leader.

I have tried to make very strong arguments. I have lost on several occasions. The Chair has ruled differently because there is no way, I am no angel, unless the Chair directs. The Chair should direct that if a Chair of a Committee has a responsibility and cannot, for one reason or the other, bring an answer to this House, they require the Majority Leader to intervene, then they should bring it to my attention, otherwise, I would be trespassing on the committee work. We wanted some hygienic and sane relationships for the better performance of the relationships in this House.

The indication I got from the two rulings from the Chair on this matter is that the Committee Chairs are on their own. The Standing Orders say that questions should be directed to the Chairs of Committees. I am happy with that bit because I do not want to be all over the place. However, when committee Chairs do not deliver, then the Senate Majority Leader takes responsibility and yet they have no obligation, whatsoever, to report to me. How should I know what to do to support the Chairs of Committees?

The Speaker (Hon. Ethuro): Hon. Senators, this is a fairly straight matter which I want to dispose of.

(Sen. Wako stood up in his place)

The Speaker (Hon. Ethuro): I hope you will be very brief. I also hope that you heard the Senate Majority Leader trying to challenge the Chairpersons of Committees.

Sen. Wako: Mr. Speaker, Sir, I will be very brief. I will support you that the fault is not in the Constitution at all. The fault is in us. Apart from what has been stated before, we have the power that was bestowed upon us under the Constitution.

If a Minister does not respond to our requests, which are made with utmost courtesy and respect, we have the powers to summon that Minister. If those summons are not honoured, we can ask, through the Attorney-General that he or she be arrested and be charged for refusing to honour summons. Either House of Parliament under Section 125 of the Constitution has the same powers as the High Court of this country: Powers to enforce the attendance of witnesses and examine them on oath of affirmation or otherwise; powers to compel the production of documents and powers to issue, commission or request to examine witnesses abroad.

We all know that if the High Court has summoned you to attend and you do not attend, it is an offence and there are consequences for that. So, we have the powers but we have not exercised the powers which are bestowed upon Parliament and upon the Committees of Parliament. Even under our own Standing Orders, we have the powers. The powers are there under Standing Order No.193. It states:-

“The Committees shall enjoy and exercise all the powers and privileges bestowed upon Parliament by the Constitution and Statute, including the power to summon witnesses; receive evidence and request for and receive papers and documents from the Government and the public”.

So, we have the powers and I think it is now up to us to use them. They are powers we have rarely exercised because I think we have believed in an amicable

relationship between the House and the Executive. If that amicable relationship is being abused, there should be no hesitation in calling upon us to exercise those powers. If questions are not being answered or they are being ignored or the Government is neglecting to answer them and so on, then that is an abuse of the process and if it is an abuse of the process, we have that ultimate power and sanction under the Constitution and our Standing Orders. So, I agree with you that the fault is not in the Constitution, the fault is in us, like the famous Shakespearean play of Julius Ceasar – “the fault, my dear friend, is not in the stars, but is in us”.

Sen. Orendo: Mr. Speaker, Sir. While I agree with the remarks and directions on this matter and also with Sen. Wako, I am concerned, because in any government which takes governance seriously, what arises from the National Assembly or the Senate is of critical importance. In fact, if I was occupying the Office of the Senate Majority Leader, who I baptize “the leader” without any further adjectives, now I am beginning to regret, that having called him the leader, it will be incumbent upon him at the end of every day, to take an audit of what transpired and what is required of Government at the end of the day. Because he is not doing that, you can see that all these issues that are arising are bordering on Government responsibility and accountability.

Mr. Speaker, Sir, for example, when I heard Sen. Lesuuda pleading – you know she is nominated by the Jubilee Coalition – as a Senator, what about the Senators who are not in the Jubilee Coalition and they may not be able to whisper to those in positions of responsibility? So, if Sen. Lesuuda cannot be heard, what about the ordinary Kenyans? Whereas I like the pontification by Sen. Wako, but again I would like to give free advice to the Jubilee Government: They should either have a whole department in charge of parliamentary affairs as is done in other jurisdictions or initially when we had Independence you remember Assistant Ministers were called Parliamentary Secretaries because then they would take the business of the House seriously. It is not upon you to tell the Government of the day what to do when issues arise of the magnitude we are talking about Baragoi. It is not a matter you can go out of the way to assist the Government of the day.

If the Government of the day is taking proceedings in this House seriously as the National Intelligence Service (NIS) takes seriously where Sen. (Dr.) Khalwale is eating lunch or where he slept, instead of using those resources following Sen. (Dr.) Khalwale, they should employ somebody, attached to the office of the Senate Majority Leader to know what is required of Government from this Senate and for that matter, any other institution so that these issues will not take as long as they have taken. I know in the old days and the former Attorney-General knows, his office would assign somebody at the law courts to find out what has been filed against Government so that they can react. If you want it to appear *ex parte*, you suddenly find a State Counsel there as you file and therefore you will not be able to find the benefit of prosecuting something *ex parte*.

Mr. Speaker, Sir, it is not about the little speeches the Senate Leader of Majority makes here. There is something in Government that counts for more than that. So, please, take an audit everyday and advise the Chairpersons accordingly, that if they do not answer those questions or react to them, it is the image of the Government that suffers.

I beg to support your position.

Sen. (Dr.) Khalwale: On a point of information, Mr. Speaker, Sir. I would like to inform Sen. Orendo that his attempt to invite the Senate Leader of Majority to be taking stock of business here is not anything out of this world. You remember very well, and you were there when Martha Karua was Deputy Leader of Government Business in the House - she would sit there every day of the whole week until she developed a back problem and a special chair was created for her. You should stop thinking that you are the newly appointed Prime Minister; you are the newly appointed Leader of Government in the House. This means that even when the Committee Chairpersons are not there, they are comfortable knowing that the highly paid Senate Majority Leader is there and is listening for us; and will tell us what it is that we have to respond to. You better be informed!

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

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

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

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

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

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

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

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

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

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

Sen. Benson Njoroge!

Sen. Njoroge: Mr. Speaker, Sir, I beg to support the Motion before this House on matters regarding health. As I went through---

The Speaker (Hon. Ethuro): Order, Senator! I saw you raising your hand and you had intimated to me that you wanted to contribute. That was another order, but I can see you are already in the next Order. You may wish to wait until that Order is called out.

Sen. Njoroge: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

MOTIONS

ADOPTION OF REPORT ON VISIT TO
LEVEL FIVE HOSPITALS IN UASIN GISHU,
ELGEYO MARAKWET AND NANDI COUNTIES

THAT, the Senate adopts the Report of the Standing Committee on Health, Labour and Social Welfare on the visit to levels 4 and 5 hospitals in Uasin Gishu, Elgeyo-Marakwet and Nandi counties laid on the Table of the Senate on Tuesday, 15th October, 2013.

(Sen. (Dr.) Kuti on 17.10.2013)

(Resumption of debate interrupted on 17.10. 2013)

The Speaker (Hon. Ethuro): On this Motion, the last contributor was Sen. Elachi who has a balance of 20 minutes.

Sen. Elachi: Thank you, Mr. Speaker, Sir. I wish to continue with my contribution on the report that was tabled last week on health. When you look at the recommendations of the report, some issues were raised in the counties visited. There is need for the Cabinet Secretary for Health to assist in terms of ensuring that some district hospitals are supported. When you look at the findings, the capacity of Iten District Hospital, for example, is about 167. However, it usually admits more than 200 patients. Therefore, you will find that even in the maternity unit, the capacity is 38 beds for mothers. Currently, the facility is being renovated. Even after the Jubilee Government has ensured that we have free maternity, women in Iten might have challenges in terms of getting to the nearest maternity hospital for services.

