

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 16<sup>th</sup> April, 2014

*The Senate met at the County Hall,  
Parliament Buildings at 2.30 p.m.*

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

### PRAYERS

### PETITION

#### TAXATION CHALLENGES IN TEA FARMING

**Sen. Obure:** Mr. Speaker, Sir, I wish to present a Petition on behalf of the following petitioners, as provided for and in accordance with Articles 37 and 119 of the Constitution and the Senate Standing Order No.220.

Mr. Speaker, Sir, the 13 petitioners who come from the nine constituencies of Kisii County are citizens of Kenya, registered voters and taxpayers and have duly appended their signatures to the petition as required. The petitioners are small-scale farmers, residing and carrying out their farming activities in Kisii County.

Mr. Speaker, Sir, the challenges which form the substance of their Petition are shared with thousands of other small-scale tea farmers not only in Kisii County, but also from other tea growing counties. The petitioners wish to draw the attention of the Senate to the following:-

The recent hiking of taxation on tea for export by raising the amount of *ad valorem* levy has negatively impacted on the tea industry, which is one of Kenya's leading foreign exchange earners, contributing 4 per cent of the Gross Domestic Product (GDP) of our country. It has also crippled the tea industry which is a major pillar of Kenya's agricultural sector which is expected to enable the planned 10 per cent annual growth as projected in Kenya's Vision 2030. This will greatly undermine the growth of the country and put many livelihoods into jeopardy, noting that the tea industry promotes industrialization, employment, family incomes, trade and growth of small-scale enterprises.

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The value of the contribution of the tea industry to the economies of the producing counties like Kisii is so immense, that it is virtually the economic lifeline for a large majority of the population, while noting that Kisii region, including its neighbor, Nyamira County, hosts 12 of the Kenya Tea Development Agency (KTDA) processing factories and that the majority of the people in the region depend on tea production, processing, support services and infrastructure.

The destruction of or any turbulence in the industry will, therefore, destroy entire families and have a devastating social-economic ripple effect. The introduction of the *ad valorem* tax on tea exports, at 1 per cent, by the Minister for Agriculture on 27<sup>th</sup> January, 2012, raising it from the original 0.46 per cent per kilogramme, which was levied at source, dramatically raised the cost of Kenyan tea meant for export and exposed our tea to unfair competition from other tea exporting countries. The new levy was later to be adopted in the Dr. Julius Kones Bill which was enacted into law. The consequence of this additional taxation was immediate, as Kenya tea at the Mombasa Auction was immediately snubbed by buyers as it became more expensive and hence, we lost clients to competitors and consequently, reduced sales and revenue to both the KTDA and tea farmers.

Mr. Speaker, Sir, in the first week of implementation Auction Sale 9 which took place on 1<sup>st</sup> March, 2012, the demand for KTDA tea plummeted and prices had to be discounted by three US cents per kilogramme, while prices of tea from our competing countries like Uganda, Rwanda and Tanzania appreciated by between Five US Cents and 22 US Cents per kilogramme. Appeals by leading stakeholders to review the imposition of this levy with a view to scrapping it all together have not been heeded. Indeed, even appeals for the rate to be charged based on kilogrammes instead of a percentage of value or to enable the Tea Board of Kenya to permit industry players to make monthly payments in arrears for direct sales, have gone unheeded.

Mr. Speaker, Sir, this haphazard taxation has alienated tea importers and drastically reduced incomes to tea farmers who are now being lobbied to reduce production. The cure does not lie in asking farmers to reduce production of tea, but in abolishing the *ad valorem* tax to make Kenyan tea more competitive in the world markets. Reduced earnings to small holder tea farmers come with financial crisis which threatens to ruin all families and livelihoods. The scaring away of Kenya's traditional clients in the tea export market due to higher costs, will be too expensive in terms of current investments in this sector. The designated views of some of the unnecessary taxes on tea, like works on tea access roads, among others, is a duplication since such can be effectively done by constituencies roads funds and other existing public roads managed by county governments.

Mr. Speaker, Sir, the higher taxation is causing the type of disruption in the industry that threatens to run down and completely kill the KTDA, similar to what happened in the past with major farmers' institutions like the Kenya Co-operative

Creameries (KCC), Kenya Farmers Association (KFA), among others, which led to the loss of jobs and a sharp rise in poverty levels amongst the affected communities.

