

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 29th 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): Hon. Senators, I am informed that we have no quorum. So, let the Division Bell be rung.

(The Division Bell was rung)

Order, Senators! We now have a quorum so we shall commence our business.

MESSAGE FROM THE NATIONAL ASSEMBLY

APPOINTMENT OF MEMBERS TO THE PAN-AFRICAN PARLIAMENT

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

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

APPOINTMENT OF MEMBERS OF PARLIAMENT
TO THE PAN-AFRICAN PARLIAMENT

“Pursuant to the provisions of Standing Order No.41(1) of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

The National Assembly, on Thursday, 24th October, 2013, approved the following Members of Parliament to the Pan African Parliament (PAP):

Hon. Zakayo K. Cheruiyot, MP

Hon. Rachael Wambui Shebesh, MP

Hon. Millie Grace Akoth Odhiambo Mabona, MP

Hon. Shukran Hussein Gure, MP

Hon. Sen. Kipchumba Murkomen, MP”

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

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

Hon. Zakayo K. Cheruiyot, MP

Hon. Rachael Wambui Shebesh, MP

Hon. Millie Grace Akoth Odhiambo Mabona, MP

Hon. Shukran Hussein Gure, MP

Hon. Sen. Kipchumba Murkomen, MP”

Thank you.

STATEMENTS

STAND-OFF BETWEEN TULLOW OIL COMPANY
AND RESIDENTS OF TURKANA COUNTY

Sen (Dr.) Khalwale: Mr. Speaker, Sir, I rise to seek for a Statement from the Chairman of the Committee on Energy, Roads and Transportation in respect of the stand-off between Tullow Oil Company and the residents of Turkana County which has forced the oil drilling company to stop business. I would like the Chairman to clarify the following:

What urgent measures the Government is taking to end this ugly and unfortunate incident. Secondly, to clarify how Tullow Oil Company has factored the needs of the local Turkanas in the exploitation of this oil resource. Thirdly, what the Government is doing to scale up involvement of the locals in this grand project beyond the universally accepted practice of simple casual jobs, being offered opportunities as non-skilled task workers and being given simple small-scale businesses and simple contracts. Finally, I

would like the Chairman to clarify what guarantee the Government is giving on the safety of the non-Turkana employees from elsewhere who are reportedly being evacuated.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, the message I got was not as comprehensive as what you have read.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, when you are seeking a Statement, from your experience, you know that when you pronounce a comma or a full-stop, it tends to look longer than when it is written.

The Speaker (Hon. Ethuro): Quite the contrary, commas and full-stops are never pronounced. So, how do you prolong them?

When do we get a response, Committee?

Sen. Moi: Mr. Speaker, Sir, that issue needs concise and elaborate answer. Therefore, I beg your indulgence that I bring the response after two weeks.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Yes, Mr. Speaker, Sir. Indeed we need a comprehensive answer but it is also important for him to factor in the implications to the foreign investing community. The message should not remain undelivered for a long time since we want investors to engage in business activities in the country. Could he compromise and bring it on Thursday next week?

The Speaker (Hon. Ethuro): Mr. Chairman, the problem is that the situation now can easily get worse. So, I think that compromise suggested by Sen. (Dr.) Khalwale is a good one.

Sen. Moi: I will do so, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Okay, let it be Thursday next week.

Sen. (Prof.) Lonyangapuo.

ISSUANCE OF GUNS TO THE KENYA POLICE RESERVISTS

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations. The Statement relates to the issuance of guns to the Kenya Police Reservists (KPRs). In the Statement, I would like the Chairperson of the Committee to;

- (i) State the number of guns issued to KPRs in Turkana County, especially in Loima and Turkana South Districts.
- (ii) State the number of guns issued to KPRs in West Pokot County, especially in Central and North Pokot districts.
- (iii) Explain the criteria used in identifying the individuals to be issued with guns.
- (iv) Lastly, to state the number of KPRs in the said districts and confirm whether it tallies with the number in the records kept at the headquarters here in Nairobi.

The Speaker (Hon. Ethuro): Chairman, National Security and Foreign Relations Committee.

Sen. Haji: Mr. Speaker, Sir, I beg your indulgence that we be allowed to issue this Statement in the next two weeks because trying to look in the record for the names of people who are in the bush takes a bit of time. So, we shall do it within two weeks.

The Speaker (Hon. Ethuro): Except, Mr. Chairman, I thought the records are kept at the headquarters. The people might be in the bush but the records are not in the bush.

Sen. Haji: I agree with you, Mr. Speaker, Sir, but in view of the many outstanding Statements from this Committee, I ask the indulgence of the hon. Senators to give us at least ten days.

The Speaker (Hon. Ethuro): He actually does not have a problem with the two weeks and the latter reason is better than the one of the bush and records.

Sen. Kagwe: Mr. Speaker, Sir, I rise to respond to a request for a Statement that was sought by Sen. Wamatangi.

The Speaker (Hon. Ethuro): Sorry, Chairman. Why can we not dispose of the requests first, then I will give you the first bite. I recognise Sen. Kanainza.

MANAGEMENT OF *UWEZO* FUND

Sen. Kanainza: Mr. Speaker, Sir, I had requested for a Statement from the Committee on Devolved Government about the issue of *Uwezo* Fund. My questions were---

The Speaker (Hon. Ethuro): Order, Senator! There are no questions here, only Statements.

Sen. Kanainza: I had sought a Statement and I need an answer from the Chair because he has been evading but today, he is in the House.

The Speaker (Hon. Ethuro): Who is the Chairman of the Committee on Devolved Government?

Sen. Murkomen: Mr. Speaker, Sir, we have written a letter to the Ministry but we have not received a response. We have now resolved to call the Minister next week and then, thereafter, we shall bring the answer.

The Speaker (Hon. Ethuro): An allegation has been made that you have been ducking.

Sen. Kanainza: Mr. Speaker, Sir, I sought this Statement before we went for recess. He has had enough time and what he is giving me is an excuse. I know that young people have not been involved in these negotiations and I wish to get an answer.

Sen. Murkomen: Mr. Speaker, Sir, with your indulgence and the indulgence of my friend, Sen. Kanainza, I beg to be allowed to bring the answer on Thursday next week.

Sen. Kanainza: Mr. Speaker, Sir, let me hope he will keep the promise. Next Thursday I will be here and I want to know why the youth department has been ignored.

The Speaker (Hon. Ethuro): Chairman, the Statement was actually sought on 1st August, 2013 and was supposed to be due on 17th September, 2013 and again on 10th October, 2013. So, the Senator has every reason to feel uncomfortable with that timeline. So, ensure that this time the one you have promised will be the correct one.

Sen. Billow, the last inquiry.

UTILIZATION OF REVENUES BY COUNTIES
TO FINANCE EDUCATION ACTIVITIES

Sen. Billow: Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on Education, Science and Technology on the following: In view of the transfer of various functions to the county governments, it is becoming very difficult for some counties to determine whether they can use their revenues to finance certain activities. In particular, I would appreciate if the Chair would clarify, with regard to education, the following issues:-

(i) Whether the county governments can use that money for the purposes of establishing bursaries for secondary and university students because there are concerns over that.

(ii) Whether they can recruit and pay teachers through the board of governors system because a number of counties have their priorities as lack of teachers.

(iii) Whether they can purchase equipment and establish infrastructure in schools. Again, this is an area that a number of counties have a concern with and I will appreciate if the Chair would clarify the issue.

The Speaker (Hon. Ethuro): Is the Chairman here?

Sen. Kagwe: Mr. Speaker, Sir, I can respond to those questions in two weeks' time.

The Speaker (Hon. Ethuro): Okay. Did you have a response? We are done with those seeking Statements.

MEASURES TO ENSURE EFFICIENT NATIONWIDE
MIGRATION FROM ANALOG TO DIGITAL SIGNAL

Sen. Kagwe: Mr. Speaker, Sir, I rise to respond to Sen. Wamatangi's Statement regarding a very serious matter at the moment in Kenya, of digital migration. The Senator sought to find out whether we are ready as a country to migrate on 13th December, 2013 as proposed. The following is the response from the Ministry.

The first issue was whether there are enough migration top boxes that are set to be installed for all the people of Kenya.

The analogue switch off of the existing analog television transmission shall be implemented in three phases whose deadlines have been set as follows:

On 13th December, 2013 - Nairobi region.

On 30th March, 2014 - Mombasa, Malindi, Nyeri, Meru, Kisumu, Webuye, Kisii, Nakuru and Eldoret.

On 30th June, 2014 - All other regions.

The Government has already gazetted the above deadlines in the Kenya Gazette of 18th October, 2013. At the moment, the analog switch off is focusing on Nairobi region and its environs where the existing analog television transmitters shall be switched off on 13th December, 2013. The estimated shortfall in the number of Free-to-Air (FTA) set top boxes is 700,000 and is detailed as follows:

The television households targeted in the Nairobi area are estimated to be 1,261,235, televisions less FTA set top boxes sold already within the Nairobi region 26,538,000, less the payless set top boxes sold in digital threshold television like Dstv and others, is 224,000, less the total pay subscribers in other platforms which are 300,000. The estimated set top boxes shortfall on FTA is 700,000. The number of set boxes for FTA according to import plans and stock levels as per indications from authorised vendors is estimated to be 540,000.

The shortfall is expected to be met once the consumer awareness campaign has been conducted. In addition, the gazettelement of analog switch off dates on 13th December, 2013 will incentivize vendors to bring in set top boxes. The uptake of these boxes will be monitored and reviewed once the consumer awareness campaign, which was launched on 23rd October, 2013, has been carried out.

The other question was regarding the taxes on these boxes. The Government has waived import duty on set top boxes. The same boxes, however, attract a Value Added Tax (VAT) of 16 per cent and a levy of 1.5 per cent.

The other issue that was raised by Sen. Wamatangi is whether it is possible to set aside taxes that have been imposed on these boxes. The National Treasury has clarified to the Ministry of Information, Communications and Technology that it will not be able to set aside the taxes that are currently imposed on the set top boxes. The FTA set top boxes will therefore remain at the current average price that will range from Kshs5,000 to Kshs7,000 or less depending on the level of competition from the suppliers.

The other question was whether there is a county by county programme to educate Kenyans on the migration, specifically the residents of Kiambu, Machakos and Kajiado counties which border Nairobi County and which will be affected by this migration owing to their proximity to Nairobi County. Indeed, they will be affected.

The other concern was: What steps have been taken by this Committee and the Ministry concerned to make sure that Kenyans do not get inconvenienced especially a few days to Christmas? There is an elaborate consumer awareness campaign on digital migration. The Communications Commission of Kenya (CCK) in collaboration with the Ministry and other stakeholders launched on 23rd October, 2013, the consumer awareness campaign targeting the areas being switched off in Nairobi region. The campaign will use various media channels, radio, television, print media and other outdoor activities such as road shows.

The areas that will be affected from 13th December, 2013 following the analog switch off in Nairobi region include Nairobi County, Kiambu county, parts of Machakos and Kajiado counties. The consumer awareness campaign for Nairobi will cover all those areas and the consumers will be educated on what is expected from them in order to migrate. The campaign will also urge consumers to acquire type-approved set top boxes from vendors duly authorised by the Commission well in advance of the switch off deadline in order to avoid a last minute rush.

Measurements have been carried out to verify that the signal coverage in a targeted area duplicates the analog signal. The set top box market is open and liberalised and so far 45 vendors have been authorised. The shortfall in the number of set top boxes is expected to be met once the consumer awareness campaign has been conducted.

The statement is signed by Fredrick Matiang'i – Cabinet Secretary for Information, Communication and Technology.

Thank you, Mr. Speaker, Sir.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I wanted Sen. Kagwe to finish his Statement. When he talked about the analogue switch off, the Senate Majority Leader turned to me and said: "We will switch you off". Is it in order for him to insinuate that he will switch us off as Senators?

The Speaker (Hon. Ethuro): Did he insinuate or he told you? Did he tell you in your capacity as the Senator for Mombasa or he referred to all Senators?

Sen. Hassan: Mr. Speaker, Sir, while seated right there, he projected his head and said: "We will switch you off". So, I do not know what that metaphor was supposed to mean.

The Senate Majority Leader (Prof.) Kindiki: Mr. Speaker, Sir, I am actually surprised with the statement which has been made here by my colleague, the Senator for Mombasa, who is actually a good friend of mine. First of all, it is not in the nature of the Senate Majority Leader to conduct business or speak those kinds of words. My record is very clear in this House. More fundamentally, the Senator for Mombasa is out of order because, in my view, he is trying to say that the Senate Majority Leader has communicated in a way other than the usual way in this House which is through the Chair. There is no way I can communicate to this Senate when I am in this Chamber unless I speak through the Chair. Is he in order?

The Speaker (Hon. Ethuro): I agree with the Senate Majority Leader. Unfortunately for the Senator for Mombasa, the Senate Majority Leader has every opportunity to speak and he has denied that he said such words. So, let us rest the case there.

Who had requested the Statement?

Sen. Wamatangi: Mr. Speaker, Sir, the answer that has been given by the Chairman is satisfactory.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, on 7th October, I tried to answer Sen. (Prof.) Lonyangapuo's Statement about the---

The Speaker (Hon. Ethuro): Order! Order, Chairman! Let us see those Senators who are interested to make interventions on the Statement from the Chairman of Education, Information and Technology. Sen. (Dr.) Machage!

Sen. (Dr.) Machage: Mr. Speaker, Sir, as we appreciate the Statement given by the Chairman, he should also note that he has talked about 45 vendors being allocated the duties of distribution of the set top boxes. Could he tell us who they are and what the rationale for the selection was?

Sen. Murkomen: Mr. Speaker, Sir, I do not have a point of clarification but to just request the Chair that next time such an answer must be broken down in a more consumable language; not a technical language. Part of the reason why many Senators are not seeking clarifications is because he has hidden himself behind the technical knowledge.