Mr. Speaker, Sir, as we look at the report and noting that the challenges in different health facilities are similar, how do we come up with better policies and a framework to ensure that counties forge ahead in development? We should come up with the framework which will help improve services in Iten District Hospital. We need to know whether this county has a blue print that is anchored on Vision 2030. Does it have its own plans to help this country realise its dream as envisaged in Vision 2030? At the end of it all, some counties will be doing so well and others will lag behind in terms of development.

As we discuss these recommendations, we need to think about employing more doctors and nurses to work in our hospitals and health centres. We, as leaders, need to find solutions to various challenges facing this country, especially in the health sector. I believe the current Cabinet Secretary for Health has great plans to surmount the various challenges bedeviling this sector.

The other challenges facing many of these hospitals are the issues of electricity and water bills. Many hospitals have been grappling with these huge bills for many years. I call upon the national Government to address this issue so that we move forward in development. How do we ensure that county governments work in harmony with the

national Government to address some of these challenges? I urge the Cabinet Secretary for Health and the Cabinet Secretary for Environment, Water and Natural Resources to work together and, probably, address this challenge at the Cabinet level. Most of the health facilities in the country are bogged down by huge electricity and water bills.

Lastly, I want to talk about the issue of family planning and reproductive health. We, as a country, need to ask ourselves whether we need to restart the programme we had in the 1990s. In those years, women were able to access family planning. I know the *Maendeleo ya Wanawake* Organisation at that time did a very good job. Today, there is nothing happening. So, how are we going to ensure we manage population growth and ensure that women get free pre-natal and post-natal care? They should have free family planning services.

When you look at the statistics in terms of mortality, you will find that many women go through miscarriages because of different conditions, including high blood pressure which can be taken care of. It is a pity that sometimes a woman delivers safely, but ends up bleeding profusely until she passes on. These are things we can prevent. Do we need to see our patients sharing beds? It is time to use our *Jua Kali* artisans in Gikomba and other places to supply beds. Why should we import these beds when we know that our *Jua Kali* artisans can supply them? We should support our local industries. We need to transform the health sector and make sure that patients are not sharing beds.

With those few remarks, I beg to support.

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

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

The Temporary Speaker (Sen. Ongoro): Sen. Joy Adhiambo Gwendu.

Sen. Gwendu: Madam Temporary Speaker, I would like to use the few minutes left to also support the report by the Committee on Health, Labour and Social Welfare.

The Temporary Speaker (Sen. Ongoro): Sen. Gwendu, you actually have 30 minutes.

Sen. Gwendu: Thank you, Madam Temporary Speaker. According to the Report, I noticed that they gave statistics on diseases like Malaria and diarrhea which we can deal with at home. We have organizations that actually concentrate on these diseases. They go from home to home, teaching women on how to take care of their children, how to take care of their water and so on. It is the lack of not taking care of water that causes diarrhea. So, I was asking the Committee to also work with organizations like Population Services International (PSI) which run educational programmes on malaria prevention. For example, they teach people how to use mosquito nets and how to take care of water. This will also help reduce these diseases.

This Committee could also extend its visits to other counties because they visited only four counties and level 5 and 4 hospitals. Each county is supposed to have these hospitals. If you look at the situations of hospitals which are supposed to be at this level, the situation is a bit wanting. If they go to other counties, we will know what is not there and how we can help and what we need to do more. When we take care of the health of

our people, we are protecting many more people. We cannot be leaders without people. The reason we are leaders is to protect the people. This protection begins with their health.

The other issue is the situation of nurses and doctors. As it is right now, they stand in-between the national Government and the county government. I believe this is something that the Committee can look into to ensure that our doctors have the time and the mindset to work in government hospitals and also do their private things. In my own opinion, they end up in private hospitals because they are either not remunerated properly by the government or there is too much work for the doctor. The hospitals need to be facilitated with enough doctors who are retrained all the time. We need to give them capacity building and also sort out their remuneration. These are things that the Committee should look into and not only in one county, but in all counties.

With those few remarks, I beg to support.

The Nominated Senator (Sen. Ben Njoroge): Madam Temporary Speaker, I beg to contribute and as well give my Maiden Speech on the same matter which is before the House.

Madam Temporary Speaker, our policies have significantly evolved from the 1960s, when reduction or eradication of our social and health problems was the main approach. Today, we are focused on participatory approach in our current devolved health development. As we celebrate 50 years of Independence, the issue of health to persons with disabilities is still a challenge. There are reasons to be optimistic about the future, especially based on our very inclusive Constitution, which is capable of spurring national unity, county and individual development. We still find situations where persons with disabilities are marginalized when it comes to health services.

Madam Temporary Speaker, according to Kenya's National Survey for Persons with Disabilities, 2008, about 4.6 per cent of Kenyans experience some form of disability. Many of them are still not well taken care of by our health system. Firstly, it is important to strengthen the existing county hospitals and health centres in all the 47 counties, so as to be able to provide better health services towards the persons with disabilities. I went through the report of the Committee on Health, Labour and Social Welfare.

I would also like to seek the intervention of this House to urgently review the nature of participation of the Persons with Disabilities (PwDs) in the public and private health centres and hospitals. I wish to propose the establishment of a Government rehabilitation centre for persons with disabilities, at least, in one public hospital in every county. This should have sufficient services, including a laboratory, physiotherapy units and necessary devices to cater for the holistic needs of persons with disabilities.

Madam Temporary Speaker, I wish to request the Committee on Health, Labour and Social Welfare to visit and review the situation at Mbagathi Hospital, as they move round the counties, considering the Level 4 and 5 hospitals. I recently visited the hospital for my assessment and found the services accorded to persons with disabilities wanting. I noted that the unit where persons with disabilities obtain services is identified with a banner of the HIV/AIDS scourge. This tends to imply that the PwDs who visit that hospital are also HIV/AIDS patients or that the HIV/AIDS patients are also PwDs; a

factor which is obviously stigmatizing. This situation in Mbagathi Hospital is confusing and suggests that either the management is ignorant or insensitive to the needs and dignity of PwDs.

Madam Temporary Speaker, as I conclude, the needs of persons with disabilities should not be limited at the level of policy development. Proper implementation on health matters is as well an urgent priority. As the Committee moves on with its work, any factors that can limit the participation of PwDs, should be addressed through creating necessary knowledge base, removing technical bottlenecks and dealing with any mentality, upon which exclusion can be perpetuated.

Madam Temporary Speaker, with those few remarks, I once again wish to request the Chair of the Committee, through you, actually to take into consideration visiting the Mbagathi Hospital as a matter of urgency, because what is happening there is pathetic.

Thank you, Madam Temporary Speaker.

Sen. Mungai: Thank you very much, Madam Temporary Speaker, for giving me this opportunity to contribute to this Committee's findings.

Madam Temporary Speaker, it is very challenging that as we discuss this report, there are counties that still lack Level 4 and Level 5 hospitals. To be able to limit the number of deaths that occur in areas where these hospitals are lacking, we need to prioritize the construction of hospitals in the said counties.

Madam Temporary Speaker, there is also the issue of the rising cases of cancer in our country. This is a very big challenge that is affecting our people. People with cancer in some areas are being shunned. Some people even think that they have been bewitched. So, it is important that the facilities that we have are able to cater very well for victims of this particular disease. When we were young we used to hear about cancer. It was not common. However, today, it has almost reached epidemic levels. It is important that we think seriously about this particular problem that is affecting our people.

Madam Temporary Speaker, there are efforts that have been put in place to ensure that patients who are suffering from cancer are given proper attention in Naivasha District Hospital. But it is unfortunate because the facilities that are required to treat these patients are not even in Nakuru where we have a Level 5 Hospital. Patients have to be brought all the way to Kenyatta National Hospital (KNH) from Naivasha. So, it is important that this is looked into, so that the suffering of a section of our population from cancer is limited. This can be done by ensuring that the facilities for treating them are close to them.