Mr. Speaker, Sir, the prayers of the humble petitioners to the hon. Senators are that this Senate-

- (i) identifies all taxes currently imposed on tea and payable by stakeholders in the tea industry;
- (ii) investigates the effect of each of the taxes on production, processing, local sales, exportation of Kenya tea, incomes to farmers and payment to workers in factories and farms;
- (iii) investigates the justification for imposition of the tea levies;
- (iv) identifies the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
- (v) interrogates the plans, if any, of the Ministry responsible for agriculture, concerning the tea industry taxation related problems;
- (vi) interrogates the plans by the national Government to mitigate the continued losses suffered by the KTDA and farmers due to the taxes; and,
- (vii) institutes the necessary measures to abolish the *ad valorem* tax on tea exports introduced on 27<sup>th</sup> January, 2012, along with other burdensome taxes on tea exports.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Senator, you need to table the petition.

*(Sen. Obure laid the document on the Table)*

**Sen. Murkomen:** Mr. Speaker, Sir, correct me if I am wrong, but I have a Statement that apparently you ruled yesterday that I should deliver, on Internally Displaced Persons (IDPs).

**The Speaker** (Hon. Ethuro): Sen. Murkomen, you are definitely wrong, but to the extent of timing. I thought that when you entered, you kept the good company and wise counsel of the Senate Majority Leader, who I imagined was bringing you up to speed. But apparently, that is not the situation. You will wait to make that Statement at Order No.7.

Next Order!

## PAPER LAID

### REPORT OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM EXPLOITATION OF NATURAL RESOURCES IN COUNTIES

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Wednesday, 16<sup>th</sup>, April, 2014:-

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Report of the *Ad hoc* Committee on Legislation on Royalties accruing from Exploitation of Natural Resources in the counties.

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

## NOTICE OF MOTION

### ADOPTION OF REPORT ON LEGISLATION ON ROYALTIES ACCRUING FROM EXPLOITATION OF NATURAL RESOURCES IN COUNTIES

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

THAT, this House adopts the Report of the *Ad hoc* Committee on Legislation on Royalties Accruing from Exploitation of Natural Resources in the Counties, laid on the Table of the House today, Wednesday, 16<sup>th</sup> April, 2014.

## STATEMENTS

### RECRUITMENT OF STAFF IN COUNTIES

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Sessional Committee on Devolved Government concerning the recruitment of staff in counties.

Mr. Speaker, Sir, in the Statement, I would like the Chairperson of the Committee to-

- (i) explain why some county executives have recruited staff in total disregard of the county service boards, contrary to Section 59 of the County Governments Act;
- (ii) explain why some county assemblies conducted the recruitment exercise before their county assembly service boards were constituted, contrary to Section 12(7) (b) of the County Governments Act;
- (iii) state whether he is aware that many county assembly service boards have been constituted without observing the one-third gender rule; and,
- (iv) what action the Ministry of Devolution and Planning is taking to address these anomalies. Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Chairman!

**Sen. Murkomen:** Mr. Speaker, Sir, before I even say anything about the timelines, how is one expected to answer such a question? It is saying: "Some county assemblies and county public service boards." Would I have to go and research on which

county assemblies are doing what? Really, if it is general, it becomes a research question more than a specific answer for a specific problem.

**The Speaker** (Hon. Ethuro): What is wrong with a research question?

**Sen. Murkomen:** Mr. Speaker, Sir, considering that it is a general statement, first, to even know which counties he is referring to is not easy. I wish there was an indication as to why county X or Y has done this. But to just say that some counties have not done this and some counties have done this, it would mean that I would have to go and write to all counties and ask them: "Have you done this?"

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am surprised at the way that the Chairman is trying to evade the Statement. He knows that he has 47 counties and when a question has been asked, you quickly get this through the relevant department as indicated. So, he should not chicken out from proceeding, because these are anomalies that we would want to rectify. So, he has to take the challenge.

**Sen. Bule:** On a point of order, Mr. Speaker, Sir. I think that my brother, Sen. Murkomen, is better placed actually to know which county has undertaken the right procedure, because he is the Chairman of the Committee on Devolved Government. Actually, we want to know from him which counties have followed the right procedure and which ones have not followed them. This is because---

**The Speaker** (Hon. Ethuro): Order, Senator! I think that you have made your case and very convincingly. So, you may resume your seat.

Sen. Machage!

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Your able office has actually made sure that every Committee has research officers. Is the hon. Chairman, therefore, in order to doubt his ability to research on the status of the 47 counties, on recruitment and appointments?