The Speaker (Hon. Ethuro): Sen. Murkomen, you should speak for yourself. The Senator who sought the Statement was completely satisfied and very happy with the

boxes and that other technology. So, it is up to you to also play a bit of catch up on this one.

Sen. Elachi: Mr. Speaker, Sir, could the Chairman clarify whether indeed this is the last time the Chairman is telling us that they will switch off because this is something which has been going on for a very long time and whether the media owners are now happy or we will still have conflict with them as we switch off?

Sen. Kagwe: Mr. Speaker, Sir, first on Sen. (Dr.) Machage's question with regard to who the 45 vendors are, I do not know them as I speak here right now. What I know is that they are the normal traders and anybody who applies to the Communications Commission of Kenya (CCK), as long as they have the right specifications, they can be able to trade in set top boxes. Any trader who wants to apply can do so. The only reason they apply is so that they can get the proper type of set top boxes. Otherwise they can bring in boxes here that are not approved and they will not serve the purpose from 13th December, 2013.

I really sympathize with Sen. Murkomen on grounds that he wants me to simplify on something that cannot be simplified beyond there. In literature, I believe it was called onomatopoeia; it is buzzing like a bee. You cannot ask me to explain the buzzing of a bee. Technically, a set top box cannot be called anything else except a set top box. It is a small little box that you put on top of the television and it receives a digital signal instead of receiving an analogue signal. It converts an analogue signal into a digital signal. I am sure that explanation will help. As everybody knows, we have moved from analogue to digital and I would urge that, as the leadership, we should also do the same thing. We should start to understand more digital than analogue. The matter is as simple as that. You are either part of the change or part of the problem. I believe that Sen. Murkomen is part of the change.

Mr. Speaker, Sir, with regard to Sen. Elachi's question, this is a very important and serious matter. It is more serious than a lot of Kenyans currently appreciate. What the media houses have been complaining about – in my understanding – is that they need to get their own signal distribution licences so that they can be produce their own programmes and also distribute the signal to themselves. Only two signal distributors in Kenya have been given licences. One of them is Signet which is basically the Kenya Broadcasting Corporation (KBC) and the other one is Startimes.

What it means is that on the night of 13th December, if you switch on the Nation Television and you do not have set top box, you will not be able to view it. You will be completely in the dark. Therefore, the implication for the media houses is huge because if people do not have set top boxes and they are not able to watch television, what it means is that the advertisers will not be interested in placing advertisements on the evening of 13th December. So, it has got huge implications. It is our hope that Kenyans understand it and get their set top boxes before 13th December.

As for the happiness of the media houses, I cannot say, but I am aware that there was a meeting between the media houses, the Cabinet Secretary and the Head of State to discuss this matter of migration from analogue to digital. All I can say is that as we stand here today, since we do not have any other communication from the Ministry, the communication we have is that following the gazette notice, unless otherwise stated, for

Nairobi, we are going to migrate on 13th December. The importance of making sure that we stick to deadlines once we say so is because the people who are importing the set top boxes can only do so if we guarantee them that we are indeed switching off on 13th December. If we do not do that, it means that they will be holding stock that is not moving. So, it is important from the Government side to say that if it is 13th December, it remains that. If we are not migrating on 13th, December, then we need to give very good notice so that people do not import these set top boxes.

Thank you.

Sen. (Dr.) Machage: Mr. Speaker, Sir, maybe Sen. Kagwe did not see the gist of my question as regards the skewed contracting and skewed benefits of such a monopoly of distribution of such a national exercise. I still demand that we are told who the distributors so chosen are. I also would want to add another question that he confirms that the pricing of the set top boxes will actually be controlled and not dependent on the economics of supply and demand. I can see a situation where the demand will rise to a peak level and prices will escalate. We want protection.

Sen. Kagwe: Mr. Speaker, Sir, I am quite prepared to follow up on Sen. (Dr.) Machage's request and get a list of the people who are distributing set top boxes. But let us not confuse that the set top boxes that we are talking about are the ones that people need to buy before next year. I will get him the list that he requires and table it on the Floor of the House. I also want to say that if there is anybody who is known to have applied and did not get approval, he should say so. You can only approve those who have applied. You cannot approve those people who have not applied.

On the issue of the cost of the set top boxes, the best guarantee of lower prices on any product anywhere on earth is indeed demand and supply. Forty five people competing for the same market and others that will be approved is sufficient guarantee that the prices are going to be affordable in the country. What would be a big mistake – I agree with Sen. (Dr.) Machage – is where there will be one or two suppliers and then they can come together and create a monopoly of suppliers who are going to charge the prices the way they want. But if we can get anybody who wants to bring a set top box being allowed to do so, then I believe that the competitive environment that will be created by those approvals will be sufficient to keep the prices down.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir, the issue raised by Sen. (Dr.) Machage cannot be swept under the carpet for the reason that the Senator of Nyeri is telling us that traders should not blame anybody if they did not apply. Could he confirm and clarify to this House that you made the public aware that such a lucrative tender was there? You cannot hide under that fact when potential business people were not aware? Did you advertise those tenders?

Sen. Kagwe: Mr. Speaker, Sir, as I said, I will table the list of those who have been approved. I am aware that there has been tremendous amount of publicity, all the way from 2007 and 2008, when people were told that we will need set top boxes. We were supposed to migrate on 12th December, 2012. That was the deadline that had been set. Let us also not take the role of business people. A business person who knows that the whole world is migrating by 2015 will go out of his way to find out how they can do business. Where they have been stopped, our role will come in. If there are people who

applied and were denied the ability to do so, those are the kinds of people I will be happy to listen to. But having nobody who can be tabled here as having been refused, there is very little that I can do. I will, as I said, table the list. Once the list is tabled, let us hear if anybody has been denied opportunity to import those set top boxes.

Thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Ethuro): If it is different, then it is not for this matter. What is it, Sen. (Dr.) Khalwale?

ARREST OF TURKANA MPS OVER
TULLOW OIL COMPANY PROTESTS

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, earlier on in the afternoon, you allowed me to seek a Statement the Chairperson of the Committee on National Security on the issue of Tullow Oil Company. It has now come to pass, that as we were transacting business here, two local Members of Parliament have been arrested in connection with the same matter. They are being held at the police station. This completely changes the statement to the extent that maybe, the Chair should guide us on whether we should not be asking the Majority Leader to come here with a comprehensive statement to the extent that now that the local leaders are being arrested, obviously tension will rise in Turkana. Anything can happen.

Mr. Speaker, Sir, I believe that this is important, it should be cleared up. We cannot have a situation where a Government arrests Members of Parliament who are speaking and advancing the interests of their people.

The Speaker (Hon. Ethuro): Majority Leader!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I agree with my brother, the Senator for Kakamega County, that what is happening in Turkana County deserves a very comprehensive and thorough Statement. This is not only touching on national security, but also on the future relationship between our country and investors.

As important as this is, it is something that should be processed through the usual way, through the Chairman of the relevant committee in this case maybe the Committee on Security and Foreign Relations because of the security implications or the Committee on Energy, Roads and Transportation. I do not see any justification why the Majority Leader should be involved in this one.

The Speaker (Hon. Ethuro): I completely agree with the Majority Leader that the matter can still be handled by the Committee Chairs. That should be dealt with by the Chairman of the Committee on National Security and Foreign Relations. That should be separate from the issues that you had sought earlier, although they are related, but in terms of the other concerns. But maybe because of the urgency, Sen. Haji, we need a communication to the request by Sen. (Dr.) Khalwale. When can we get it?

Sen. Haji: Mr. Speaker, Sir, we will attempt to respond to the issues on Tuesday, next week.

The Speaker (Hon. Ethuro): Let us now hear Sen. (Dr.) Kuti.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I had earlier stated that the tradition in answering statements is such that the other members give their concerns and finally the questioner concludes. When the questioner stood up to say he was satisfied, I thought the matter was concluded. But the reaction I got is what I want to seek your guidance on. If someone wants to make something out of order, there is a parliamentary procedure to handle it. When I heard “woow”, I thought somebody was vomiting. We have to have a procedural way of handling things when they are out of order.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Kuti! That procedure is that you rise on a point of order at that particular time. You do not raise those issues in order to escape from the same issues. But more fundamentally, Chairman of the Committee on Health, Labour and Social Welfare Committee, is that once the Statement has been sought by a Senator on the Floor of this House, it becomes the property of the House. It is not a personal possession. So, he may be satisfied because maybe he was considering certain specific aspects which were answered to his satisfaction. But other Senators may also have other areas they would want further interrogation. So, it should never occur to you that maybe you have talked to the Senator who sought your statement to be happy, he will not get away with it, other Senators will intervene.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I oblige.

The Speaker (Hon. Ethuro): Proceed then.

STATUS OF THE OLDER PERSONS CASH TRANSFER PROGRAMME

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I am responding to a Statement sought by Sen. (Prof.) Lonyangapuo, which I replied to sometime in mid-October but it generated a lot of interest. This is on the cash transfer to the elderly people. Many Senators sought further details, especially on the list.

Mr. Speaker, Sir, I would like to table the list of the beneficiaries of the cash transfer programme. This is a very voluminous document. It is 414 pages for this year only. The Members had sought the payments from 2009. I had asked the Cabinet Secretary to prepare a soft copy, so that anybody with further interest, the soft copy could be availed to the office of the Clerk and the Member could give his email address, so that the soft copy is emailed to him or her.

On that basis, I beg to table the list of the beneficiaries.

(Sen. (Dr.) Kuti laid the document on the Table)

Mr. Speaker, Sir, there were a few other issues that were sought. The vetting process is mainly done through the District Social Development Officers together with community leaders, be it chiefs or councilors. Awareness is built through public *barazas* held by the District Officers and chiefs.

Mr. Speaker, Sir, I am just brushing through because, generally, this is what the Members were interested in. They also wanted to know why this is called “older persons” cash transfer programme rather than “senior citizens” cash transfer programme. The term

“older person” is enshrined in Article 57 of the Constitution of 2010 that obligates the State to take measures to ensure the rights of older persons and the same has been interpreted under Article 260 as older member of the society. The term “older person” is right from the Constitution.

The Speaker (Hon. Ethuro): In addition to what the Chairman has said, the Cabinet Secretary responsible has actually written inviting the Senate for a thorough briefing on the cash transfer exercise. This is an opportunity for all Senators to avail themselves. We are working on the dates with the Ministry. We will communicate in due course. Definitely, it should not take more than two weeks for the meeting to take place.

Sen. (Prof.) Lonyangapuo!

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise to request that next week we could set time to interrogate this list in detail, so that if there are any queries - although we will be given a soft copy - this Senate can ventilate on the same.

The Speaker (Hon. Ethuro): I would suggest that we get both the soft copies and the hard copies. Senators can get this information in the room where you get documents so that you can look out for more details. But in terms of interrogation, let us do it after we get the brief from the Ministry. If there are gaps, the Chairman can pick on those at a time we can agree on.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, thank you for that guidance. The figures are cumulative. I just want to warn Members. You may, for example, see Kshs24,000. That is the cumulative figure up to that period that, that recipient has received. It is important to note that so that you do not say: “Per month, how is it that one person gets Kshs24,000?”

The Speaker (Hon. Ethuro): Sen. Haji.

MEASURES TO RESOLVE BOUNDARY DISPUTE BETWEEN MERU AND ISIOLO COUNTIES

Sen. Haji: Mr. Speaker, Sir, I am issuing a Statement on measures to resolve boundary disputes between Meru and Isiolo counties.

On 17th September, 2013, my name sake, Sen. (Dr.) Kuti, requested for a Ministerial Statement on the measures that the Government has employed to resolve boundary disputes between Meru and Isiolo counties. In particular, he alleged that on 17th September, 2013, four people were injured and two women raped within the disputed areas.

Mr. Speaker, Sir, I wish to state as follows:

The Independent Electoral and Boundaries Commission (IEBC) is aware of the boundary dispute between Meru and Isiolo counties. Further the County Assembly of Isiolo has requested the Commission to avail information on the contentious boundaries. The Commission is currently working towards availing all information and technical expertise to resolve any underlying issues that touch on constituency and boundaries in the county. However, the Senate is advised that there is need for the formation of an independent commission by Parliament to address the boundary dispute as envisaged in Article 188 of the Constitution of Kenya, 2010.

Mr. Speaker, Sir, sometime in the month of August, Meru County Administration commenced the construction of a road in the disputed area. Isiolo County leaders and the community members protested and the road construction works were stopped. However, this led to tension between the residents of the two counties.

Again, on 17th September, 2013, some residents of Tulu, Roba Location in Isiolo County went to the area and demarcated plots for themselves leading to a scuffle between the members of the Borana community on one hand and the Meru community on the other. Contrary to the remarks made by the hon. Senator, five persons were injured during the scuffle and although there were allegations that two women were raped, the investigations have not proved these allegations. Investigations on the incident are being carried out with a view to bringing the perpetrators to book.

Lastly, Mr. Speaker, Sir, the Government has taken the following measures to enhance security in the area:

(1) Enhanced patrols during the day and at night to prevent escalation of the conflict.

(2) The unplanned demarcation of the land in the affected area by individuals has been halted and security officers directed to apprehend anyone found doing so.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I would like to thank the Chairman for the answer that he has given. The Meru and Isiolo people have lived together for many years. There are many people from the Meru Community within Isiolo and a few people from the Isiolo community within the Meru side. This matter of the boundary is going to be the new challenge to security, unless it is managed properly.

Mr. Speaker, sir, while the Chairman has said that the demarcation has been stopped, just the Saturday before the last one, a new market was opened up in this disputed area and it has regenerated new tension within the area. Therefore, I would like the Chairman to confirm that this new market came up exactly two weeks ago and is now a new cause of concern. I am very appreciative to my colleague, Sen. Kiraitu. We have spoken about this matter and worked together for a long time to make sure that our boundaries are peaceful and our people live peacefully together.

In fact, I appreciate that he had even gone to the Office of the President. We hope to organize a joint peace meeting for the two areas. But while that is happening, it is very important that no activities happen that can escalate issues. Therefore, just as much as the demarcation has been halted in the disputed area, no other activities like the setting up of the market should come up. So, I would like that confirmation from the Chair.