Madam Temporary Speaker, even the issue of transportation of patients using ambulances is a problem. This issue should be looked into so that we have enough ambulances to carry patients safely. We also have an increase in the number of accidents as evidenced in the reports that we get from the Traffic Department. Therefore, the number of ambulances has to be increased to ensure that the people who get injured in accidents are taken to health facilities that will give them first aid and proper treatment in time to avoid more deaths.

Madam Temporary Speaker, there is also the issue touching on the attitude of staff in some of the hospitals. I had a chance of attending a seminar that was discussing issues concerning pregnant mothers and the way that they give birth. It was very

shocking that there are some staff who really mishandle pregnant mothers. So, it is important that we ensure that a humane approach is given to expectant mothers. Anybody that is involved is a guardian angel to that particular mother. The child is supposed to be born in a friendly environment. So, it is important that proper attitude is shown to these mothers, so that they can feel comfortable. When we go out of the country we find that exercise is carried out in a very humane way. The mother and child get out of hospitals, a very happy lot.

Madam Temporary Speaker, the issue of availability and loss of drugs is also a major challenge. As this particular exercise is being devolved, it is important that we ensure that the loss of drugs that used to be there before is eliminated. This is the only way we can eliminate some of these diseases.

Madam Temporary Speaker, as I conclude, the level of cleanliness in most hospitals is wanting. It is important that this is taken care of it. We want to ensure that anybody can go to a hospital and be treated for a disease and not contract another disease because of poor hygiene.

Madam Temporary Speaker, with those few remarks, I support this report.

Sen. Sijeny: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute and to support this Motion. In the past, it is very clear that the successive governments have not allocated adequate budgets or funding to the health departments. Looking at this good report, I am sure that they have gone and interrogated the issues in this report. Once approved and implemented, this report will give ease or give access to high quality health care. Once the facilities are upgraded, then Kenyans will get quality medical care.

It has not been fair to make Kenyans travel far and wide, locally, regionally and internationally, to get specialized treatment when we have qualified medical personnel. They only require facilities and equipment within the hospitals for them to deliver services to our people. At times, the health personnel work without simple things like gloves, microscopes, syringes, beds within the maternity wards, ambulances to transport the needy or sick Kenyans. Once all these are provided, these diseases that spread like cancer, diabetes and HIV/AIDS pandemic, will be drastically reduced. At the end of the day, Kenya will have very strong manpower. When we have healthy people, they can contribute immensely towards the improvement of our economy. These are people who contribute to the development of their communities. By devolving these facilities, it means making the people more accountable and more involved. They are definitely going to take care and stop mishandling these facilities within their counties.

Madam Temporary Speaker, let me give an example of Pumwani Maternity Hospital. At times, you may find that the facilities are so dirty, there is no water and the few toilets there are dirty. It is a pity women give birth in such a pathetic situation. As the previous speaker said, hygiene is so poor that, at the end of it all, they may end up contracting more diseases. Even with children, if facilities at the pediatric wards are not well equipped at the counties, then how do we expect them to survive? This is a whole generation which we expect to take over the leadership of the country in future.

Madam Temporary Speaker, once the budget is increased, it will be very useful to the people since it will be easier to expand these health facilities, learn issues to be

treated and dealt with as proposed. With budget increments, the health facilities can be adequately expanded and we become the pride of the region as we used to be a long time ago when some of us were growing up. Kenyatta National Hospital (KNH) has been a referral hospital for the entire East African region. It attracts people from Uganda and Tanzania. Today, the situation has changed. Instead of them visiting KNA or The Nairobi Hospital for treatment, they go to India and South Africa. We need to improve on our facilities so that we serve more Africans in the region and improve our economy.

So, Madam Temporary Speaker, with those few remarks, I beg to support.

The Temporary Speaker (Sen. Ongoro): There being no other Senators wanting to contribute, I now call upon the Chairman of the Committee to reply.

Proceed, Sen. (Dr.) Mohamed Kuti.

Sen. (Dr.) Kuti: Thank you, Madam Temporary Speaker. I would like to start by thanking all the Members who were able to get an opportunity to contribute to this very important Motion about the findings of our health facilities, especially Levels 3, 4 and 5 hospitals in Rift Valley, especially in the north Rift. I would also like to thank the Committee on Health, Labour and Social Welfare, which I chair, for being able to visit this area as a sample and bring out this report; for being able to take time off their busy schedules to be present there and for coming up with this report. I am also grateful to the secretariat who accompanied us and to the Senate administration for facilitating us.

Madam Temporary Speaker, this tour is an indicator of the scenario of our health institutions across the country. A lot of the Members who contributed felt very strongly that the Committee should have had more samples. In fact, if possible, do a country wide tour. That is actually our programme. I would like to announce that immediately after the Kenya Women Parliamentarians (KEWOPA) Seminar in Kwale, my Committee will be in the Coast to tour counties so that we also can compare these facilities in other regions.

After that, we intend to go to the counties in the former North Eastern Province and counties in Central, Upper Eastern and come up with a more comprehensive report, so that we can actually come up with a Bill that will then inform how we wish our health facilities to be run, what kind of improvements need to be added, the areas that we need to strengthen and all this. This is our plan. I would like to thank all those who felt that this should have had a wider catchment in order to bring out more broad results.

Madam Temporary Speaker, many Senators spoke about women's health in various ways, one of which is the distance that mothers have to cover to reach the health centres. In fact, I would like to congratulate the Kenya Government right from the beginning although there are a lot of challenges. One very important thing that we have to recognize is that we have the infrastructure in almost every sub-location. There is a dispensary and a health centre in most locations. There are district hospitals in most districts, other than the new districts that were created in the last days of the Grand Coalition Government.

We also have the provincial hospitals or referral hospitals in well established counties. Even in the most remote areas like north eastern, health centres and dispensaries still play a very key role. As I said, there is infrastructure in place. The main problem is the staffing because we have lost a number of our doctors who have gone to work outside this country. We must recognize the fact that it is only 40 per cent of doctors trained in

this country who work here. About 60 per cent of our doctors are in South Africa, the United Kingdom (UK), Canada, America, Botswana and Namibia. They are serving those countries.

You know very well the slogan of the doctors who are here; “*Mheshimiwa Sonko*” and “*Dokta msoto*.” Those are the arguments they had. “*Mheshimiwa Sonko*” is not Sen. Mbuvi Sonko, but it is the Swahili words meaning “*waheshimiwas* are rich. Most of them might not be as much educated as the doctors. It is sad that the highly educated doctors are poor. They are dissatisfied and demoralized. What happens? While they work as civil servants in the Government hospitals, they also have side clinics in order to make ends meet. This is far from what really a doctor should do. They are supposed to focus on their training.

I remember as a young doctor after I finished my studies many years ago, I had a lot of vigour to serve the people. In fact, I had committed myself to the service of this nation. The first thing that hit me hard, apart from the salary, was the poor facilities in our hospitals. The patient had to come with a small exercise book because the stationery in the hospital was not there. So, for you to even write something, the patient had to go to the nearest kiosk to get these exercise books. We had to use these exercise books to write prescription for the patients. When you wanted to do a malaria slide, the patient had to go to the lab in town. After that, if you had to examine this patient, he had to buy gloves or whatever else that was required to examine him. Therefore, by the time you arrive on this diagnosis, you are so demoralized. Finally, you prescribe some medicine. He had to buy them from a chemist in town. Therefore, those days, it was very frustrating to the doctors. I am sure the situation may have changed just minimally.