**Sen. Khaniri:** On a point of order, Speaker, Sir. To add onto what Sen. Machage has said, I know the procedure of asking for Statements in this House. Once a Member drafts the request for the Statement, it comes to the Speaker for approval. I know that in your wisdom, you approved this request by Sen. (Prof.) Lonyangapuo. So, is the Member in order to challenge the validity of this Statement, when you - the Speaker - approved it?

*(Sen. Murkomen stood up in his place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Kipchumba! I think that these were points of order addressed to the Speaker and not the Chairman. So, let me rule.

First, there are no questions here. These are Statements being sought. Statements can be definite or general in nature. In fact, our reading of our own Standing Orders says that during Statements Time, you can make a general statement. So, for the Committee Chair to argue that some Statements are so general that you cannot provide them, is defying what is already provided for within the Standing Orders.

Secondly, that burden should not really be put on the Member asking. The burden is on the Chairperson to assist the Member, through the relevant Ministry. So, all that you need is just to say: "We are 47 counties; these are the issues, give me a status report on the recruitment." From there now, you will know which ones complied with the law and which ones did not. I do not think that, that is too much to ask. I thought that the Chairman would be asking for more time, given maybe the extensive task ahead, but just to say that he cannot do it is not permissible.

Mr. Chairman!

**Sen. Murkomen:** Mr. Speaker, Sir, you have actually reframed the question in the manner in which the Member should have asked. If this question had come in terms of apprising the House on the status of absorption of county staff, hiring and so forth, it would be different. But the question is asking why some counties have not and there is no point in that one. But I appreciate what you have said. We will try to frame it as it ought to be and push the relevant Ministry to provide the statement. Considering our calendar and the manner in which we are proceeding, as soon as we return from the recess, in the first Thursday of our return, I will be able to provide the answer.

**The Speaker** (Hon. Ethuro): Well done. But Chairperson, with one year of devolution, the House needs to be seized with information on how some of these things happen. That is really an important statement.

**Sen. Murkomen:** Most obliged. I want to add that, in fact, the Committee is reaching out to the Summit and the Council of Governors to give us the statutory reports because the Act says within one year. So far, we have no report from the Summit or the Council of Governor. But the Committee is following up. As soon as we return, there should be a status report as to how far they have gone.

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

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

**Sen. Ndiema:** Mr. Speaker, Sir, further to that question, there is the issue of where recruitment was done without---

**The Speaker** (Hon. Ethuro): Order, Senator. That matter has been dispensed with. If you have any other issue, you can approach the Chair at your own time, here or elsewhere. For now, it is closed until we get the response from the chairperson.

Chairperson Committee on Devolved Government, you have a statement to issue. Proceed.

#### RESETTLEMENT OF IDPS IN NYANDARUA COUNTY

**Sen. Murkomen:** Mr. Speaker, Sir, I have a response to a request made by the Senator for Nyandarua County on the status of IDPs in Nyandarua County.

Before responding to the statement, I wish to provide a general overview of resettlement programmes so as to clarify the different approaches adopted in resettlement of IPDs.

Following the Post-Election Violence (PEV) in Kenya that erupted immediately after the announcement of the disputed presidential elections in December, 2007 and lasting up to February, 2008, an estimated total of 663,921 persons were violently displaced from their homes, farms, businesses and work places. A total of 1,300 lives were lost and 78,254 houses were destroyed countrywide. A total of 350,000 IDPs of those displaced sought refuge in 118 camps while 313,921 IDPs were integrated among various communities in the country. Out of this, 640 IDPs fled to Uganda.

Following the operation *Rudi Nyumbani* Initiative, a total of 70,000 households later returned to their farms. The IDPs who did not return to their farms can be categorized into three main groups as follows:

(1) IDPs in self help groups profiled before the set deadline of 30<sup>th</sup> December, 2008. IDPs who could not return to their former homes for one reason or another formed self help groups. When they were paid Kshs10,000 startup capital, they pooled the money and bought small parcels of land in parts of Rift Valley and Central Province where they proceeded to pitch their tents. The congestion in those settlements posed a security risk and the Government requested that all IDPs that were in self help groups present their registration certificates by 30<sup>th</sup> December, 2008 for purposes of settlement. By the said deadline, only 20 self groups with 6,978 IDP families had presented their certificates and registers. These are the IDPs that the Government agreed to resettle in Government procured land.