Sen. Haji: Mr. Speaker, Sir, generally, I think that the Senators will agree that there are boundary disputes all over the country and this one is not in isolation. However, the question of a new market is a new matter to me. If it is true, then that is wrong. Before I can undertake to take action, the Senator should let us know whether this market has been set up on the Meru side.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, it is on the Meru side.

Sen. Haji: Mr. Speaker, Sir, then I undertake to caution the Cabinet Secretary that what they have stated in their Statement should be followed to the letter.

Sen. Murungi: Mr. Speaker, Sir, I would like to thank Sen. Yusuf Haji for the Statement that he has made in this House. It is true that the Senator for Isiolo and I have

worked together for a long time. Since he assumed power in Isiolo, the security situation in that area has considerably improved because we have been on talking terms and a lot of consultations have been going on. It is also true that a new market has been established in the last few weeks. I have had occasion to talk to our governor who has established this new market, but he is very clear that the market is being established on the Meru side and not on the Isiolo side.

According to our governor, this boundary is very well known and was established in colonial times. He, therefore, feels that the people of Isiolo should have no complaints at all as far as the establishment of this market is concerned. This is because the governor is fulfilling an election promise to the people of Meru, to accelerate economic development in that area, which is one of the poorest and least developed parts of Meru.

Mr. Speaker, Sir, I would like us to continue with our good relationship with the Senator for Isiolo and get our two communities living together in peace. But the people of Isiolo should not retard development in Meru County.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, while I would not like this to be viewed as a duel, I think that it is very important that we realize that land is a very sensitive issue. The land that was demarcated is in Kenya and people were living in that area anyway. As I said earlier, there are Isiolo people living on the Meru side and many Meru people living in Isiolo. I think that the demarcation has been stopped on the land that is just in the town of Isiolo because of past injustices. It is just because maybe at that time the Minister for Lands, for a long time, happened to be from Meru. If you throw a stone from Isiolo, it lands in Meru. How can we expand and yet, people have to settle?

I think that this is a disputed area and so, just as much as the demarcations have been stopped, any other activity on that disputed area, which the Independent Electoral and Boundaries Commission (IEBC) had said that they were going to look into and even advised for the formation of a Parliamentary Committee--- Until all these matters are resolved, I think that is very important that activities on this land be halted, so that when the dispute is over, then we can decide how to use the land even together, because that is Kenya. As I said, people live on either side and it is important that we do not bring issues that can cause a lot of tension. There are a lot of Meru interests in Isiolo and a lot of Isiolo interests in Meru and this will bring a new tension that has not been there before.

The Speaker (Hon. Ethuro): Order, Senators! We cannot demarcate boundaries on the Floor of this House. Since already the two Senators are working to resolve the matter, let us leave it that way for now. In fact, I was very reluctant to give Sen. Kuti the chance again, because I am convinced that any further interventions on this matter can only make it worse, and I do not think that, that is the intention of any Senator dealing with this matter. You can see that interest now has extended beyond Meru County to Tharaka-Nithi County.

What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I want to agree with all the Senators who have spoken here on this matter, that is, the Senator for Isiolo, the Senator for Meru and even the Chair of the Committee on National Security and Foreign Relations. Boundaries are very sensitive. I am rising on a point of order because I have looked at the issue of boundaries. Unlike other areas in

the Constitution, where somehow the Senate seems to have been subverted by people who did not want to have a strong Senate, the Senate in Article 188 has the final say on issues relating to boundaries between counties, and it is an extremely sensitive national security matter.

So, the direction that I was seeking is in relation to the kind of Commission which is envisaged under Article 188. My reading of that article is that the Commission which is envisaged is not the IEBC, but a unique Commission on boundaries. If you could give that direction, it would help going forward, because sooner or later, this Senate will have to sit and resolve sensitive issues around boundaries in a final manner.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. I want to propose some way forward in this matter. What my colleague, Sen. Kuti, said is true. There are many Meru people who live, especially, in Isiolo Town and there are many people from Isiolo also on the Meru side. This is historical because Isiolo Town itself was part of Meru and it is the *Njuri Ncheke* which leased that part to the colonial government to settle the Somalis from Somalia after the Second World War. We are not claiming the land back. At the time of the lease, the land was demarcated and the documents exist.

The boundary is well known, especially to the Ministry of Interior and Coordination of National Government. Would I be in order to propose that for us to resolve this matter, the Cabinet Secretary or the Committee Chairman requests that we have a specific date when Sen. Kuti, the Governor of Meru, who had done the market, the Governor of Isiolo, the County Commissioners of Isiolo and Meru and I jointly tour that boundary? After we tour the boundary, we shall know whether there is a problem or some people are creating a problem. Jointly, that team should be able to resolve this issue once and for all, because problems arise when it is done unilaterally by either the Isiolo side or our side. I want to propose that the Chairman facilitates that kind of meeting, so that we resolve this problem.

The Speaker (Hon. Ethuro): Mr. Chairman, I think that, that is a specific request and if you could facilitate, I am sure that we will all appreciate as a country.

Sen. Haji: Mr. Chairman, Sir, I think that this is a very good proposition. We do not know how long the IEBC will take to resolve the issue. Unless Sen. Kuti has any objection, I can write to the Ministry and ask them to provide escort on a date that we shall agree on with them and possibly, even the provincial surveyors who are well versed in survey issues, so that we go and visit the boundary and try to resolve the problem.

The Speaker (Hon. Ethuro): It is so directed. Dr. Kuti, I am sure that you have no problem with that. It is just an opportunity for all of you to meet.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I agree with that proposal and thank Sen. Kiraitu for that way forward. But I think it is important that we enlarge the membership to include Members of Parliament. We could have a forum maybe even outside Meru or Isiolo and get technical people to guide us to arrive at the solution. This is because sometimes even those visits at the site can cause a lot of tension.

The Speaker (Hon. Ethuro): Sen. Kuti, those are details. I think that once the principle is agreed, then it is really the two Senators responsible and the Chairman facilitating to agree on the content and logistics. That should not be for the House. But on the matter raised by the Senate Majority Leader, on whether the IEBC is the Commission

contemplated under Article 188. In fact when you rose to speak on that matter, I quickly went to Article 188, and it says:-

“The boundaries of a county may be altered only by a resolution—

(a) recommended by an independent commission set up for that purpose by Parliament;”

I think one school of thought would say “yes, the Independent Boundaries and Electoral Commission (IEBC) has already been set up for the purpose, so it should do it.” Another school of thought thinks that you can create a whole new different Commission; I would ask for a bit of time to research on it and then I will make a communication from the Chair.

I think that is the end of Statements.

Next Order!

BILL

Second Reading

THE COUNTY GOVERNMENTS PUBLIC FINANCE MANAGEMENT TRANSITION (AMENDMENT) BILL, 2013

The Speaker (Hon. Ethuro): Who is the Mover?

Proceed, Sen. Kerrow Billow.

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

Mr. Speaker, Sir, I beg to move The County Governments Public Finance Management Transition (Amendment) Bill, 2013.

The objectives of this Bill, as set out in the memorandum of objects and reasons, are to amend the County Government Finance Management Transition Act, 2013, so as to extend the validity of the Act. The reason for this is to allow the county governments to fully operationalize their county treasuries and to pass the relevant laws governing their revenue raising measures.

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

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

Mr. Temporary Speaker, Sir, in this regard, the Bill specifically attempts to amend the Act at Section 2(1) by deleting the definition of ‘Transition period’ and substituting thereof the following new definition---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Billow Kerrow! You are the Mover of the Bill, right? The Bill is being read for which time? You are supposed to state.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. I beg that The County Governments Public Finance Management Transition (Amendment) Bill, 2013, be read a Second Time.

The Temporary Speaker (Sen. Murkomen): Proceed, Sen. Billow.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. Those are legal technicalities.

So, Mr. Temporary Speaker, Sir, the objective of this Bill is to amend the Act by deleting Section 2(1), which talks about the definition of ‘transition period’ and inserting or substituting with the following:

“Transition period refers to the period between the date of commencement of this Act and the date when the respective county treasuries are established, and in any case, not later than 30th June, 2014.”

Mr. Temporary Speaker, Sir, the purpose, as you can see clearly, is to extend the validity of this Act. The current Act as enacted reads in Section 31:

“This Act shall stand repealed with effect from 30th September, 2013.”

Mr. Temporary Speaker, Sir, what we are trying to do is to extend, therefore, the validity of this Act. Now, it is important for Members to know why we are extending the validity of this Act. It is also important for Members to know what exactly this Act itself is about. This Act, which was passed in January, 2013, was to provide for a framework for the establishment of the county treasuries and the transitional county budget processes. It was also intended to provide transitional revenue raising measures and, generally, expenditures as well as other transitional issues regarding the accounting officers and the revenue collectors.

Mr. Temporary Speaker, Sir, specifically, I think of interest to the Members is that, that Act is the one that provided for the establishment of the transitional county treasury. This is a treasury that was set up between March to September this year by the Transition Authority (TA) to be run on a transitional basis in order to allow the county governments time to recruit their own officers who will run or establish their own county treasuries.

Mr. Temporary Speaker, Sir, the same Act, again, provides that the TA shall identify the officers who will be seconded to the county governments to run those transitional treasuries. At the same time, those officers, including the transitional principal officer and so forth, who have been seconded by the TA under this Act, were required or are required to report on all public financial management matters to the TA as well as to the county executive member responsible for finance in the county government. It is also important for Members to appreciate what the transitional county treasury is and what it comprises; and who are the people who are running the county treasury on a transitional basis for that period, between March and September, 2013.

Mr. Temporary Speaker, Sir, the functions are specifically provided for in Section 8 of that Act, but the individuals who are running that treasury are quite a number who were seconded there by the TA. Specifically, there is someone who is the head of treasury; there is someone who is also responsible for preparing the budgets; there were people who were also responsible for assisting the counties in keeping their financial records; all this team was sent to the county on a transitional basis. So, it was up to the county governments to now recruit their own staff, set up their treasuries and get their county governments running.

In addition, Mr. Temporary Speaker, Sir, the transitional treasuries were also supposed to set up bank accounts for the county governments – which I think quite a number of them have done so – and preparation of budgets during that transitional period. The budgets were done; the national Treasury prepared this and it was approved by the Tenth Parliament. So, the budget that was used for the period between March to June of this year was, in fact, prepared by the national Treasury, approved by the National Assembly and it is the same budget which provided for the initial resources that were given to the county governments.

Mr. Temporary Speaker, Sir, what is important – and I just want to mention two other important areas with regard to this Act – in Section 22 of the Act, and it specifically provides as follows regarding the continuation of revenue raising measures:

“Until the new budgets of the decentralized units – that is the county governments – had been approved by the relevant county assemblies provided in the County Financial Management Act, the revenue raising measures approved by the Minister for Local Government under the Local Government Act, shall continue in office for the 2012/2013 Financial Year.”

In other words, for that transitional period between March to June, those votes, rates and budgets that had been set up for local authorities by the Local Government Minister were the ones that were in use. It reads in Section 23 also, which is important:-

“For the avoidance of doubt, until a new law relating to imposition of rates and charges is enacted, county governments, urban areas and cities may continue to impose rates and charges under the law for the time being in force in relations thereto.”

This, again, is significant, Mr. Temporary Speaker, Sir, in the sense that for the moment, that the period between March to September for which this Act is valid, the county governments would continue using those rates and levies that had been approved previously under the Local Government until the county governments enact their own Finance Acts to enable them come up with their own rates. So, therefore, these are some of the key areas that I wanted to highlight.

Mr. Temporary Speaker, Sir, it also says in Section 30:-

“On the commencement of this Act, any regulations, directions and instructions in force under the Public Finance Management Act shall apply under this Act with the necessary alterations so as to be applicable to the county governments.”

In other words, where relevant, despite the fact that there is a Public Finance Management Act, the provisions of this Act will continue to apply also as long as this Act is in force.

Mr. Temporary Speaker, Sir, then, why do we need this amendment? I think what is important is that according to reports from the TA; the county governments are not all on the same page with regard to the establishment of the county treasuries. We have been told that the county treasuries in some of the counties have not been set up. Some county governments are still in the process of fully constituting their county executive committees. Other county governments are probably in the process of appointing their

permanent secretaries and, as you know, the permanent secretaries in charge of finance will be the accounting officers for the county governments.

Mr. Temporary Speaker, Sir, some county governments may have even gone further and actually recruited staff for their county treasuries. So, what this means is that there is a possibility that there are county governments where the treasuries are still being run by people who have been seconded on transitional basis to the county governments by the TA. That is one of the reasons why it has been felt necessary that we must have this Act extended by a further six months, up to 30th June, 2014.

The second reason, Mr. Temporary Speaker, Sir, is with regard to the revenue raising measures; it was up to the county governments to have, through their county assemblies, prepared their Finance Acts that would set the rates and charges that they want to charge for respective services.

Mr. Temporary Speaker, Sir, as you know, quite a number of the counties are still in the process of setting up their Finance Acts; very few have, in fact, been able to enact them. I think Nairobi County Government is one of those that have published their Finance Bill in this regard. So, these are some of the reasons why it has been felt necessary that we should give the TA time, perhaps, to ensure that this is in place.

Lastly, Mr. Temporary Speaker, Sir, I think one of the reasons is that, there is a period of transition with regards to operationalisation of the county treasuries themselves in terms of training and in terms of getting people to understand how to use the Integrated Financial Management Information System (IFMIS), for example; in terms of getting people to understand how to prepare their accounts, and so forth. However, what is important is that some of the provisions which are here have actually been addressed. For instance, all the counties have already prepared their budgets for 2013/2014 – this is a fact – and all of them have had their budgets already approved by their respective assemblies. They have already received revenues in the county revenue funds for September and for August, and they have started using this money. So, with regard to some of the measures that are here, I think they are no longer in transition, but it was felt that it is important that we extend the validity of this Act by at least a further six months to ensure that those counties that are still having challenges can catch up.