In addition to that, the salary was meager. While I was in the medical school, my room was facing the roundabout at the City Mortuary. I would see vehicles moving up and down, then I would tell myself that when I complete my studies, I will never drive a Datsun 120Y. I will only buy Peugeot 504 or a bigger vehicle. However, when I came out, I was shocked to learn that I would be earning Kshs5,200 per month. I decided to be queuing with the watchmen at the cash office to get my salary. I never took it to the bank. We were frustrated as young doctors. This led to a lot of brain drain. Many doctors found themselves in countries abroad.

Therefore, you will find that even if you upgrade a district hospital, you will not be able to staff it with specialists. Now, the new Constitution has devolved health services 100 per cent. This means that the referral hospitals which were in one district and which were then referred to as provincial hospitals, were serving a lot of other districts around them. The ownership is now going back to the counties. This means that every county will now have to struggle to upgrade their hospitals to a referral facility. Where will the specialists come from?

You can change the infrastructure. You can change the building, but can you build the theatre, the maternity wing and the lab? Of course, maybe, you can accomplish that with difficulties of funding too. But even if you do so, where will you get the specialists, for example, the gynecologists and the surgeons? A lot of counties are developing Medical Training Centres (MTCs) attached to these facilities. Where will you get the

lecturers from? So, there is a staffing issue which has been noted. This problem is countrywide which we really need to work on.

Madam Temporary Speaker, this is a new opportunity for us too, because we cannot always complain about this and that lacking. We must also see it as an opportunity for us to improve our health facilities. We must make sure that money allocated to the health sector is well utilized. It is now up to the counties to decide to prioritize their needs, train their staff and upgrade their facilities.

This is now a new dawn for us. The new Constitution has now provided every county with the ability to sit down and assess where it is, where do we want to go, how do we arrive there and what resources do we have? This is the beauty of this new dispensation. Initially we were waiting for officials in Afya House to decide for us. They would sit down and manipulate whatever resources they had and even attract more resources from donors and other people of goodwill in order to address our health challenges.

Turning back to the maternal healthcare, I think this is very important. Many people have talked about the treatment that mothers undergo when they are delivering. This needs to be addressed. The issue is getting better, but we still have a lot of challenges, I must admit. I will pass these concerns to health officials. I want to have a chat with the Cabinet Secretary and the Principal Secretaries. We hope to have a countrywide meeting of Cabinet Secretaries for Health, Labour and Social Welfare so that we share information.

The issue of the physically challenged was mentioned by Sen. Njoroge. I want to agree with him that we need to prioritise issues concerning our disabled population who form a good proportion of us in this country. They need their special consideration. I did not quite well get what he said about Mbagathi District Hospital when he said that the area where the disabled people sit is the same area labeled and used by the HIV/AIDs affected people. I would like to sit with him and get those details.

Therefore, I would like to assure him that if there is anything out of context or any issues that are putting our disabled people in that hospital in bad light, then they must be addressed as soon as possible. I must also say that the fact that one is disabled does not protect them from contracting HIV/AIDs. I am sure that there are HIV/AIDs patients who are also disabled. I know that is a scenario which brands every disabled person as HIV positive. It is not acceptable. We will address that issue.

The issue of drugs supply was mentioned. I thank Sen. (Prof.) Kindiki for coming up with the challenges. I had said that we have Kshs4 billion worth of drugs at the Kenya Medical Supplies Agency (KEMSA). Monies have already been sent to the counties. The counties can now buy their own drugs from any source that they want. However, there has to be a law to commit them and the gap is being filed by the Bill of Senator Kindiki.

With regard to ambulances, this is being addressed. I have been seeing the Minister flagging off many ambulances. These are materials that depreciate. This must be a continuous process. We must put that into consideration. The issue of disease burden in relation to poverty, especially cancer, diabetes and others, is important. I know that we have not quite addressed cancer issues in our country because we only have three

oncologists. Cancer is becoming a major killer in this country. Patients' screening should be made a priority.

I am very passionate about this because I lost my mother in December, 2011 to ovarian cancer. During that period, I learnt that many people suffer from the disease not knowing what it is. They move from one hospital to another in the rural areas being treated for malaria. By the time they get actual diagnosis, the disease cannot be managed. The issue of awareness and early screening is important so that they are diagnosed and treated. Most cancers, when diagnosed at stage one, are treatable. However, if they progress and are noticed at stage three or four, they cannot be addressed.

I would like to conclude by thanking all those who contributed. I would like to assure you that we will go round, make reports and debate on this matter. Before I conclude, I would like to request that pursuant to Standing Order No.51 (3), voting on this matter be deferred because it concerns counties so that we do it when hon. Senators are around.

With those few remarks, I beg to move.

The Temporary Speaker (Sen. Ongoro): Your request is in order. It is granted. We will put that Question tomorrow at 3.00 pm.

(Putting of the Question on the Motion was deferred)

Let us move on to the next order.

AUDIT OF EMPLOYEES OF DEFUNCT LOCAL AUTHORITIES
BY TRANSITION AUTHORITY

Sen. Elachi: Madam Temporary Speaker, Sir, I beg to move:-

THAT, aware that Section 7(2) of the Transition to Devolved Government Act requires the Transition Authority to carry out an audit of the existing human resource of the Government and local authorities and advise on deployment to either level of Government; further aware that Section 57 of the Urban Areas and Cities Act provides that every person who, immediately before the commencement of the Act was an officer, agent or member of staff appointed, seconded or otherwise employed by a local authority shall, on the commencement of the Act be seconded or otherwise deployed as may be provided by law; concerned that failure to absorb bona fide employees of the defunct local authorities will deprive them of their rightful means of livelihood contrary to the spirit of the Bill of Rights as contained in Chapter Four of the Constitution of Kenya and the principles of devolution; the Senate urges the Transition Authority to urgently finalize the audit of employees of the defunct local authorities and put in place the necessary framework for their absorption as employees of the respective counties.

Madam Temporary Speaker, Sir, as you know, for the last one year, former employees of local authorities have been wondering what has been happening in terms of their deployment.

County Governments have also challenged the national Government saying that these are the employees of the national Government, and, therefore, should be taken back. We are, therefore, playing with the lives of Kenyans who worked very tirelessly for us under the local authorities. It is important to understand that these are Kenyans who are pensionable. Before we return them to the national Government, we should ask ourselves what will happen to their pensions.

Today, county governors would want to employ their own people. We need to ask ourselves what will happen to an employee who is in Kakamega, for instance, a Luhya from Western Province, who has worked in Kakamega for 20 years, should this person be removed from office. Should this person be returned to the national Government? This person worked in Kakamega. The Government should understand that these are human beings and not toys to play around with. These are lives and people who have children who go to school. Today, as I speak, some county governments are way ahead. They are employing people. However, as they employ, I do not know whether they are also considering that they have staff members who have been around for many years.

The Governors say that they were employed by the national Government. These are the same people who voted for them. They have a right to remain as workers of the county governments. While we are playing politics, we are also destroying lives. We know very well that the Jubilee Government has insisted on taking care of people. As we try to remove the Transition Authority (TA), we should also tell Kenyans that the moment this body is removed, counties will have space to do a lot of corruption.

The TA should know what happened to the employees, assets and liabilities of any county. We have to be very careful as we deal with the TA considering that in the Constitution, it is very clear in terms of protecting the rights of innocent persons. While governors want to discriminate in terms of whom voted for which party and who did not support who, it is the right of the Senate to stand firm and say that we finished politics and issues of parties. We have now moved on to build Kenya as one country. Therefore, those citizens have a right to benefit in terms of their remuneration, privileges as they did before.

I know that this is a very sensitive matter. The TA officers have been seconded as experts to the counties. I think they also have a contract that says that they have been seconded for a certain period. After the period expires, they should go back to the national Government. However, there are some counties that have huge numbers of these people and even ghost workers. I am pleading that we give the Government a better framework that will assist them to ensure that there is no mismanagement and ensure that corruption is done away with.