(2) IDPs in tented camps who submitted their records after expiry of the set deadline of 30<sup>th</sup> December, 2008. There were IDPs in 20 tented camps who could not be enlisted by the Government for resettlement because they did not register their groups within the deadline of 30<sup>th</sup> December, 2007 set for the purpose. For this reason, they have been categorized under the integrated IDPs.

(3) Integrated IDPs. There were 313,921 IDPs who were integrated among various communities in the country. Out of this, 170,416 households were paid Kshs10,000 per household as *ex gratia* support and another 37,843 households were paid Kshs25,000 for construction of burnt houses. The amount paid for reconstruction of burnt houses was later stopped after Operation *Rudi Nyumbani* Initiative was launched.

Mr. Speaker, Sir, with this background information in mind, I now wish to answer the specific question relating to the status of IDPs in Nyandaura County.

(1) The number of integrated IDPs in Nyandarua County as per the Government record from profiled data as at the end of 2008 were 16,228 IDPs in Nyandarua County representing 3,179 families, all of them integrated. Later on in the resettlement programme, another 16,520 IDPs from Nakuru Stadium representing 3,304 families moved to Mawingo Farm in the county and pitched tents. The two groups totaling to 32,748 IDPs formed the only profiled IDPs in Nyandarua County. It is also possible that other integrated IDPs who had registered in other counties may have moved to Nyandarua County but in our records, they are not reflected under the Nyandarua County

but under the counties where they registered. It is not possible for us to verify and categorize those who fall under this category unless we profile them again.

(2) On the number of integrated IDPs in Nyandarua County that have been settled in Nyandarua County, all the 3,304 households from Mawingo Camp were settled in various farms bought by Government. In addition, 6,719 households were paid startup capital of Kshs10,000 each. This number is higher than the number of integrated IDPs households recorded under the county confirming that some IDPs from other counties migrated to Nyandarua County.

(3) On the number of integrated IDPs in Nyandarua County that have not been settled, currently, only 132 integrated IDPs in Nyandarua have not been paid the startup capital of Kshs10,000.

(4) On the action that the Government intends to take on the integrated IDPs who have not been settled, the current Government policy is to pay Kshs10,000 per integrated IDP household as startup capital. There is no other provision for them.

(5) On the number of IDPs in the camps and who have not been settled, nationally, there are only 1,745 IDPs households in 20 camps who are not yet settled. Although they are in our records as groups, they did not register their self help groups for settlement when they were supposed to and hence are treated as integrated. Unfortunately, none of these IDPs are from Nyandarua County – or even fortunately. It is, therefore, our submission that we do not have unsettled, profiled IDPs in camps in Nyandarua County.

(6) The action that the Government intends to take on IDPs in the camps and who have not been settled is that all the remaining IDPs fall under the integrated IDPs category. Unless the policy changes and more resources are availed for resettlement, they can only be paid Kshs10,000 per household as startup capital. Those who have been paid the Kshs10,000 expect nothing more under the current provision of the resettlement programme.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. (Eng.) Muriuki Karue.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, first, I should get a copy of that statement before it is tabled unless there is a change of policy. Perhaps you could give direction on that. Having said that, I requested a statement on the status of the integrated IDPs in Nyandarua County. The Chairperson has told the House that there are no integrated IDPs in Nyandarua County while the records of the Provincial Administration in Nyandarua County headed by the County Commissioner indicate that there are 36,000 integrated IDPPs in Nyandarua County. None of them has been paid the Kshs10,000. The ones at Mawingo Camp are clear, they came to Mawingo, they left and that was it. The Government did what they did with them. The question is: Is the Chairperson telling this House that the Government headed by President Uhuru Kenyatta has now abandoned the 36,000 integrated IDPs who on 15<sup>th</sup> January, 2014 had a big meeting at Ol Kalou



Stadium? The meeting had been triggered by a statement by the Government that the issue of settling IDPs is over.

Secondly, the Government has indicated that IDPs have been paid Kshs400,000 as resettlement *in lieu* of being given parcels of land. Can the chairperson confirm whether this is the case or not? If so, how come that the IDPs in the Nyandarua County who are integrated IDPs, all the 36,000 of them, none of them qualified for the Kshs400,000?

**Sen. Murkomen:** Mr. Speaker, Sir, first of all, in terms of the copy of the statement, because of your ruling yesterday the responsible officers had to run around and the statement was given to me just before I came to this House. So, the oversight of not giving my colleague the report was necessitated by the manner in which it came here. But this should not be the case. These reports should be coming in good time. That is the reason why you ruled yesterday as such that this statement must be delivered today. But that oversight is regretted.