Mr. Temporary Speaker, Sir, one of the measures that this Bill seeks to address is revenue raising measures. In other words, the county governments are required to enact laws with regard to revenue collection in their counties. As you know, the only revenues being collected in these counties before were revenues which were being collected by the defunct local authorities. It is now up to the county governments to come up with their own laws under the legislation that is passed in their own local assemblies – the Finance Acts – to collect revenue. Revenue is a very important aspect of the responsibility of the county governments.

The national revenue that is shared out to the county governments is not adequate to provide services in the counties. It is their responsibility to ensure that they identify what potential exists in each county for revenue and come up with laws regarding how to collect it and how to charge it. From the trips we have done to the counties, it is becoming apparent that some counties are not collecting revenue very well. In fact, quite a majority of the counties are collecting much lower revenue than what the local

authorities and former cities were collecting before the county governments came into being. We have seen that in the reports that have been tabled by the Controller of Budget and by the Committees of this House. It is unacceptable---

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. For the sake of HANSARD, my Chairman has just talked about an extension of six months. That is not entirely correct. He needs to make that correction.

Sen. Billow: Thank you very much for that correction. It is actually nine months and not six months. This is from 30th September, 2013 to 30th June, 2014.

It is important for us, as the Senate, to be alive to that fact. County governments must collect revenue over and above what the local authorities used to collect. That is the expectation of the people of Kenya. County governments, with the resources, structures and the competence they have, should enhance revenue collection but not to reduce.

One of the things I want to comment on is that we have seen counties coming up with their own Finance Bills and in the process, trying to set levies, rates and other charges that they are supposed to charge. We want to encourage county governments to be alive to the fact that as much as they want to collect revenue, they must appreciate that they have a responsibility or, indeed, it is in their interest to attract investors to their counties. If we charge revenue; it must be reasonable. We have seen and heard, in recent weeks, counties that charge revenues that are completely unacceptable in terms of the amounts of the rates themselves or the types of rates. We have heard of rates on dead bodies and revenues being charged for graves in large amounts.

It is important for counties to appreciate that, one, they need revenue but they also need to attract businesses to their counties. So, it is important for counties to appreciate that they need the revenue but also to attract businesses to their counties. They need to attract investors and to be reasonable. They need to facilitate business and trade. We do not anticipate that county governments will come up with legislation that will hamper the growth of business.

We are also aware that some counties are charging rates and levies that are punitive. For instance, you can be registered to do your business in Nairobi but for you to drive and to distribute your products in another county; you are charged levy or some fees. This is charged on the vehicles and it is happening. It is a pity. Businesses are being subjected to double taxation and to arbitrary charges and levies. This is a matter that is causing concern. The Committee on Finance, Commerce and Economic Affairs is looking at this thing critically with a view to come up with a Bill that will guide the county governments in this regard.

I want to mention that counties are part of this country. A county government that is in this country is part of this country and not part of another country. So, when a business is registered in county "A" and is trying to do business in county "B", it should not be viewed as if the business people are from another country.

Counties tend to think selfishly about their own counties. They tend to say look, why is county "A" collecting the revenue and yet we are also interested in that revenue? That is a wrong concept. What is important to the county governments is that all the businesses will pay national taxes. They pay VAT, Income Tax and Customs Duty. These national taxes form part of the national revenue that is shared out equitably across the

county governments. Somehow, all the counties benefit. Wherever the businesses are in this country, all the counties benefit indirectly.

I think it is important for county governments to be advised and for all Senators to advise county governments respectively when they are preparing Finance Bills so that they are not punitive. Their rates should not be punitive. They must not be unreasonable. They must avoid double taxation. They must also avoid discouraging investors.

Lastly, it is important that we address the issue of accountability that is very critical. I mentioned, earlier, that revenues are falling in many counties. In a county that was collecting Kshs200 million when it was under the local authority, six months after the county governments took over, it is collecting less than Kshs100 million. We saw that in many counties that we visited. What is happening is that, clearly, there is lack of accountability. We are aware that a number of counties are trying to address it. They are trying to automate their revenue collection services. They are trying to come up with electronic revenue collection systems and to outsource their revenue collection. However, what is important is that there are questions regarding accountability in some counties.

We must commend some counties that have already doubled or tripled their revenue collections. They are there and quite a number of counties have really tried. Their monthly collections are going up significantly. For others, the monthly collections have been going down. It is incumbent upon all of us, as Senators, to be alive to that fact as we visit the counties. However, counties must be held accountable. They must put in place systems that will ensure integrity and that will cut down on corruption. We have seen counties where people have been arrested, sacked and so forth. In fact, some of the two counties that we visited had experienced massive corruption in revenue collection. Money has been completely lost.

I think it is important for county governments to know that they will be held accountable for losses of revenue and that the ability to raise revenue is an important factor. The fiscal ability of a county is an important factor in determining the revenues that they will get under Articles 203 of the Constitution.

We want to encourage those who are modernizing their revenue collection systems to go ahead and do it. Those who want to outsource it should do it but whatever the case, we want to encourage the county governments to ensure that they are accountable. They must work to increase their revenue.

This Bill, therefore, is very important. I want to conclude by saying that the responsibility for ensuring that the transition is completed by 30th September was given to the Transition Authority (TA). I want to state, clearly, that in my view - with regard to the public finance - the TA did not deliver. They did not deliver. The TA arrangement regarding finance, in terms of putting the capable people in place, putting financial records in place and all the systems in place should have been done by now.

They came on board in December and had nine months to address all the issues regarding public finance management. It would not have been necessary to extend the validity of this Act if the TA had done its bit. It is important for them to now move fast and ensure that all county governments are in compliance with regard to the Public Finance Management Act (PFMA) so that we do not need this piece of legislation come 30th June, 2014.

I urge Members to support the proposed amendment which is very brief so that we change the definition to extend it to 30th June of the next financial year. This Bill concerns county governments in terms of Article 110(a) of the Constitution. It is not a money Bill within the meaning of Article 114 and, therefore, we want to encourage Members to support it.

I beg to move.

Sen. Mositet: Thank you, Mr. Temporary Speaker, Sir, for allowing me to second this amendment. From the outset, just as my Chairperson has said, this is a brief amendment. He has explained the reason behind the amendment which is worth supporting.

My Chairman has explained the reasons and the technical terms. The most important thing is to know the legalities with regard to collection of revenue, how to use the monies and to come up with county Finance Bills, which have not, so far, been passed by any county. This gives us the chance to extend the mandate of the Transition Authority. For that matter, it is in order for Members to support so that we give them a period of nine months so that counties can function well.

It is good to note that all our counties are still carrying out recruitment. We do not really have any staff in place. As much as some counties may claim that their treasuries have opened accounts and are working, the truth is that they may not have staff members.

It is also good to note on this Floor that counties should function better than the local authorities were functioning and operating. So, when it comes to revenue collection, we are sad to report that some counties we visited told us that in the previous month, they collected about Kshs200 million but in the current month, they have collected Kshs100 million. That was really disturbing to us and we wondered how the governors and executives will run their county governments.

It is good to note that a lot of money is now being taken to the counties. As we talk, I do not think that there is any county that has used any of the monies that is available to them. We should make the governors know that they should start using that money. Otherwise, within some months, they might find themselves overwhelmed by the monies in their accounts. Maybe, one year down the line, they may not have time to spend it.

I just want to support and second this amendment and note that if you look at what the Chairperson had said, there are a number of ways that the county governments are trying to use to collect more revenue. The counties are not even consulting the existing laws. They are not consulting the laws that we have between us and other communities like the East African Community (EAC) Laws. They should know that they are not supported by the law and they may be threatening investors and creating bad precedence which does not create a good environment for investors to feel that they are comfortable to work in those counties.

As they do that, I also find some cases where some raw materials may be leaving some counties. For example, Mandera County could be very rich in gypsum whereas it could be leaving Mandera all the way to Athi River and what the Mandera County gains is very little. It may be in order for them to also check in terms of the raw materials which leave particular counties and go to other counties, what those counties gain.

With those few remarks I second the amendment and request my colleagues to support it.

(Question proposed)

Sen. (Dr.) Khalwale: Thank you Mr. Temporary Speaker, Sir. I want to thank you because I wanted, if possible, to speak fairly early in the debate so that many contributions do not confuse me. Having read this Bill and understood it, I want to request colleagues that this is a very critical amendment and we must approach it very carefully, keenly and make time to consult the client; the consumer. The consumer in this case is the governor. All the counties – I agree with Sen. Billow - are not at the same level. So, if particular counties have challenges, it should not be assumed to be the standard. We should carefully craft the law in such a manner that those who have taken off be allowed to go ahead and those ones who have issues be assisted. Unfortunately as you know, because you were involved in the Constitution making process, there is no lacuna in this particular area. The law sufficiently provides on how you can deal with those counties that have got challenges.

One cannot for sure begin to understand what we are trying to do simply because you have read the Memorandum of Reasons as attached on this Bill. You begin to understand when you realize two simple things, that actually, what we are doing here is that; we are, without saying it, debating the issue of extending the life of the Transitional Authority. So, if we want to discuss the extension of the life of the Transitional Authority, the time will come. We should not do it with this kind of Bill. The moment you amend what is in the current Act, and take it to 30th June, 2014, you have extended the life of the Transitional Authority and as we all know, there is an on-going national conversation which has not been concluded.

Mr. Temporary Speaker, Sir, secondly, let it not be lost to all of us that up to 30th September, 2013, all governors in the country were not in control whatsoever of the county treasury. It is only after the expiry of this Act on 30th September, 2013 that governors and their executive committees started spending. I am giving you a real life experience from Kakamega County. In Kakamega County, my Governor, Mr. Oparanya, was completely unable to spend. He has only started spending and cash is flowing as we speak now. In fact, I have rang him barely 25 minutes ago because I wanted him to be clear how we are going to contribute this afternoon, and he has assured me that the cash is flowing.

So that I do not look like I am being hypothetical, if you look at this Act whose life we are extending, we are therefore saying that we are giving five people control over the county treasury and among these five people, the Governor, the Deputy Governor and no single member of the executive committee are there. I am referring to Article 5 of the County Government Public Finance Act. It describes the members who establish the county treasury. The principal officer is responsible for all the public finance management matters. Secondly, we have the transition head of the county finance department responsible for accounting and procurement. Third, there is the transition head of the economic affairs department who shall be responsible for the economic

analysis and budgeting. Fourth, we have the transition head of internal audit and fifth the staff deployed or seconded to the transition county treasury.

Mr. Temporary Speaker, Sir, are you telling me that the Senate of the Republic of Kenya wants to keep the county executive so well carefully selected, some of the so highly qualified to remain in limbo when some of these junior officers from the Ministries, who have been seconded to counties, are the ones who will be discharging their mandate? This is something we want to think about and I will be requesting the Committee that when we come to the Third Reading of this Bill, we be allowed if indeed we must amend this Act so that it goes on up to 2014, that we allow them to go on up to 2014, but create a win-win situation whereby if the Committee will allow, we create a partnership between these five people from the Transition Authority and the Executive Committee of the county government.

If you look at most of the counties, they have the cabinet secretary in charge of finance and county treasury. Then they have the chief officer in charge of finance and then they also have the head of finance. These are the critical people who are waiting that the five people who currently control the county treasury give way so that they start discharging. In counties like Kakamega and Bungoma where I have done my research, they have recruited very competent professionals. So, I will be down on my knees asking the Committee to accept that if we must amend it, then we should go further after amending to provide for an extension, we go further and amend Article 5 which establishes the county treasury. We amend it so that we then introduce members from the county executive to sit on the newly established county treasury. We should allow the following to sit on the County Treasury; the cabinet secretary in charge of finance, the chief officer in charge of finance and the head of finance. Because the chairman is a well established finance expert, it reads nonsense that you can have an internal auditor sitting on this same committee.

So, we should remove the internal auditor so that we allow these three officers to come in from the governor's office to sit with those officers from the national Government and put their heads together at the expiry of the tenure of this new team in June, 2014. These three players who will have come in from the county executive will have the institutional memory and things will then flow. Otherwise, we are putting out governors in disrepute. If Senators were watching like eagles, they would not want to see a mistake being done. It will be wrong for you to go in February, April or June next year to go and pin down the governor on the failures either by way of commission or omission of things that he was not part of.

The governor is not part of this Committee because he does not sit there, his deputy does not sit there and none of his members of the executive committee sit there. As we oversight the governor, we want to pin him down in law and tell him that he is the chief executive officer and the people working under him are the ones who have been doing this. He will come and defend himself in court and say that he was not part of it. Who is to blame? The National Assembly of the last Parliament and the current Senate.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. Sen. (Dr.) Khalwale is misleading the House. I have watched and listened to him for some time and he continues to mislead the House. First and foremost, this is not an attempt to extend the

life of the Transition Authority. The Transition Authority is provided for in a different legislation and they had three years to run. So whether or not this amendment Bill is passed, the Transition Authority will continue in office.

I find the Senator out of order with regard to Article 5 of the Act he is referring to. The essence of this Act is transition. All these people are transitional and the Act is clear. It is up to the point when they get their people on board. Immediately you get an officer on board, the transitional person is either appointed and confirmed by his board and becomes a member of your staff or he goes back to the Transition Authority. That is what has happened in all the counties. I think Section 6 (2) is very clear on this. It states:-

“Upon establishment of a county government, the officers deployed in that Section 5 shall be deemed to be seconded to the County Government”.

However, as soon as the county government appoints his team – this is provided for in Section 18 – then these other people cease to have any role.

Lastly, Section 30 says that the provisions of the PFMA Act also apply concurrently with this one. It reads:-

“On the commencement of this Act, any regulation or directions or instructions in force under the PFMA Act shall apply under this Act”.

We have a situation where we have a transition team in place. A government is being set up. Once they settle, the transition team will get out. That is the concept. I want to give a good example of my county. They already have their economic advisor and heads of finance and treasury. All the Transition Authority (TA) officers have either been confirmed or returned to the Treasury. There is nobody in transition in that treasury. That is the way they work.