There are those who have reached the age of retirement. However, they need to retire in peace and get their packages. These are some of the things we are asking the Government to look at them so that we come up with processes which are friendly. We should have an environment where every Kenyan can present his case. If a Kenyan has

the right papers, then indeed, she or he has the right to be employed or to continue working within the county government.

I also want to plead with the TA, because time is not on their side, considering the circumstances they are going through, to hasten and ensure that before the end of this year, the hundreds of Kenyans that we are talking about either go for Christmas as employees of the county governments or are returned to their mother Ministries.

Madam Temporary Speaker, Ministries have also been merged. Therefore, it is upon the national Government to ensure that most workers are returned to the national Government after their mother Ministries have been identified. They should go back and be given their privileges or packages that will send them home in a peaceful manner.

In this country, we have a challenge of not caring for one another. We only care when we are the ones being touched. That is when we get up and start fighting. We only care when it comes to our houses and we start fighting. But before it comes there, I will never care about my neighbour. This is one thing that has finished our country and that is why we also experience insecurity.

Now, we are thinking of removing all these people and saying that they either go back to the national Government and a few can be absorbed. It is important to understand that we have young people who were also employed and they had contracts. What happens when the county governments decide that they are going back to the national Government when they had contracts with the particular counties? It is only the word “county” which we added, but most of the names of these local authorities remained the same. So, it is something we need to ask ourselves. Bringing in a name, does not mean that the framework or the policy changed. What the Constitution did was that it enhanced in terms of making sure that things now work better.

When we talk of devolved governments, they are governments that have structures and that respect the law. That is what we want to tell the governors. As they read the Constitution, I believe somebody might take them to court and ask: “Did you employ me?” I think they should know that, at the moment, they have not employed anyone. They are seeing people who were within the local governments and those who came from the national Government.

Madam Temporary Speaker, that is why I am even pleading to the national Government to have dialogue with the governors. As I speak, these are all Kenyans, some of whom have done very well, whereas others have done badly. If there are those who deserve to go to court and be jailed, then so be it, because it is also a chance to show that this is a county government and we are not going to allow corruption that was there to continue. Today, as I speak, we are losing a lot of revenue because of corruption. County workers have decided to duplicate receipts and collect revenue on their own and “eat” the money. If you look at the revenue that was being collected by the county governments, it has dropped beyond what the local authorities used to collect. This is because of the attitude the governors brought in. They were not ready to embrace these workers; instead, they wanted them to leave. The workers have now sabotaged the governors. That little revenue that they expected is no longer there.

A good example is the Kisumu, Bungoma and Nakuru counties. When you look at the report from the Controller of Budget, it shows that the local revenue has really

dropped although we still have people who collect that revenue and who are on the payroll. These are some of the issues which the governors are crying about, whereas they are the ones who created that monster. It is because of their attitude and how they have managed the workers, which is unfortunate. As we go around the country as the Senate, looking at the transfer of functions, it is important for to also listen to the workers. They have unions and we do not know what will happen. I know when we will start the issue of deployment, the unions will go to court. What will happen next? We saw it happening in Nairobi and Mombasa.

I want to thank the Governors of Nairobi and Mombasa for listening to the workers. They dialogued to see how they could move forward as a county. This is what other counties must embrace. How do we sit down and dialogue with the workers to ensure that there is that smooth transfer and retirement of workers? When the workers hear of a headcount, they pose a lot of challenges to the governor. So, if they agree even with the unions that take care of these workers, they will find a framework that will be easier to deliver in terms of their moving forward.

Madam Temporary Speaker, I know we have talked about recruitment and staffing for some months now with the TA. Up to date, I want to plead to the TA, just the way you saw it in this House when the issue of Committees and their Chairpersons arose, that they also need to style up so that when we support them, we support them knowing that they are also working and they are also serious in carrying out their duties. When you are summoned in more than one Committee on the same issue for more than two to three months, the Committees will feel that they are consulting persons who do not care. Quoting Sen. (Dr.) Khalwale, it is because of the way the TA has behaved that they find themselves in this situation.

I want to assure them that we will stand with them, but they need to pull up their socks. If it is about the report, why can they not table the report? The governors must think of a solution that will now remove what we call ghost workers and that which will enhance the contracts of those who are working within the county governments. This will help them to know how much their expenditure is in terms of salaries and wages. Without naming particular counties, this is where you find that they are paying more than what the national Treasury has given them. You feel very worried for such a county because if their revenue has reduced and they have a deficit of Kshs1 billion in terms of wages, how will they move on to the next level? How will they ensure that there is development within their county?

These are some of the things that we are really worried about as Senators and Kenyans. But I stand to be corrected that many of these Kenyans are worried about their future. We need to assure them that we are going to seek a solution with all the relevant Ministries to ensure that the process is done in a manner that is in line with the human rights instruments and within the socio-economic rights; that no Kenyan will suffer because of devolution.

I beg to move and ask Sen. Madzayo to second the Motion.

Sen. Madzayo: Asante sana, Bi. Spika wa Muda, kwa kunipa nafasi hii ili niunge mkono Hoja hii iliyoletwa na Sen. Elachi. Jambo la kwanza ambalo ningependelea kuunga mkono ni kwa sababu ni haki ya mfanyikazi kuona ya kwamba wakati wa ugutuzi

kama huu tulionao hivi sasa, serikali zimeundwa mashinani na kuna wafanyikazi wa aina mbili; wale ambao walikuwa wanafanya kazi katika zile Serikali za Wilaya na wafanyikazi ambao hivi sasa, wataajiriwa na serikali za kaunti. Katika mtafaruku kama huu, ni lazima Serikali ikae macho kuona ya kwamba hakuna hata mfanyikazi mmoja ambaye atafutwa kwa sababu ya Serikali kugeuza njia ya kutawala nchi hii wakati wa ugatuzi. Tusiwe na mfanyikazi hata mmoja kutoka kwa Serikali za Wilaya ambaye atapoteza kazi.

Litakuwa jambo la kusikitisha sana kuona ya kwamba ni wakati huu haki ya mfanyikazi inaweza kupotea. Kwa mfano, amepoteza malipo yake ya uzeeni ama malipo ya miaka ambayo ameifanyia Serikali kuu kwa sababu ya kuchukuliwa na Serikali ya kaunti. Kutakuwa na hali ya mtafaruku wakati wa kubadilisha kazi hizi na itabidi TA ikae katikati kuona ya kwamba haki imetendeka na hakuna mfanyikazi hata mmoja ambaye atapoteza haki yake ama malipo ya marupurupu yake ya uzeeni wakati ukifika wa kuacha hiyo kazi ama wakati wa ugatuzi.

Bi. Spika wa Muda, ninasema hivyo kwa sababu wafanyikazi hawa wana familia zao na majukumu tofauti tofauti katika familia zao. Wako na watoto kwenye vyyo vikuu, shule za upili na zile za msingi. Wengine wamechukua mikopo ya benki ili kusuluhisha matatizo ya kifamilia ya afya na kadhalika. Na katika hii hali yote, utaona kwamba watu kama hawa, haitakuwa vyema wakiambiwa kwamba hawana kazi kwa sababu ya ugatuzi wa Serikali. Ni lazima tuelewe ya kwamba kufuatana na sheria za kimataifa za wafanyikazi, wakati kuna ugeuzi wa aina yoyote ya Serikali, mfanyikazi asipatikane na hasara ya kupoteza kazi yake. Hiyo ni sheria ambayo inatambulika na ni kwamba sisi kama Seneti, ni lazima tuone ya kwamba tumetetea kitengo hiki cha hali ya kitaifa ya wafanyikazi.

Kaunti ya Kilifi ina wafanyikazi wengi sana wanaofanya kazi katika hoteli. Kuna wafanyikazi wengi ambao wanafanyakazi katika *supermarkets* na kulingana na Katiba ya Kenya tulioipitisha kama Wakenya, inasema kwamba, katika muda huu ambao tunageuza mwenendo wa Serikali, ni kwamba asili mia 70 ya wafanyikazi ni lazima watoke katika lile eneo la ile biashara. Hata Katiba inasema kwamba wafanyakazi wote watakoajiriwa wawe ni asilimia 70 kutoka eneo ambalo ile kampuni inafanyia kazi. Hivi majuzi jambo la kusikitisha ni kwamba katika mahoteli tukiangalia katika Kaunti ya Kilifi asilimia 70 ni kinyume cha Katiba. Utapata kwamba asilimia 30 ndio wa Giriama na asilimia 70 si wakaazi wa pale.

Hili ni jambo la kusikitisha kwa sababu haliambatani na Katiba ya nchi yetu. Kwa hivyo, mimi naunga mkono nikisema kwamba hata wale wafadhili wanaoweka makampuni yao, wazingatie Katiba ya Kenya. Inafaa wajue kwamba mtu akitaka kuanza *supermarket*, asilimia 70 ya wafanyakazi ni lazima wawe watu wa kutoka eneo hilo.

Hivi juzi kulikuwa na mkutano baina ya magavana na Rais. Mojawapo ya dai la magavana ni kwamba TA ifutiliwe mbali. Hatukatai, hiyo ni sawa, lakini kuna muda ambao umepeanwa na Katiba ya miaka mitatu. Ni lazima masilahi ya wafanyikazi yazingatiwe na ikiwa watakuwa na hisia ya kurudi nyuma wakubaliwe kuambatana na Katiba ya Kenya. Ile mipango ambayo walikuwa wafanye haijakamilika. TA bado wako na kazi ya kufanya kama kuhesabu wafanyakazi. Wakati kama huo tunajua kwamba

kutakuwa na njama nyingi kwamba huyu ni wangu na huyu si wangu, huyu afutwe na yule asifutwe.

Ikiwa harakati zitakuwa kama hizo tunahitaji kuwa na TA ambayo itajua kwamba wafanyakazi wa kutoka serikali za wilaya lazima wapewe haki yao. Ili kuona kwamba hakuna mtu ambaye anapoteza kazi yake tunafikiria kwamba afisi ya gavana pekee yake haiwezi kufanya kazi hiyo. Kwa hivyo, inahitaji kusaidiwa ili kuona kwamba wafanyakazi wote wameondoka kutoka kwa serikali za wilaya na kuingia katika serikali za kaunti.

Jambo la mwisho tunajua nchi hii ina Katiba na tunaiheshimu. Wakati kama huu tunaweza kuona wafanyakazi wakiwa kwa vyama tofauti tofauti, kwa mfano, *Local Government Workers Union*. Ikiwa wanaweza kuhusishwa katika mipangilio hii, basi huenda pia wakachangia vilivyo kuona kwamba hakuna hata mfanyakazi mmoja ambaye haki yake imeathiriwa.

Bi. Spika wa Muda, nataka kuunga mkono Hoja hii ya Sen. Elachi kuwa TA wapatiwe muda wa kukamilisha kipindi chao. Mimi sikubaliani na magavana kuwa wanaweza kuendesha shughuli za kaunti bila TA.

Kwa hayo machache, ninaomba kuunga mkono Hoja hii.

(Question proposed)

Sen. Mungai: Madam Temporary Speaker, I would like to contribute to this very important Motion that has been moved by our Chief Whip. It has been very challenging to the employees that were inherited by the various county governments. This is basically because there is a feeling in our country that the moment there is change of guard anywhere, staff has to be moved whether they are working well or qualified to other places. In most cases, they are replaced by people who are not able to perform properly. So, it is very disheartening to see that most counties now, like the Mover of this Motion has said, have failed to raise the revenue that used to be raised by the defunct local authorities.

This is mainly because, like Nakuru County, there was mass transfer of good workers who were in various municipalities and county councils. This brought a very bad beginning for the county government of Nakuru. The revenue that was lost because of that is astronomical. It is regrettable that in some instances people who wanted to pay land rates and other payments that were to be paid, were finding employees who do not understand what they were supposed to be doing. This has had a serious impact on even the popularity of the various county governments.

Madam Temporary Speaker, it is worth noting that the employees that were working in those defunct county councils were employed by a government that was balancing ethnicity and many other issues that were affecting our nationhood. Today, Kenya is a country whose level of patriotism has gone down, because many people are looking for their tribesmen to employ. I believe that this is wrong. What Sen. Madzayo has said here concerning Kwale is something that is now being duplicated all over the country. In some of the instances, like in my county, mass transfers were being carried out and families separated. I had to intervene in cases where mothers were being

transferred and yet, they were the ones who were catering for the small children that were enrolled in the local schools, where they were working. As a result of this, the governors have a workforce that is totally demoralized. This demoralization is affecting even the usage of the funds that we, as the Senate, are fighting hard to take to our various counties.

Madam Temporary Speaker, in some instances, issues concerning corruption and embezzlement of inward generated revenue by the various counties has occurred in very serious proportions. This is because someone feels that you are in a position because maybe you were sent there to make money. There is someone out there who is apparently looking at you, wondering and expecting that you will take money to them. So, we, as the Senate, are supposed to be very serious on this particular matter. This is because it is not right that when you become a governor or senior person anywhere in our country, you indulge in an exercise that will affect Kenyans, maybe who do not come from a particular area. I am happy that in Nakuru we have a multiethnic representation. Therefore, it is important that the mass transfers which, right now, are seriously affecting our counties, are discouraged throughout the country. This is because they are having a negative impact on the performance of the various counties.

Madam Temporary Speaker, this particular exercise, if not stopped, will lead to many counties failing and reverting back to the central Government. If the governors are operating with staff who are not able to perform, then certainly we will have serious cases of lost money and corrupt individuals being arraigned in courts. The overall impact might be that Kenyans will become disillusioned with devolution and start opting for the central Government operations that were there before. So, it is important that this Motion is supported by all Senators, to ensure that the employees that are currently demoralized feel that there is a body that is thinking and caring about them. This is because we cannot stand here when families are being divided by the various administrations that are in our counties.

Madam Temporary Speaker, with those few remarks, I beg to support.

Sen. Sijeny: Thank you very much, Madam Temporary Speaker, for giving me this opportunity to contribute in support of this Motion. This Motion is quite timely and I believe that it will highlight the plight of the former employees of the defunct local authorities.

Madam Temporary Speaker, it is very important for the TA to come up with a clear framework, adhere to the Constitution and protect the interests and rights of these Kenyans, who probably, happened to be at the right place at the wrong time. They are amongst the first casualties of devolution. It should be a smooth transition, as the name of the authority concerned in ensuring that devolution works, suggests. Right now, there seems to be confusion. We can call them teething problems or anything. This is because everyone has the powers to do what they deem fit. The governors and their governments have been authorized by the Constitution to come up with ways of governing their counties without any interference from the national Government. We have seen in the media that the county governments have advertised various jobs and people have applied for them. They have come up with some new positions, which probably never existed according to the framework or strategic plan. We do not know what they desire to achieve or what changes they wish to bring within their counties.

Madam Temporary Speaker, it is also a reality that the former employees of the local authorities are confused and scared. There is a lot of uncertainty. They do not know whether they are being phased out or rightfully going to be absorbed into the counties. So, they are not applying for those jobs. If they are applying for those chances which are being taken up by other people, where will they go? Definitely, there are people who will be left out in the cold, because the national Government does not have a place for them, since the former employer is no longer in existence.