Mr. Temporary Speaker, Sir, the hon. Senator has set up that design to capture the County Governor and put him in. That scenario is very frightening; it does not exist.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I must thank Sen. Billow. The difficulty was that he did not know if to rise on a point of order or a point of information. Sen. Billow has attempted to inform me. But the truth is: I have had the privilege of having sat up to midnight, unlike Sen. Billow, when we were debating this particular one. Let me take you, Sen. Billow, to Clause 18 that you have talked about. The establishment he is talking about is not contrary to Clause 5. It is Clause 5 which establishes. Clause 18 refers to the established one. The establishment we were talking about at that time is because it was the National Assembly--- The TA had not sent people to the proposed county governments. Therefore, we were saying until it is established. Now that it has been established---

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

The Temporary Speaker (Sen. Murkomen): What is it, Sen. Billow? That should not be a point of information.

Sen. Billow: Mr. Temporary Speaker, Sir, Sen. (Dr.) Khalwale continues to mislead us. If you look at Clause 18, it reads:-

“Until the establishment of the County Treasury for a county, the Chairperson of the Transition Authority shall, in writing, designate the Transition County Principal Officer of the respective county government to be responsible for receiving, collecting and accounting for county government revenue.”

The County Treasury is not the same as the Transition County Treasury. Those are two different entities. They are both clearly defined. They are separate. They are not the same. The County Treasury is provided for, explained and defined clearly in the Public Finance Management Act (PFMA). It is different. So, he should not mislead us.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, this debate is not a shouting match. As time goes on, we are debating and hope that we will find a middle ground.

As I was saying, the wisdom of bringing these two teams together ---

(Sen. Billow consulted other hon. Senators)

I beg that the Chairman of the Committee continues to listen to me like he has been doing. The wisdom is that there will be no crisis. There are some counties - I do not want to say their names because it can become an emotive comment - which have got such serious challenges that if left the way the Chairman of the committee is proposing, they would literally behave like headless chicken. That is why we support the TA to that extent. I would prefer an amendment whereby even as the TA goes on, it does so, in partnership with the Executive Committee of the Governor.

It is not by chance that in Kakamega County, for example, they were completely unable to spend until this Act expired. The Act expired on 30th September, 2013. The funds are flowing and people are happy. They are seeing things going on and where mistakes are being seen, the Governor is being crucified on FM stations. I am also on FM stations being called names because I have either over said it or I have not said or said it the wrong way because something has started happening. This is the participation of the public that we are talking about.

Mr. Temporary Speaker, Sir, I will not oppose the Bill as such, but I will call for careful consideration in the Committee Stage. If we allow it to be extended, we will then make the county governments fully participatory.

Before I conclude my contribution, I want to refer to the statement in the Memorandum of Objectives and Reasons for this amendment. The Chairman has told us in his presentation that we are amending because this will enable the county governments to fully operationalise their county treasuries and to pass the relevant legislations governing their revenue raising measures. That is the only reason he has given us. If we dissect it, who told you, when you were seated in that Committee, that all county governments have been unable to operationalise? Did you call governors or their representatives? This is an assumption! Who told the committee that the necessary information---

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

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to be informed.

Sen. Billow: Mr. Speaker, Sir, I want to inform the hon. Senator that this is not an assumption. There is a report published by the TA on the assessment of the readiness of the status of the county governments. It is in those reports that they actually itemize the readiness with respect to every aspect of a county, including their treasury, training, accounting systems and so on.

I want to inform the Senator that in Clause 7(b), the Transition Principal Officer, they actually do not just report to the TA, but they also report to the County Executive Member responsible for Finance. Even the Internal Auditor as stated in Clause 7(2) says that he reports to the Governor. So, even under transitional circumstances, the Governor and the Member in charge of finance are actually in charge.

Sen. (Dr.) Khalwale: Thank you for that piece of information on how you got to know that county governments have not fully operationalised their county treasuries. I had not looked at the report by the TA. I do not know whether you got it when you were in Mombasa recently. I did not go to Mombasa because I thought that going there was a total waste of public funds - meetings upon meetings with the TA which do not seem to tell people anything new. So, I refused to go. That money could be used to buy shoes for children in Ikolomani who go to school without shoes. I refused to go in protest.

Mr. Temporary Speaker, Sir, be that as it may, my colleague, Sen. Billow, is it true that you actually have an audit report showing that county “x” has not done the relevant legislation? If you have, I will be happy to look at it. I am not trying to play “Mr. Hard”. All I am trying to do is to ensure that we are rational. We just do not assume. Let us base things on what we have been informed factually, so that we live up to our responsibility, which is, protecting our county governments.

I will be failing as a protector of county governments, if I did not highlight these issues, especially after having spoken to Governor Oparanya this afternoon. He has told me that he has had serious challenges working with these people and that he cannot wait for them to leave. Why do we not craft this Bill in such a manner so that those of us who have recruited the necessary staff and are operating regularly, like in Kakamega County, will release these people to go to Mandera County, for example, or all other places and leave us alone? We do not want the national Government to interfere with the running of our county.

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

Sen. (Dr.) Khalwale: Yes, you may inform me.

Sen. Billow: Mr. Temporary Speaker, Sir, I am surprised the hon. Senator is not informed in this regard. But I want to inform him that as soon as his county government gets its team on board, the people from the TA are supposed to be sent back to the TA. Unless the county is absorbing some of them through normal appointment and confirmation by the county board, they must be sent back to TA. More importantly, 30th September, 2013, was the deadline for this to be done. So, if by 30th September, 2013, if they had their full team on board, those whom they are not absorbing should have actually been released. The Act is not keeping those people in Kakamega County.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, since I know the proceedings of the Senate are taken very seriously by Kenyans in employment in various offices, I am hoping that those who are serving in transition capacity in the County Government of Kakamega have, not only heard my debate, but they have heard your assertion that they are supposed to go. Could they, please, go away because the professionals we have hired are competent? They will do a better job. We do not want duplication of duties and so on. For example, someone refers to a Minister in Nairobi whose appointment we never even participated in vetting. We want to enjoy our independence as a county.

We are one of the most resourced counties. We want our professionals to be given an opportunity to exercise the manifesto of our governor, so that five years later, we will be judged, not by the failures of the national Government that seconded people to our county, but by the successes of the officers that we have recruited.

Mr. Temporary Speaker, Sir, in conclusion, it is true Members of the County Assemblies (MCAs) across the country are faced with serious challenges of salaries and so on, but I urge them to put in an extra hour to run one extra mile, to ensure that they provide proper legislation that can operationalise the manifesto of the county governments. Let me give you two sad examples; the county governments of Kakamega and Kiambu. These are the two biggest rural counties in the country.

Where were the members of the county assembly when the Governor of Kiambu imagined and attempted to run away with a criminal thing like trying to make money from dead people? That when you burry your wife, God forbid, she is dead, you burry her on your land, which you got from your grandfather or you bought with your own money, you go and take money to Governor Kabogo. Who told Governor Kabogo such things? Is that why he wants to be called His Excellency? You cannot do such primitive things. This was not our idea when we wanted devolution. We wanted devolution to give our people hope. But it looks like devolution to the people of Kiambu County means more suffering.

Mr. Temporary Speaker, Sir, it is shocking that the County Assembly of Kakamega has resuscitated all the by-laws that were done in 1948 when people were still mining gold in Rosterman, Lirembe, Malinya and Shiakungu. Those by-laws were done by the white man. They have brought a mobile county court. If the officers come and find a man who spits because of the stench of uncollected rubbish, he is arrested on the spot, charged and fined Kshs2,000. If the Governor of Kakamega wants the law on spitting to have force in Kakamega County, he better align it with the realities of the moment.

The realities of the moment are far different from what they are doing. They are arresting our people because of smoking, not smoking *bhang*. The traders who pay him are the ones who sell to my people in Kakamega County. If a young man walks around with his girlfriend, smoking, the guy is arrested, charged on the spot and fined Kshs2,000. I am not against the health implications, but they should, first of all, create smoking zones. We want our people to know that if they smoke here, for example, they will be arrested. If they smoke there, they are free. They are harassing our people because the county assemblies are not working.

The worst thing is that in Kakamega County we do not have a single public toilet. In this Senate, for example, the Kshs7.3 billion that you helped me to take to Kakamega County has reached there twice. The first Kshs531 million has reached there. Why has it not occurred to the governor and his team that they should take just a bit of this money to create public toilets? Now, in the process, you will find a child from Bondeni Primary School peeing in the thicket because there is no public toilet. In the process, he is arrested. Where else can he pee other than in the thicket?

So, for people to stop peeing in the thickets in Kakamega, Governor Oparanya must put up public toilets. If he cannot put up the toilets, then Kakamega County Assembly should do legislation to see how they can navigate the issue. We want our laws to resonate with the poor people of Kenya. We know the rich of this country, for

example, doctors, business people and a mogul like Gideon Moi, do not need a *mtetezi*. They can always *tetea* themselves. It is the poor who need us to speak for them. So, when our laws are not helping the poor, then our lives were not worth coming to this Senate. You might think that it is a joke, but it is very painful. When a trader in Kakamega who sells ripe bananas and makes Kshs200 the whole day is arrested and he is supposed to pay a fine of Kshs2,000 on the spot. How is that possible?

Mr. Temporary Speaker, Sir, with those few remarks, I support this Bill with a view of amending it in the third stage.

The Temporary Speaker (Sen. Murkomen): Sen. Khalwale, at some point you used the word “*mtetezi*” and I did not want you interrupt you, because you were in such an emotional moment. But for the record, you need to correct that.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am sorry that I was carried away. My campaign slogan is “*mtetezi wa wanyonge*,” but what I meant by “*mtetezi*” is that we are the defender of the weak and poor within the society and, indeed, I am.

The Temporary Speaker (Sen. Murkomen): Thank you, Sen. Khalwale.
Sen. Elachi!

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. I rise to support the Bill knowing very well that for the first few months, we have seen how the counties have been managing their resources.

Mr. Temporary Speaker, Sir, if this Bill is enacted into law, it will also help the counties that we know went through by-elections. There is a county, for example, Nakuru, which has not given us the whole team of the county executive committee members. We also have counties that to date have not been able to manage their resources as required. Therefore, I agree and disagree with my Senator on some of his views.

Mr. Temporary Speaker, Sir, the main purpose of the Senate is to ensure that we have a uniform set for all counties. As much as we know that we have some counties that have more capacity than others, for the sake of managing them within the law, it will be very important to have this amendment Bill in place. With all due respect, I would like to tell my Senator that I know that our Governor, Mr. Oparanya, is one person who believes in order and procedures. Therefore, we should not blame him. It is also part of the weakness of the Executive; and it is the county assembly which is supposed to also monitor all that.

Mr. Temporary Speaker, Sir, it is important for us, as Senators, to help the county assemblies to also look at how they are enacting legislation and assist them, because they do not have the capacity. So, as much as you are the one who handles those who are very weak, we want the people in Ikolomani to have shoes.

Mr. Temporary Speaker, Sir, having said that, when I look at the Bill and the reports that we have received so far from the Controller of Budget and the dilemma that the Auditor General is facing, we know that we still have a lot to do in terms of capacity in the counties, especially with regard to issues to do with money or resources. As I speak, we know that the counties are even charging the industries. Some have even come up with laws where, for example, when you reach Mombasa, you pay a levy, yet you have a licence and have been doing business with the national Government. By just

going to distribute your products, you are again charged. These are some of the things that will make even investors fear what we are going through.

Mr. Temporary Speaker, Sir, since the county governments already have departments that are working well, they are allowed to send back the staff that were seconded to them. They need now to move on and manage their resources. They need to determine ways of collecting revenue which has really dropped in the counties, compared to what the local authorities used to collect. This is something that we need to find ways of assisting the counties. What has happened? Is there corruption? What do we do?

Mr. Temporary Speaker, Sir, the Committee of Finance, Commerce and Economic Affairs has gone round the counties. There will be a lot of challenges in these counties. I will tell you without fear or favour that as much as we gave Kakamega County Kshs7 billion, not much development has been realized. I believe that the governor has a very good plan and blueprint in terms of development. We have other counties which used the money that they received from the national Government to pay salaries and remained with a deficit of Kshs1 billion. We need to ask ourselves whether they will really develop.

The sad part is that counties that have a huge population might never develop during this initial period of devolution. But the counties that never used to receive resources from the national Government or felt that they were marginalized during the 50 years of Independence are the ones that will come up very well because they are focused and want to see change. What we should be doing now is to look at this Bill and ask ourselves how we will help counties like Nairobi, Mombasa, Kisumu and Kiambu to ensure that they develop beyond what they have achieved. It is a big challenge because of the politics and competition.

Mr. Temporary Speaker, Sir, as we finish the year we will get a report from the Controller of Budget which will guide this House. We will monitor progress. For example, if Kakamega County has received over Kshs1 billion, we will be able to question how it has been spent. As we look at Sen. Sang's Bill also, we need to determine how we can ensure that politicians from different counties sit down and agree that these resources are meant to change the lives of our people. One day when you go to Kakamega, for example, you will be proud to see people appreciating that, indeed, devolution has come, is here to stay and will change their lives.

Mr. Temporary Speaker, Sir, we, as a country, still need the TA. But they need to bring a report to this House, so that we are able to know how many counties have moved on, especially in terms of managing their finances in line with the County Governments Public Finance Management Act. This will guide us even when making amendments to the Act.

Mr. Temporary Speaker, Sir, I beg to support.

The Temporary Speaker (Sen. Murkomen): There being no other person to contribute, I now call upon the Mover to reply.

Sen. Moi: On a point of order, Mr. Temporary Speaker, Sir. I think that the Mover might have gone for prayers.

The Temporary Speaker (Sen. Murkomen): First of all, such a situation where the Mover of the Motion is not sitting here to listen, follow and ready to reply, is usually

strange and not contemplated by the Standing Orders. However, I suspect that the Mover did not expect that there will be less than two people contributing to the Bill. He thought that more people were going to do so. A legal interpretation of the Standing Orders would be that there is nothing to reply to or no one to reply.