The county governments have also made changes. We are aware that the Ministries and parastatals, especially, are being merged. You will find that if, for example, someone was a manager in the Department of Fisheries, now the new body will deal with fisheries, water and environment. So, you will find that, definitely, this person or employee is not qualified, because he or she has specialized in one field. So, even the job designation that has been created by the county government states that they need a director and no longer a manager. That means different and higher qualifications, which, definitely, shall not be achieved.

As we all know, most of these workers are still very young and energetic. They have dreams and big plans. As much as the Constitution was passed in 2010, it is clear that there was lack of adequate preparedness to deal with most of these things and eventualities that would crop up. You will find that people have liabilities which will not be transferred unless the TA comes up with it. For example, even if they were going to employ them within the counties, the Senate is yet to pass a Bill or an Act that will govern the pension scheme of these employees. This means that the infrastructure of employing them is still not ready. If this infrastructure is not ready, it means that they cannot be employed or they cannot continue from where they were. In a nutshell, the *status quo* cannot be maintained. Things are changing and they have to go back to the drawing board. The exercise must be done very cautiously and within the law.

Madam Temporary Speaker, the TA is also still facing several challenges within them, between themselves, the governors, the national Government and the county governments. All this needs to be decided before that framework that we so much desire is put in place. I wish Sen. Madzayo was still here. In his former employment, he was in charge of the industrial court and I had the privilege to appear before him in several similar situations. He mentioned that there are people, especially in his county, who are employed in the hotels. I was representing a client who had eight hotels at the coast. However, due to the political atmosphere, the post election violence, terrorism and the clouds or smoke that was choking people in Europe, the tourism industry was affected.

Most of those hotels were shut down. Kenyans, in their thousands, remained stranded. They did not have jobs and their former employers could not pay them. Kenyans insisted they wanted their money. It was rightfully so, within the Constitution and the industrial court. They had to be compensated because they had done nothing wrong. They were ready and willing to work. It is only that there was no longer any work for them to do. This is a similar situation. That is why as much as I support this Motion, I will also propose an amendment to cater for the interest of those people who will find themselves---

An hon. Senator: Move it now!

Sen. Sijeny: I will bring the amendment at the appropriate time.

Madam Temporary Speaker, I had the privilege to listen to the TA, when they appeared before us in the Committee on Legal Affairs and Human Rights this morning. They were grappling with some of those challenges. They were saying they were working very hard, burning the midnight oil, to sort out some of these things. It may not be possible to tell you what exactly the situation is, but they are lobbying people. They are lobbying some counties who are over-staffed to transfer some of the workers to other counties. There may be some counties which need more personnel and so on. That is why this framework that the Senate will pass is going to cater to all these different scenarios. We want to ensure that, at the end of the day, the rights of the Kenyans who were employed by either the defunct local authority or the national Government are catered for. All employees must know their fate before we disband the TA.

With those few remarks, Madam Temporary Speaker, I beg to support the Motion.

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, I stand to propose an amendment to this Motion as follows.

THAT, the Motion be amended by inserting the following words immediately after the word “counties” at the end thereof: “and the national Government to either absorb the former employees or pay retirement benefits in the unlikely event that they are not absorbed by the counties.”

So that, Madam Temporary Speaker, the Motion as amended now reads:-

“THAT, aware that Section 7(2) of the Transition to Devolved Government Act requires the Transition Authority to carry out an audit of the existing human resource of the Government and local authorities and advise on deployment to either level of Government; further aware that Section 57 of the Urban Areas and Cities Act provides that every person who, immediately before the commencement of the Act was an officer, agent or member of staff appointed, seconded or otherwise employed by a local authority shall, on the commencement of the Act be seconded or otherwise deployed as may be provided by law; concerned that failure to absorb bona fide employees of the defunct local authorities will deprive them of their rightful means of livelihood contrary to the spirit of the Bill of Rights as contained in Chapter Four of the Constitution of Kenya and the principles of devolution; the Senate urges the Transition Authority to urgently finalize the audit of employees of the defunct local authorities and put in place the necessary framework for their absorption as employees of the respective counties and the national Government to either absorb the former employees or pay retirement benefits in the unlikely event that they are not absorbed by the counties.”

Madam Temporary Speaker, I join my colleagues who previously stood here to thank Sen. Beatrice Elachi for bringing this Motion at this time when there are a lot of employment sprees taking place in our counties. No day passes by without us seeing an advertisement from some county looking for people to go and work in those counties.

Madam Temporary Speaker, as you noted and as we know, most of the offices that now exist unutilized by the county governments were originally for municipals, local authorities, cities and so on. There existed employees who are Kenyans and who were genuinely employed then.

Madam Temporary Speaker, we note that there was a Minister in charge of Local Government at that time. Hence, these employees were working for the local authorities. All of them had employment personal numbers. Leaving them out the way some counties want to do it is not fair. Some counties want to employ clerks and other officers. These people were there previously before the new dispensation. This is something TA needs to address. The TA should move with speed and see to it that all data for all the employees that has ever existed is put correctly for all local authorities. There are several local authorities. We have the county councils and the town councils. We also had the urban councils, municipalities and cities.

There were different categories of people there. For instance, where will the people who were taking care of parking spaces go if they are not absorbed? There is a notion that some of these employees are inept. We also hear that some of them are corrupt. Some are not experienced and trained. However, we utilized their ability to work for us faithfully and sincerely at some point. The Motion is now being amended to ask the county governments, after the TA has checked the available data, to absorb the people who were working there and retrain them.

I have now noticed a new trend where barely two weeks go by before you hear that some county officials are in Kisumu. The latest destinations are Kisumu and Nakuru. We even met some in Rwanda when we were there a week ago. Some have been going to South Africa. The governors are entertaining, travelling abroad. That money can be used to train these personnel. The Constitution, under the Transition Act, states that these people must be retrained. Anybody who has a sober mind can be made to perform duties as long as they are trained. We should not dump those people because governors and county governments are politicians. We should not say that we do not know how these people were serving because these people reside in the counties and are Kenyans. Some had taken huge loans like mortgages. Some of them had taken ordinary loans. If we start removing them, we will be throwing people in more problems.

These people should be absorbed. The national Government, noting that this was a national issue, should have provided for a segment of Government. They should be absorbed and taken to the relevant Ministries just like it has been proposed for officers who are working in parastatals. Some of them will be recalled to the national Government.

The Jubilee Manifesto talks about job creation. They also talk about achieving Vision 2030 so that we have a good life. We are only 17 years to Vision 2030. We will not achieve that if we do not take care of these people. We will have created redundancy and more problems for people by sacking them. The manpower that is already aware of what should be happening only requires a clarion call for them to put their best foot forward.

If you recall, in the late 1980s, there was a wave in Kenya for people to be retrenched. I was in university then. This was the order of the day. They wanted to

retrench people so that we become a rich nation. What became of the people who were retrenched? I know about two people who were working at Egerton University then. The moment they received their retrenchment letters, they collapsed and died. Now, rather than this being a blessing, it became a curse to people.

Some of the things being done by our ably elected county governments are not really good. I have noted some of them. I have gone for interviews that had been advertised in the papers. Owing to the fact that some used to work for the local authorities, they were not absorbed. It is a tragedy that we do not consider people who have been working in these places before. I hear TA has called us to go and talk to them this Thursday in Kwale. I wish they had asked us to go to Kapenguria and relax under the trees on the slopes of Mount Mtelo instead of going to swim in the Indian Ocean all the time.

We need to ask the TA who they are transiting. What have they done so far? They should be baby-sitting and taking care of the transition we are in. We do not want to lose these workers. If there is need for us to do away with them, we will do so with decency. If they are taken by the national Government and are retrained, they should also be prepared for retirement although it may appear to be forced. They should also be given good packages of retirement.