Therefore, the Bill will proceed to the voting stage. But knowing that this is a Bill that affects counties, it is, therefore, scheduled to be voted for tomorrow afternoon, together with the other Motions that were ready to be voted for, from 3.00 p.m.

(Sen. Billow walked into the Chamber)

Just for clarity, I had already been approached by one of the Senators, that since we do not have the necessary numbers, the Question be put tomorrow afternoon, from 3.00 p.m. So, together with the Motions that are going to be voted for, we will put the Question tomorrow, afternoon, from 3.00 p.m.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. Since tomorrow we will be voting from 3.00 p.m. and we want to maximize on the time, would I kindly request that before we move to the next Order, you give me a few minutes just to reply, so that, that aspect of it is finished.

The Temporary Speaker (Sen. Murkomen): Order, Sen. Kerrow! That time came and passed. When the time came for reply, there was no one to reply. So, we are already past that stage.

MOTION

ADOPTION OF REPORT ON VISIT TO THE REPUBLIC OF SOUTH KOREA ON NUCLEAR ENERGY CO-OPERATION

Sen. Moi: Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, the Senate adopts the Report of the Standing Committee on Energy, Roads and Transportation on the visit to the Republic of South Korea on Nuclear Energy Cooperation from 15th to 23rd June, 2013 laid on the Table of the House on Wednesday, 23rd October, 2013.

Mr. Temporary Speaker, Sir, I wish to inform the House of the visit by two Members of the Committee on Energy, Roads and Transportation to the Republic of South Korea. As the Chair, I went with the Senator and Leader of Delegation for Homa Bay, Sen. Otieno Kajwang. We were accompanied by Members of the National Assembly; hon. Onesmus Njoki, hon. Chris Bichage and hon. Rachel Amolo.

Mr. Temporary Speaker, Sir, we went to South Korea because it is an economic miracle. We went to South Korea because they have shown that it is possible for a country which has started with virtually nothing to be an economic giant. This is what they are today. Korea is a country which in the 1960s virtually had the same Gross Domestic Product (GDP) and Gross National Product (GNP) like Kenya. In fact, in the 1960s, South Korea was given aid of US\$10,000 by Kenya, which they acknowledged. It is amazing and extremely impressive that today, South Korea has a *per capita* income of

US\$23,000 when I think we are hovering at about US\$900 *per capita*. They have a GDP of over US\$1.1 trillion when I think Kenya has around US\$36 billion or US\$37 billion. Yet in 1960s, we are the ones who gave them aid. So, we chose South Korea for a variety of reasons.

Mr. Temporary Speaker, Sir, we also took note that one of the main things that enabled South Korea to achieve economic prowess was because of their energy policy. They have cheap, reliable and competitive energy. All those who know about economic activities know that the cost component of energy is between 40 to 60 per cent.

Mr. Temporary Speaker, Sir, when we went to South Korea we noted that in one generation, they became what they are today. In the energy requirements, Kenya today has 1,500 megawatts. It is a pity that 50 years after Independence, we have only 1,500 megawatts. This is basically composed of hydro and thermal generation. The other day, you heard that we had an energy day or an energy conference where the Government pledged that in 40 months, they will achieve an energy requirement of 5,000 megawatts. That component will comprise geothermal which is the “sexiest” form of energy, coal and Liquefied Natural Gas (LNG). Now, it is important that we note this; putting in Kenya coal, LNG and geothermal to be part and parcel of the 5,000 megawatts component is mainly because of the competitiveness of those three resources. We will also have, of course, wind and solar.

With all that, we will have what we call ‘green energy’ and the ones which are not so green. What is important to note is that in our base load and in our mix, it is important that we bring down the energy prices so that Kenya can be competitive. We have to compete, if not beat countries like Egypt and South Africa. It is imperative that we do so if we hope to achieve our Vision 2030, which is to be a middle income economy by 2030. Today, we only have 1,500 megawatts which is basically hydro and thermal. By 2030, we hope to have 17,000 megawatts of power. These sources of power are extremely expensive, with thermal costing about US\$17 cents per kilowatt hour while hydro cost US\$14 cents per kilowatt hour. So, how do we achieve that? That was the basis of our visit to South Korea.

Mr. Temporary Speaker, Sir, another objective of our visit to South Korea was to see exactly how they did it and what technologies they used. We were impressed by what we saw there. South Korea moved from 373 megawatts, which they had in the 1960s, to 82,000 megawatts which they have today. This shows that they have got their policies right.

Mr. Temporary Speaker, Sir, when you talk about nuclear energy, for lack of a better word, you get what is called ‘heebie-jeebies.’ This is where people become extremely concerned. People become extremely worried and apprehensive. With nuclear energy, one has to be extremely careful. We, as a Committee, agree this is the cheapest, but the most destructive when things go wrong. It has to be handled with great care. We are looking at 17,000 megawatts by 2030. South Korea gets 33 per cent from nuclear energy. The other great component of theirs is coal energy and hydro energy which they import.

Mr. Temporary Speaker, Sir, there are steps to be taken before we can achieve nuclear energy. The process from today to the day you switch on a nuclear reactor will

take Kenya 15 years. So, it is not something which you think of today and you do it tomorrow. It is a long process. When we were there, we managed to visit various sites, all to do with nuclear energy. We learnt how South Korea became a nuclear power house. We visited a company called Doosan Heavy Industries and Construction, which participates in every major power project in South Korea. They are involved in wind generation, power generation, then you combine cycle power plants, then water plants, casting and forgings and so on. These are the components which we need to make nuclear energy.

We then visited Korean Hydro and Nuclear Power. We saw exactly how they do it. The first thing which we all must know is first safety, second safety and third safety. We also visited KINGS College, which stands for *KEPCO International Nuclear Graduate School*. In this school, we interacted with ten Kenyans who are doing their masters in nuclear technology. We were very pleased to meet them. We had lunch with them. In fact, we spent the whole afternoon with them. The most impressive thing is that they come from all over the Republic of Kenya. Nowadays we talk about counties, but in the olden days, we would say that they come from every single province. These are young and extremely bright Kenyans. These are what we call the 'vanguard' of the Kenyan nuclear programme. They are our hope in nuclear technology.

Mr. Temporary Speaker, Sir, we also went to see how they handle nuclear fuel. We went to Mau Penam site. We toured the Korea Institute of Nuclear Safety where we saw how they approved their plans. This agency is independent and not under the so-called control of the Government. We were pleased and honoured that when we were there, we met the Minister in charge of their trade and industries and the nuclear programme who explained to us what exactly we, as a country, had to do to achieve 17,000 megawatts from a nuclear programme.

Mr. Temporary Speaker, Sir, the nuclear programme is a 15 year programme. I believe we can achieve it because a thousand mile journey begins with one step. There are many students from Kenya on a full scholarship studying nuclear technology in South Korea. I think we can get the necessary tools and infrastructure from the South Korea Institute if we decide to go the nuclear way.

Mr. Temporary Speaker, Sir, we made our recommendations when we came back. One of them is that we need to strengthen the Kenya Nuclear Electricity Board which is already in existence. It must undertake public education on nuclear energy to allay the fears of the *wananchi* or of any Kenyan on the pros and cons of nuclear energy. We need to seek technical support from Korea in capacity building for our nuclear programme. We need to set up institutions to manage Kenya's nuclear power programme. We need grade analysis to determine the status of our existing grade *vis-à-vis* what will be required. We need site analysis because nuclear reactors need areas which have extreme high quantities of water. Mandera County may be left out on this, so Sen. Billow, you will be okay with your people. We believe Kenya and Korea need to enter into bilateral talks in order to enhance their relations.

Finally, Mr. Temporary Speaker, Sir, I would like to repeat this, and I keep on emphasizing this wherever I go, that if we want to become a middle income economy by 2030, we must embrace this technology. We now have oil from Tullow Oil. Geothermal

energy will make Kenya competitive with the rest of the world. Wind energy is good, but slightly expensive. We also have coal. Finally, we have got LNG which is cheap. I hope in the near future, we will use the natural gas which was discovered off the shorelines of Kenya. Therefore, I hope that the mix of all these will give us the 5,000 megawatts within 40 months as promised by the Government. However, we must work hard to achieve 17,000 megawatts by 2030. This is the only way we can achieve the Vision 2030. We need to be prepared to achieve this because we cannot dodge the bullet. It will come and we will have to accept where we are going.

Finally, I would like to thank all the people who made it possible for us to visit South Korea. My gratitude goes to all the participants for their time, import and cooperation we got during the visit. In particular, I would like to thank the Cabinet Secretary for Energy and Petroleum, the Leader of Delegation, my Chairman, Kenya Nuclear and Electricity Board, hon. Ayacko, the Speaker of the Senate and the Clerk of the Senate.

Special gratitude goes to the Korean Government through its Ministry of Trade, Industry and Energy, staff of the Korean Nuclear Association for International Affairs for their preparation of the entire visit, logistical support and hospitality.

In South Korea, there are no natural resources. We are lucky because we have been endowed with every resource that God has blessed the earth with. We must ask ourselves why they have a GDP of over US\$1.1 trillion when Kenya has around US\$36 billion or US\$37 billion. I am happy that the Government has put in place a policy for us to get out of the kick off stage.

With those few remarks, I beg to move and ask Sen. Obure to come and second.

Sen. Obure: Thank you, Mr. Speaker Temporary Speaker, Sir, for giving me an opportunity to second this important Motion. First, I want to thank the Committee for presenting a very good report. This is a report that has been prepared very professionally. It is very clear and captures the main features of the visit by the Kenyan Delegation.

I also want to thank the Chairman of the Committee, Sen. Gideon Moi, for the very excellent, clear and elaborate presentation he has made to this House in moving the Motion.

From what he said, you can see that the Chairman is a very serious person. The chairman is keen on seeing Kenya move forward in the energy sector. One of Kenya's biggest impediments to growth and development is electric power. The economic and social transformation which this country desires will remain a mere dream. Vision 2030 development strategy which we have talked about for very long will also remain a mirage and will never be actualized unless we develop the capacity to generate sufficient and reliable electric power to grow this economy.

The report that is before us, prepared and presented by the Chairman, Energy, Roads and Transformation Committee, shows that the Republic South Korea's power capacity was only 67,000 mega watts in 1961 when the civil war ended in that country.

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

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

Madam Temporary Speaker, 50 years down the line, the generation capacity has grown to 82,000 mega watts. Over the same period, we learn, from this report that the GDP *per capita* rose from US\$82 to some staggering US\$24,000. In other words, the *per capita* income multiplied 290 tonnes. This is, indeed, staggering; a very phenomenal development.

The Kenyan delegation was told how the people of Korea made such rapid achievements within a short period of time. The story of the Republic of South Korea is a story about a country which focused its attention on the right priorities. The priority was provision of affordable and reliable energy. That was the strategy. The affordable and reliable energy translated itself to cheap electricity and, in turn, this spurred the growth of the economy and helped in the social transformation by attracting the much needed investments. Kenya, on the other hand, despite the heavy investments we made in the energy sector over the years has the capacity to generate only 1,500 megawatts today, largely from hydro sources and geothermal sources which, as we heard from the Chairman, are expensive sources. Geothermal sources are beginning to make a contribution now.

Our generation capacity is grossly inadequate and cannot support the country to become a middle level industrial economy in the foreseeable future. If we genuinely believe in achieving the Vision 2030 goals that we have set for ourselves, we must, first and foremost, become self sufficient in power supply. This is a prerequisite. We also note that due to the insufficient power generation capacity, the tariffs for electricity are high and, indeed, prohibitive. They are not conducive to attract the kind of investments we would want. Therefore, the economy is down and the well being of people is adversely affected because we cannot achieve the social transformation that we desire if people, including those who are already connected to the national grid, cannot afford electricity. The social transformation we desire and the quality of life we want to see our people enjoy cannot, indeed, be achieved.

With me here is a monthly electricity bill that was sent to an average middle income family comprising of six people. This bill includes a fixed charge, at a certain level. It also includes the cost of consumption during that period of one month. The bill includes fuel charge at a certain level. There is also an expense that caters for foreign exchange adjustment and another adjustment for inflation. This is all charged to this middle income family in Kenya. There is also a levy for the Electricity Regulation Commission (ERC) and a further levy for the Rural Electrification Programme (REP) and another one of 16 per cent. All these additions are loaded to the monthly bill of this family. A family which should have paid a bill of Kshs5,000 ends up paying Kshs14,000 for one month.

The question is, even if we wanted to provide electricity to every family in this Republic, how many Kenyans would afford to pay electricity bills of about Kshs14,000 per month? That is why I am saying that high electricity tariffs will not permit us to make any economic development. We will not also help our people to enjoy a better quality of life. I felt that it was necessary to illustrate the negative impact that high

electricity bills will have, not only on the economic development of the country, but also on the quality of life that Kenyans should enjoy at the household level.

The objective of the visit by the Kenyan delegation to the Republic of South Korea by Senators, Members of the National Assembly and by a number of high ranking policy makers was, first of all, to see and understand the impact and importance of nuclear energy. It was also to see the impact it has had on the economic and social transformation of South Korea, given that country's history. They wanted to learn how nuclear power has been used to facilitate industrial and economic development in any country and expose policy makers and all of us to the opportunities that nuclear technology can offer to any country's development efforts.

The lessons that the delegation learnt are many and are clearly documented in this report. One of the lessons this delegation and, indeed, all of us will be able to derive from this report---. I am reading Page 17(c); that the Deputy Minister for Trade and Industry met made this observation:-

“That there is a very close correlation between economic development and energy security which translates into low electricity tariffs. He stated that South Korea's economy is the eighth largest in the world in no small measure due to its energy sufficiency”.

What the Minister was saying was very simple; that for any meaningful economic development to be achieved, provision of electricity was central and because of that, that is why they have really made rapid and significant progress in that country.

“He further pointed out that once nuclear energy development takes root, other related industries manufacturing parts for nuclear power plants will all be leading to further economic development”.

That the nuclear plant in itself will have added advantages that will translate into development of other industries which support nuclear technology.

“He also expressed optimism that Kenya's nuclear energy sector will flourish given the positive support by the Government and South Korea Government's willingness to support Kenya in nuclear power development”.

That, that county which has accumulated vast experience in nuclear technology is prepared and willing to support us.

Moving to Page 18, there is another remarkable observation there:

“He said that the path to development had a lot of challenges which South Korea has had to deal with while challenging Kenya to tap into South Korea's technological advancement and expertise”.

Madam Temporary Speaker, what we are being told here is that we do not have to reinvent the wheel; we could, in fact, borrow from the experience of South Korea and build on from there. So, there is a way. I believe it is possible to achieve some of these things provided we are properly focused.

Another observation I was able to make is that this delegation met Prof. Chung whom I personally know because he is a person with a lot of experience on issues of economic management, particularly in the energy sector. Prof. Chung, in fact, continues to be a member of our own National Economic and Social Council and he comes here quite frequently. Prof. Chung urged leaders to state their commitment and set in place the

right policies that will help Kenya become an industrialized country in the shortest possible time. He is calling for commitment and focus. He is somebody who knows Kenya well because he comes here quite frequently. He is conveying a special message that, yes, we are talking about all these grand ideas, but do we have the commitment necessary to undertake this grand idea? It is important to observe some of these important statements.

Madam Temporary Speaker, we have declared that Kenya will have its first nuclear plant by 2022. This has been stated by the person directly charged with the development of this technology. I strongly support this plan because it will help in contributing towards energy security in this country. I think it is very important because we need it. We cannot make any meaningful development without adequate power generation. I also know that this is easier said than done. The challenges are huge; first of all, it will require national commitment to implement the nuclear power programme. So the question we must raise is whether we have that commitment. That is really the big question which we must deal with. Shall we have the capacity this time round to put national interest first and personal selfish interests after? This is really where we have been let down in the past.

I feel that the development of this nuclear energy in this country is important, but I am also aware that there are others who will come here to discourage us. They will allege that this is not safe or it will degrade the environment and so on. They will tell us all those stories to derail us from the main focus and yet in their own countries, they are busy expanding nuclear technology to serve their own interests.

Madam Temporary Speaker, I agree entirely with the conclusion and recommendations made in this report. The South Koreans have managed to achieve what they have achieved and they are now an economic power, but this has been made possible because of their capacity to generate sufficient, stable and reliable power. If Kenya needs a long term constant and reliable energy source, nuclear power is the way to go; it will help us deal with all our tribulations. The adoption of nuclear technology could pave way for economic transformation in this country. I also agree that we should explore ways of entering into bilateral arrangements with South Korea in order to help us to develop the potential of nuclear energy.

With those few remarks, I want to, once again, thank the Chairman and the Standing Committee on Energy, Roads and Transportation on an excellent job done. I really hope that this report will not just rot away on the shelves, but somebody will seriously endeavour to implement the recommendations in this report.

I second.

(Question proposed)

Sen. Kajwang: Thank you, Madam Temporary Speaker, for giving me this opportunity to say a word of two. First, I want to thank the Committee on Energy, Roads and Transportation under the leadership of Sen. Moi for leading the delegation of the Senate and the National Assembly to this trip in South Korea.

Secondly, I am privileged to be a member of this Committee and, therefore, I will be speaking with some firsthand experience because we visited some of these places together.

First, it was an eye opener to go to South Korea and visit some of these facilities. Sometimes it is a privilege to be a member of the Senate or the National Assembly because I am sure, nobody would allow you, as a private citizen of any country, to go near their nuclear facility and even to ask questions about how it operates. But because of the privilege that we had, because we were first Members of the Kenyan Parliament and, at the same time, we were interested in co-operation with South Korea in energy development, they allowed us to get near, to ask questions and to observe.

Madam Temporary Speaker, the reason Southern Korea was a good choice to visit was that the story of South Korea is almost like our story. We were all poor at the same time. In fact, they were poorer than us, extremely poor. They had just come from a war which devastated them. We have been lucky in Kenya we have not gone through a war like that one, except the First and Second World wars which did not touch us much. But it devastated them and their country became a wasteland. From a wasteland, they developed to a first world country in 50 years. This is phenomenal! That is a story that everybody wants to, first of all, understand and, if possible join, so that we can also reach those heights.

Madam Temporary Speaker, Sen. Obure mentioned something that I should mention from the outset about commitment. The issue of commitment on huge programmes like these ones comes from the top. We were told that the father of that nation, decided, very early, after this devastating war, that, that was the direction the country would take. The reasons were many. One is that the Korean Peninsula is very poor. It has no known raw materials. It does not have rivers or coal from which to generate power. It also does not have gas. Those are the three main oil generating properties that you require; neither did they have oil from which to burn. We use some thermal energy in this country, burning oil which we do not even have. They do not have a lot of wind because this is a very mountainous country. There is no proper path for wind, so they cannot generate a lot of power from wind. In fact, it is now that they are thinking of generating some power from the ocean. But that is very little energy, like 3 megawatts.

Madam Temporary Speaker, Sir, they realized that they were in a situation in which unless heaven came down, they must find a way in which they can generate energy, otherwise they would go nowhere. That is why they approached, at that time, the United States of America (USA) and told them: "Please help us develop something here." First things first; if you want to develop something you need the knowhow about what it is you need to develop. They sent their young people to America to learn about nuclear energy, engineering and all those courses that would support the vision of developing nuclear energy in that country.

In fact, at Independence, Kenya also thought of the same direction. I do not know where we lost it. If you visit Nairobi University, there is a prototype of a reactor. Some young people have learnt about nuclear energy at Nairobi University. In fact, now it is an active programme. But very many young people who went to the USA to learn about

nuclear energy and came back like Hillary Ngweni ended up becoming journalists because we lost the vision somewhere. A brilliant nuclear scientist who came back to help his country now looked like somebody who was very dangerous because he could bomb this country.

(Laughter)

So, he decided: “If this is what it is, then I will become a journalist.” He started writing *the Weekly Review*. He is now an old man. But I am sure if there is a national committee on energy, they should recruit him so that he can at least live his vision before he dies because he is now an old man approaching his 70s.

It was because we lost that vision and we did not have the will power to continue the direction that we intended to go that made us lose it all. Look at the situation in which we are. Even if somebody gave me a lot of money to invest in Kenya now, I will be very doubtful whether I will invest it here. The reason is that if you invest in Kisumu County, for example, and that is the first place I would invest if I wanted to because I know the environs, there will be very unreliable, inadequate, on and off, inaccessible power. In fact, it will be very uncompetitive in terms of pricing.

When Sen. Obure was reading that electricity bill, I thought he was reading mine. I have had an opportunity to pay a bill of Kshs23,000 in a household. At that time, I wrote to whoever is in charge of the consumer department, that I do not run an industry in this home, how come I pay this kind of money? The reply was that: “We sent engineers to your home and we checked your meter. The margin of error is minus one plus one, which is within, so, please continue paying your bill.” If you want to use electric power, you must be ready to pay. The kind of money we are asking Kenyans to pay is not competitive. It does not even help those Kenyans to save. This means that we are telling them that because of power, they will never save or invest. Consequently, there will be a vicious cycle of poverty. We must do something about the issue of power that can bring the cost down. We should also make power reliable, efficient and accessible both to industrial and small scale consumers.

Kenya is blessed in many ways. We have rivers where we have done huge hydro electric power projects such in the Athi River. But putting all those together, it is very little power which cannot run our industrial area. Then, of course, you add the very costly oil refinery that we have. We import fuel at prices that we do not determine with the money that we do not have and then we burn it and get some power out of it, which is extremely expensive.

Madam Temporary Speaker, there is an industrialist who had come from China and visited my office because somebody knew me, who knew him. He came and said: “We relocated from China to invest at the Export Processing Zone (EPZ), but we are now pulling out and going to Egypt.” I asked him: “What are you manufacturing?” He said we manufacture polythene sheets. I asked: “For which market?” He said: “First of all, for the Kenyan market and for Africa. We sell them to refugees and IDPs.”

I asked him: “Why did you decide to move from China and come to Kenya?” This is because I thought that our labour force is not very qualified and electricity is very

expensive. He said: "In fact, you are wrong. Kenyan workers are some of the best in the world. They are well trained and work without supervision. A Chinese worker only works when you have a whip behind his back, because he must be caned to work." I looked at him and was very happy about our own workers in this country. But he told me: "The reason I am moving out is that everytime I am in motion the electricity goes off. Since these things are plastic we have to stop the machinery, pull them out manually, put them outside and start again. In 15 minutes, the electricity is off again. Sometimes it runs well for a day and then the next day it is off." They had taken photographs of huge materials that are wasted because of the intermittent stoppages of that machinery.

Madam Temporary Speaker, I took him straight to the Permanent Secretary, Ministry of Energy whom I found with the Managing Director of Kenya Power Company and the Managing Director of the KenGen. I told them: "This industrialist is going to Egypt next week because of what you have done to him." I showed them the slides. They said: "This cannot happen. We will give him a dedicated line – whatever that means - and he will have power now without stoppage." It seems like he got the dedicated line because he has never complained to me again. But we only give a dedicated line because we do not have enough power. We have to move power from a certain concentration area to another concentration area at night or during the day, depending on who needs it where. Since it is so little in the market, we have to move it around.

That affects industries. There are serious people who want to set up industries here, like cement factories, for example. The largest manufacturer of cement in Nigeria was here and he said: "I will come back as soon as you fix the power." How are we going to fix it? If we have to build a hydroelectric dam, probably, it will take us five to seven years. If we have to do all these little things that we are doing, it will take us a long time.

Madam Temporary Speaker, we now have a focus of producing 5,000 megawatts in different areas, including geothermal, hydro, oil, coal and gas. But the focus should be that we must have reliable power which would be at the same time competitive in price. That is a long term view. We will need a lot more power as we move on. In fact, when we produce those 5,000 megawatts, within a very short time, you will find that we do not have enough. This is because we have learnt that you cannot say that Kenyans are just consuming 1.6 megawatts. Why should we go to 2,000 megawatts? You will find out that when you go to 2,000 megawatts, they are already there. For example, in Homa Bay where I come from, sometimes there is no power for eight hours. So, you cannot put up an industry there. Sometimes they go for two days without power. I think that is a deliberate way of destroying Homa Bay, so that we do not grow at all. So, I will bring a Motion here to deal with that alone.

Madam Temporary Speaker, the strategy is to have sufficient power, so that anybody who needs power can tap into enough of it. There is an American investor in Siaya, for example, who has decided to develop the former swamp in Yala. He has done a good job there, and employed many people. He is exporting fish, cotton and many other things. When he went there, first of all, we fought him because we did not want him to settle there. But after we saw that he was good, the Government actually told him: "I think that we can support you. So, what do you want?" He said: "I want sufficient power. This line which you have given me is not enough for the work that I want to do." So,

there are people who want to even expand their investments, but cannot do so because of power insufficiency and unavailability.

Madam Temporary Speaker, why should we go nuclear? In fact, even though South Korea is a huge nuclear power nation, it only generates 30 per cent of their energy from nuclear, with about 23 reactors. They still have a lot of coal-fired thermal power. So, it does not mean that if went nuclear then we will not be developing other sources of power. In fact, as we are talking, they are even developing power from the current in the sea and even solar power to supplement all those things that they are doing. It is a mix of many other things, but there is propaganda against this initiative; that you want to kill us with nuclear. That is the feeling. In fact, I met a very senior Kenyan who is an engineer and a managing director of a parastatal. He told me: "Tell Ayacko to forget about that nuclear thing of his. Does he want to kill us?" That is an educated Kenyan, holding a huge responsibility, but he thinks that nuclear is death. It has not killed the Americans, Germans, Britons, French or anybody, except two or three accidents ever since the nuclear technology came. I do not know how many people buses have killed since the bus technology came.

Madam Temporary Speaker, there is some fear and propaganda that this is not the right thing for us. It is dangerous and not environmentally friendly. But we are not starting from nowhere. We are starting from a partner who is already there and a superpower in the production of this thing, both in safety and the things that they have which we can learn from them. They have nuclear human resource development and a school there where we even found some young students from Kenya learning. They develop the manpower first and then get the public to accept that this is the direction that we want to go. I think that is the reason they called us to go there.

Now that we are debating in a Chamber of the Senate, I am sure that people will know that we are talking with some authority, because we have been there and seen it. So, we need to have a campaign to tell our people that nuclear energy is not death, but actually growth. That is the way to go. After talking to their own people, they have heavy companies that have built these things everywhere else. In fact, the Doosan Heavy Industries and Construction has been selling reactors to the United States of America. Right now, they are building four reactors in Dubai. Dubai has oil. If they wanted to burn oil, they could burn a lot of it. But they have realized that you must kind of have a bit of this and a bit of that.

I think if we gave it the support that it requires – and that support comes from the top, which is the Senate – if that comes from here and if we persuaded the Kenyan people that this is the way to go, I am sure they will support us. Of course, they have done some surveys in Korea itself where they asked how many people support the nuclear programme, even after the accident in Japan, and more than 90 per cent of the people have said "yes, we support it" because they noticed that was an accident. First of all, this thing which comes from the sea – is it called---

An hon. Senator: Tsunami.

Sen. Kajwang: Yes, it is a tsunami; a tsunami came and swept off the entire thing. So, when you now want to blame Korea or Japan, how do you blame them because the tsunami came and swept off this thing and actually interfered with its heating and

cooling system? The nuclear reactor needs a lot of water to cool the chamber. But, somehow, because of the tsunami, the parts that lead water into the cooling system disengaged and, consequently, there was no way of cooling the system. So, that was the problem. But they have looked at that and decided that the next time they are building another reactor, they must take that into consideration. The reactor must have a way in which it can cool automatically even if water is not pumping. Those are things that they have put in place for its protection as we go forward.