I remember a man who was given good money after his retirement. This man went and bought a vehicle. The man had an accident and became mentally ill because no one had prepared him for this. Some men went into marrying many wives. If you do not prepare people for the social lives they will enter into as a result of the new dispensation, that will not be good. We will not also have played our role as the Senate. The Senate is here to see that devolution and counties are fully taken care of as we grow into the new system. I lay this amendment on the Table and ask Sen. Nanjira Omondi to second the amendment to the Motion.

I beg to move.

Sen. Omondi: Thank you, Madam Temporary Speaker. I take this opportunity to second the amendment on the Motion. For sure, this is a very serious Motion that needs a lot of attention. As a colleague rightfully said, employment is like life. Joking with somebody's employment is like killing somebody. We need to think on humanitarian grounds.

As a leader, a legislator and as a parent, these are our brothers, sisters and, indeed, we need to support their well being. We should not allow the county governments to do away with them. Within the personnel working for the county governments and within the national Government, those who are supposed to be on transition are being swayed around. I want to say that amongst them we have those with disabilities. I normally sit down and ask myself what will happen to such employees. For a person with disability to get employment, it is not an easy job. Even just being accepted in the job market, it is not easy. Once somebody has got that employment and it is taken away, it is quite inhuman.

In some cases these jobs are being advertised when somebody is sitting in that office, you ask yourself the moment a new employee will come and take that sit, what will happen to the person who is already occupying that office? We need to appreciate the work these people have been doing and they are still doing. In fact, after the general

elections there are people who have been running up and down to put things in place. It is sad that the county governments have now reorganized themselves and are ready to kick them out without appreciating their efforts. I feel very sympathetic. It is not right for these people to be denied employment.

Madam Temporary Speaker, there are the City Council *askaris* who I know do not have the requisite qualifications, but they have been working and they know the rules and regulations that are used to govern and run the local authorities. I believe that they can still work. There are junior staff who do not have any qualifications, but they have the capacity because of the job experience. Is it in order to behave like we have never seen them working or to behave like we have never seen anybody occupying that space?

I would like to second that amendment with those few comments.

(Question of the amendment proposed)

Sen. Sijeny: Thank you, Madam Temporary Speaker, for giving me the opportunity. I do not know when we will stop saying that we are still learning, but every day is a learning day and knowledge is power.

In supporting the amendment, I wish to bring to the attention of the House that currently the national Government is paying the salaries of the former employees of the local authorities wherever they have been deployed or attached. I would also like to urge the national Government to continue doing so. They should not leave those employees half stuck in the mud. This is an exercise that the national Government should continue performing. They should put aside a clear budget allocation which shall ensure that salaries are available before they are settled in their new jobs.

They should also ensure that at the time they are being retrenched and paid their benefits, there should be no excuse from the national Government that there is no money. They knew that we had a new Constitution and they envisaged such a scenario. So, they should cater for the needs of those Kenyans. We do not want a situation where we are going to lose young and very able employees who can still perform and develop the nation. We do not want to see them dying in shock or going back to their villages and within one year, we find the obituary pages in our daily newspapers are full as a result of this.

Madam Temporary Speaker, as much as it looks like everything is being rushed, I keep on asking myself where all these people who were supposed to cater for these things were. This should have been done in a better way. All stakeholders should have been involved. Before the county governments advertised these jobs, they should have come together with the stakeholders to find ways of absorbing them in whatever positions that had been created. They needed to put in place proper systems to deal with corruption and any other shortfalls that could occur. It is not necessarily true that the new designations that are going to be created will benefit the society. Probably, even the present working system will work better for the society to improve not only their welfare, but also the economy of the country. By the end of the day, a very satisfied employee is productive to the economy. We should all get out of the poverty level.

Once the national Government absorbs the former employees or pays their benefits, the human resource capacity in the county governments should be build. I heard the TA say that they have trained the county assembly officers and the various groups and are creating awareness. They supplied us with a lot of materials and manuals for training which should be availed to the public out there. They are useful materials.

The former employees and all other Kenyans that are not able to get those white collar jobs should be prepared to start businesses. They should be empowered in such a way that they can also have options. The package should also be attractive so that they may opt to get their benefits and start up their businesses. They could even be given priorities in the *Uwezo* Fund and in many other monetary incentives that have come up within the society which the national and county governments have brought so that they are able to stand on their feet, create more employment and move on with their lives. Once this is done, there will be no enmity and life will continue smoothly. A smooth transition is very important to us.

Madam Temporary Speaker, I do not know whether their voices have been heard. Perhaps, the Senate, through the relevant Committee, should seek audience with some of them or with their leadership so that they can discuss the way forward. These are some of the stakeholders meetings that I was talking about. Everybody should be brought together and given an opportunity to decide on their fate so that they do not feel that they have been condemned unheard. That way, we will bring harmony.

Regarding the new employees of the county because they are still a resource, the way they were being managed, the style may be different, but the product is the same. You may find a society where people are living in harmony that they still consult the old people who were working in the local authorities and who have the expertise without necessarily working there. That way, they could also get something small as they are consulted for their efforts and support. This will make everybody happy and bring a sense of permanence.

It does not mean that after every election or whoever employed them like the governor loses through a petition or death then the one who is coming in employs new people. We should have a proper and clear system and a framework which abides by the law and which is protected by the Constitution. The Bill of Rights is very important. Everyone has a right to all those opportunities as enshrined in the Constitution. No one should be denied because they were at the right place at the wrong time. Someone has decided that a new suit in the name of employment should be worn. Those who are there are not lesser Kenyans.

With those few remarks, I beg to support.

Sen. Elachi: Madam Temporary Speaker, I also want to support the amendments on this Motion and say that it is time the Committee on Health, Labour and Social Welfare takes over and looks at the welfare of every employee who is at the county level. As we move on, we, as the Senate, need to start embracing the spirit of unity in purpose. The other day we celebrated *Mashujaa* Day and it was like we are starting and rejuvenating our country. We believe in this new Constitutional dispensation and must see a new Kenya coming up. This can only start if, indeed, we can really remember those who worked in the 174 local authorities.

We are talking of thousands of people and a national Government that has to be sensitive to every Kenyan. I know that the President has always said that he believes in the lives of Kenyans and is there to support them. He is willing to ensure that Kenya is prosperous. To be prosperous, we must ensure that our human resource or manpower is our first goal. Countries like Asia and China are thriving because of the human resource that they take care of.

Madam Temporary Speaker, we know that we are facing a challenge of jobs. Therefore, it is not right for the governors to continue advertising jobs when we have Kenyans serving in the same positions. It is important to tell governors that much as they would wish to employ their cronies and political friends, they should not forget that these are Kenyans and they contribute to the revenue of those counties and develop them. So, we should not continue with the attitude of forgetting that all of us are one. It does not matter whether I am brown, white or an albino. I am a Kenyan. This is my country. I have a right to live and work in any part of the country. That is what the Constitution says. If we are not careful, we will have counties with worse ethnic issues than we thought. This is because the governors are trying to tell Kenyans that it is a must that they just employ people from their tribes, yet the Constitution says very clearly that 70 per cent of the employees will come from the county and 30 per cent from other counties, so that we can embrace the unity of our people and country.

Madam Temporary Speaker, we are moving from understanding what devolution is and entering into a very dangerous area, where we think that devolution is just my people or tribe. Therefore, anyone else, even those who lived in those counties, but are not of that tribe, are not allowed to share. That is what is happening in the counties.

The Temporary Speaker (Sen. Ongoro): Order, Senator! This Motion still has a balance of one hour and thirty five minutes. Sen. Elachi, you will have your five minutes balance.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time to adjourn. The Senate is, therefore, adjourned until tomorrow, Wednesday, 23rd October, 2013, at 9.00 a.m.

The Senate rose at 6.30 p.m.