Madam Temporary Speaker, I know there is a big war with Iran on why they are building--- Do they want a nuclear bomb or something like that? But if we do it the right way; if we ask somebody who is already a nuclear power producer to come and do it for us to help us and teach us and engage with us, I am sure nobody will oppose us. I think the problem with Iran is that they were doing it themselves and they were enriching uranium and that frightened some people as to why they were enriching it. Why were they not opening it up so that we can know what they were doing? But if we start it with the engagement and support of other members of the international community, I am sure we will get their support.

So, let us go in this direction because, otherwise, there is no other way we are going to grow. The hydropower limitations are already there. I do not think we can produce any more megawatts than we are producing already. Even if we tried, it will be in some small pockets here and there, which will not be what we need. But we do not have thermal energy, which is burning fuel. Even if we had it, it is dangerous to the environment a great deal. As for coal, we do not have it, but we hope we will have some in the Kitui basin. We are thinking of starting a coal power plant even without thinking of Kitui. We are thinking of importing the coal from South Africa to burn it somewhere in the Coast in order to produce sufficient energy.

Madam Temporary Speaker, we support the Ministry for all these things they are doing to produce enough power. We support the Committee for doing an excellent job, especially the Chairperson---

(Laughter)

Because he really represented us well when we were there; we are very proud of you. He made us learn a lot and you can see from this report that it was an in depth analysis of what we went to see and the direction we want to go. We need the support of this Senate so that we can go forward, and support the organization that is dealing with it. But there is a problem; the Treasury sometimes does not understand that for us to go somewhere, they must support us with money. Right now, we do not even have enough money to train more young people. We do not have enough money to start some of the institutions that we need. We need the inspectorate and the institutions that will make sure that nuclear power production is sufficient and well managed. We are looking at 10 years, which is not a very long time, but the journey must be supported by the Treasury, the Government and the people of Kenya for us to get anywhere.

Madam Temporary Speaker, I beg to support.

Sen. Wangari: Thank you, Madam Temporary Speaker. I rise to support this report from the outset. I am also a Member of that distinguished Committee. As you realize, the Membership of that Committee includes majorly the former Ministers and Assistant Ministers. So, its institutional capacity or institutional memory is big.

Madam Temporary Speaker, as you realize from this report, you will see that South Korea started exactly 50 years ago to be where they are today. We were at the same level – and I know that story has been said over and over again. It is a story that I want to think should teach Kenya lessons here and there because they made some of the right choices. Fifty years down the line, they are rated amongst the 10 largest economies in the world. This is definitely not by default, but it is by design. As we discuss this report, they already have 23 nuclear energy plants while four are under construction. This tells you that they took it very seriously and they not only provide these nuclear power plants for their country, but they are even exporting them to super powers like the USA, Europe and the Asian Continent.

Madam Temporary Speaker, as we look at Vision 2030 – I know the Jubilee Government has been very keen on making sure that this will be a reality – we also must invest. There is no way we will achieve Vision 2030 without having reliable, affordable, consistent and accessible power. We are now struggling. The Ministry of Energy and Petroleum came up with the target of 5,000 megawatts. They said this can be achieved in the next few years. This is something that the President is very keen on. In fact, he is the one personally chairing that task force that is charged with that mandate of making sure that Kenya can achieve that target. We are talking about 5,000 megawatts yet South Korea is doing over 16,000 megawatts in one nuclear plant.

I think we have a lot to learn from this. If we are able to sustain this supply and investors get this power – because investors would rather pay more – as business people – but be assured that the power will be there. He can, at least, rely on it. Today, you only get exorbitant bills, but you are not even assured that you will get the power that you pay for. We cannot talk of creating industries if we do not have reliable power supply in this country. Given that agriculture is a devolved function, some governors are already buying and installing processors and agro-based plants. However, this cannot be a success if we do not have reliable power.

These 5,000 megawatts that we are talking about will be a combination of many things. For many years, we have been relying on hydro power, but we have seen it is not reliable and it has far reaching effects on the environment. It contributes to global warming because the water levels keep on fluctuating. We cannot really rely on hydropower generation. We have seen geothermal power generation. We, as a Committee, have visited many plants, especially in Olkaria and Baringo. We were told Baringo County has the potential of generating 3,000 megawatts. However, the cost of even doing this is crazy because you have to keep on drilling. When we went round, we found very intelligent young men and women who have been trained even outside this country, working in these ‘rigs’ as they are called. To drill one or to buy one is not less than US\$2.5 million; the cost is exorbitant.

Madam Temporary Speaker, we need to think big because we have tried the small things. Even the coal we are talking about in Kitui, it remains just that; a potential.

Mr. Temporary Speaker, we need to think and guarantee employment to our young people in this country. This is one of the greatest challenges of the Jubilee Government. We are talking about a very young population where more than 70 per cent are below 35 years. These are people who are graduating from college and who do not know where to go. If we cannot sort out our industrialisation issues and help medium sized companies to be set up, not just at the national level, but also at the county level, then this will remain a problem. Our youth will remain a problem.

As you can see, the vision for nuclear energy is not an immediate plan. So, even as we sort out the 5,000 megawatts, we hope that we will achieve what seems to be so much out of reach. Fifty years down the line, in 2063, history will judge us very harshly if we will not have laid a very good foundation for the citizens of this country. We must explore other options.

The technical support that has been alluded to by the Senator for Homa Bay should not just be on paper as it has been said earlier. It should not only remain a good thing. It must be committed by setting up the infrastructure. We have people helping and that is why we have 10 people being trained in South Korea under a scholarship programme. We need to have the human resource. This is not something that you can do in a day or in two years. That is why we have given ourselves 10 years to achieve it. That is why the human resource development had to be set up right away. This is training where we must wait for our people to have interest.

We do not have a very good history. As Sen. Kajwang said, people who trained in this area have not ended up in good places. You then wonder why we should continue to train in that discipline. We must start again, to create awareness and to support the technical know-how in this field. Our nation must also invest in the same. As we do our budget in the coming years, we must allocate the Ministry of Energy and Petroleum a good amount of money to help set up the infrastructure so that we do not get to 2022 and go back to the drawing board. This has to be a conscious effort by everyone so that we lay the best foundation.

I want to support this report. This is not the end of this debate, but it must be taken up. As it was said by some Senators, with regard to people from the national Treasury, that very good activities are generated and supported by everyone. However, the issues get to the national Treasury; some people there create the notion that such things are not doable. We must think beyond ourselves. We must think about what our children say when we exit the Senate. We are looking at a growing population. We need to know how we will sustain it, without going down on our knees as a country. I support and hope that we will use every chance that we get through thick and thin. Let everyone own it so that we make a difference.

As I come to an end, we must also remember the policy of public participation in the governance of this country that is in the Constitution. We must also carry our people along. We should not leave them behind. The people who are afraid of change must get out of that fear. We should educate people. A lot of civil education on nuclear energy generation must be done. We must support public participation and the Ministry must be supported to give information to the public. That way, they will also own the programme and we will make progress.

I support.

Sen. Karaba: Thank you, Madam Temporary Speaker, for giving me this chance to support this wonderful report that has been laid on the Table by the Committee on Energy, Roads and Transportation, chaired by Sen. Moi.

We note with a lot of appreciation and mixed feelings that most of our Senate delegations have been going to the East. Why have they been going to the East? It is because the East has developed very fast compared to how Kenya has developed from the time we got our Independence in 1963. At the time we got our Independence, according to what we read, Kenya, South Korea and Malaysia were on the same footing. What is surprising us now is that those countries, which were on the same footing with Kenya in 1963, are now ahead of Kenya by far. The reason most Kenyans would want to go there is to see what miracle happened, so that all of a sudden that the countries overtook Kenya's development record and trade.

One of the reasons for this is that these countries, South Korea being one of them, have educated their people. The people are very patriotic and are selfless. They work very hard to see that their countries succeed. They have competition from the neighbouring countries also. South Korea, for example, has to compete very hard to beat North Korea which is a communist state. South Korea is a capitalist country. They must work very hard to be ahead of Cambodia and to measure up to the economic standards of Japan.

That is what is making the Asian countries tick. When it comes to Kenya, you will realise that one, we are not very patriotic. Once some people find themselves in certain offices, we read in the papers, they rip off a lot of money from the public. I will not substantiate because we know they misuse money and our people are taken to court every day. We have cases of graft, but in Asia, these are things which happened in the past. They are very careful in the way they spend their money. I visited South Korea with my committee in 2004. They were asking us why Kenyans are keen in investing in South Korea. When we came home, we compared what we had seen and what was in Kenya and what we should do next.

That is what South Eastern countries like Malaysia, South Korea and Japan are asking every day. One thing we must understand is that Koreans are very industrialized. Their focus is towards industrialization. Their education is towards industrialization and not the white-collar jobs kind of education. What we saw was that they do not have very big institutions like universities. Most of the colleges are middle level institutes of technology. The largest of them which we noted at that time and I believe it is still there is the Korean Institute of Science and Technology. It is the biggest Science and Technology Institute in Korea training engineers who are devolved to the lower levels to make sure that they start the cottage industries. They are the ones who also do land reclamation.

Madam Temporary Speaker, the rules in South Korea are such that they are oriented towards the development of the country. In South Korea, for example, you cannot walk on roads. There are underground tunnels because the speed of motor vehicles is very high. It is a crime to be found jumping over the road rails. Here, in Kenya, the rules are broken every minute and nobody seems to care. For example, we have the Thika Superhighway. If you went to inspect the road, you will be surprised that most of the

guard rails have been stolen while others have been vandalized whereas it has not lasted even a year. In South East Asia, the kind of discipline they have is that they can conserve, preserve, maintain and even develop. That is the sense of discipline which is not in Kenya. We need to help our people understand that we all stand to benefit from our country; that is the time our discipline will equal that of South East Asia.

Coming to the nuclear energy in South Korea, you realize that they are ahead of many countries in Africa. When I looked at the amount of nuclear energy that is produced in South Korea, it is higher than the rest of Africa, minus South Africa. If a small country like South Korea can produce that much and the rest of Africa cannot even produce enough nuclear energy to even propel a nuclear reactor, it means that there is something wrong. It is not that South Korea has uranium to produce nuclear energy; they import it from South Africa. If South Africa is in the continent of Africa where we are, we can also import uranium from there and produce nuclear reactors and atoms. That is what will lead us to produce nuclear energy.

Madam Temporary Speaker, as far as I am concerned, it is better to have nuclear energy which is cheaper, economical and not as expensive as hydro power. So, if Kenya can afford to put up as many hydro power stations as it has now done, for example, the Turkwel Gorge, Masinga and Kindaruma which produce less than what is produced by one nuclear reactor in South Korea, economists in Kenya should advise us to abandon hydro power and move to nuclear power. After all, it is even not sufficient. The cost involved in dredging these dams is very high. Even the resultant costs of construction works are very high.

We should change to nuclear energy which has less waste compared to water. In any case, water leads to soil erosion and siltation of dams. Sometimes even the water itself for power generation will not be there because of prolonged droughts. You find that in South Korea, much as it is located in South East Asia, there is no rainfall problem. They receive regular, heavy rainfall from the monsoon winds. They still can generate a lot of hydro power, but they kind of abandoned that because that occurs naturally there. They wanted to develop alternative sources of power such as nuclear power. That is what we should target at doing.

If we want to develop this country, we need to diversify our energy sources. We should not solely depend on rainfall, which is not even reliable. Distribution of rainfall in this country is another problem. We cannot talk of even rainfall throughout the year that will ensure that we generate enough megawatts of power. We do not even have enough turbines to run the water, so that we can generate power. Other sources of energy are also scarce. Putting up geothermal power stations is very expensive. If you compare the cost of putting up those geothermal installations to building a nuclear power plant, you will find that putting up a nuclear power stations is cheaper.

Madam Temporary Speaker, coming to what happens in South Korea as far as skilled manpower is concerned; the Koreans are trained in various technical institutions. These are the kinds of institutions that we are doing away with in this country. We have converted some very good polytechnics, like the Kenya Polytechnic in Nairobi, the Kenya Science Teachers College (KSTC) and the Mombasa Polytechnic into universities. These are some of the institutions, which according to me, would have trained middle

level skilled manpower. This manpower would have been used to discover, invent and produce such sources of power. But we have killed most of our institutions, some of which were training engineers who would have gone into developing some of these reactors. Reclaiming them from various universities becomes a problem.

We need to study the skilled manpower in South Korea. How are they training their people? If there are ten Kenyans there, like I have read in the report, how many more can they engage in terms of offering scholarships? Can we move towards that direction? Can we improve our diplomatic relations so that we can have more scholarships offered to Kenyans? More Kenyans should be trained at the Nuclear Institute. When they are trained, what contract will they have signed with the Kenyan authorities so that they can come back? When people are trained, they get better paying jobs elsewhere and they never come back. We have seen quite a number of Kenyans migrating from here. They get better jobs in South Korea, the USA and many other countries and leave. If we can pay them better salaries and put up some of these stations, I am sure Kenyans will take pride in their country and find it better to work here.

This is something that should be explored. Let us not just wait, debate, compare and travel. When we come from such travel, these are the kinds of things we should do. After this, we should implement recommendations of this report. We should go into the details and see whether we can put up one institute or incorporate or borrow a department from South Korea. We could also have some Koreans come here and start a department on nuclear physics or science. That is how we start off. But without that, we will not forge ahead. If we want to talk about industrialization as envisaged in Vision 2030, it is only that route that will help us achieve that goal.

Madam Temporary Speaker, I support---

The Temporary Speaker (Sen. Ongoro): Order, Senator, you still have 15 minutes more before you conclude your contribution. But if you have concluded---

Sen. Karaba: Madam Temporary Speaker, Sir, I have not.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Have you now changed your mind? When we resume debate on this Motion, you will have 15 minutes to conclude your contribution.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it now thirty minutes past six. The Senate stands adjourned to tomorrow, Wednesday 30th October, 2013, at 9.00 a.m.

The Senate rose at 6.30 p.m.