Secondly, I do not think I said that there are no IDPs. I want to read the statement again. On page three of the statement, paragraph three, it says:-

“Currently, only 132 integrated IDPs in Nyandarua County have not been paid their startup capital of Kshs10,000.”

So, there is recognition that there are 132 IDPs. But my colleague, Sen. (Eng.) Muriuki, has said that there are more than 132 integrated IDPs. He is quoting a purported report from somebody from the provincial administration---

**Sen. (Eng.) Muriuki:** The County Commissioner.

**Sen. Murkomen:** That information is not available in the House. There is no evidence that there is a contrary report because there is only one Government. I am suspecting or imagining that when the Government gives a report, it has consulted all its officers. I do not think I can answer to a report that is alleged by my colleague but which is not available in the House as evidence, to show that there is a contrary report.

Secondly, the background was very important in this statement to show that not everybody who became an IDP as a result of the PEV had land somewhere. The people who were being paid Kshs400,000 elsewhere were people who had been removed from their land or areas that were later gazetted into a forest. So, the land was being taken away or people who were supposed to be moved from the Mau Forest, for example, land was being taken away. These were the people who were displaced. They were doing businesses in the centres and so forth. The statement notes that some people went back to their land. It is only fair that if somebody is moved from his land, he should go back to his land for better integration of our country. Whoever does not want to continue to stay there, the Government should facilitate them to sell that land to buy another one. But it is not to say that somebody is removed from his own land and we allow any other person to live on that land. That would be setting a very dangerous precedent.

So, the people who were being paid Kshs400,000 in the Mau and Embobut forests are being removed from land that was later gazetted to a forest or people who were duped to live on forest land.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, is the chairperson saying that none of the integrated IDPs in Nyandarua County had land elsewhere and, therefore, none of them qualified for the Kshs400,000? The meeting that was held in Nyandarua at the initiation of the integrated IDPs was attended by everybody; the political leaders and the provincial administration, including the County Commissioner. In fact, there were no integrated IDPs. The ones who came were already 4,000 who registered in the meeting were heads of households. Is the chairperson now saying that none of these people in Nyandarua County qualified for the Kshs400,000? This means that none of them had land elsewhere. Is this what he is saying?

**Sen. Murkomen:** Mr. Speaker, Sir, it needs to come out very clearly that at no point was there a Government policy to pay Kshs400,000 to people displaced by the PEV. That would be setting a terrible precedent where people are displaced from their parcels of land which have titles and then we say we will pay them Kshs400,000 so that the people who have illegally settled on your land can stay. That will be terrible because other people will take advantage of that. So, it must come out clearly that that the Kshs10,000 was being paid for people to start up businesses or those that had houses were paid Kshs25,000 to rebuild their houses. It was nothing to do with replacing anyone from land that they left. This is our country. The Government must be able to facilitate people to go back to their land or that person to dispose his or her land and buy another one if he or she is unhappy to live in a particular area.

**The Speaker** (Hon. Ethuro): Hon. Senators, I will allow only one clarification from Senators interested in this statement because I see there is a lot of interest in this matter.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, it is so saddening that the chairperson has given us that answer indicating total discrimination of certain IDPs when it comes to the issue of support from the Government. Some IDPs lost a lot of property. Even if they lost no land, not only did they lose property but they lost human life. A good example is the Naivasha issue where a family was burnt and thrown into a destitute situation. That family has feared to come back to Naivasha. Businesses were destroyed. Why is the Government discriminating and reclassifying IDPs in consideration of land alone?

Secondly, I remember Sen. Obure, in a further questioning requested that you give information on the number of IDPs in Nyanza, in particular, Kisii and Migori counties. That answer has not been given. Why were the IDPs not considered for the payment of the Kshs400,000? I do not buy the issue of integration.

**Sen. Ndiema:** Mr. Speaker, Sir, I also want to seek clarification as to why IDPs in Trans Nzoia County who were displaced from Teldet Forest and from farms were not considered. These are squatters who did not own land but they were displaced. Why have they not been compensated?

**Sen. Munyes:** Mr. Speaker, Sir, we appreciate what the Government has done to compensate IDPs but there is one issue which is still pending. In my county, for example, there are incomplete structures in the form of brick houses for the integrated IDPs. In four sub counties, construction is ongoing and it is halfway. What action is the Government taking to complete the construction of these houses in the four sub-counties?

**Sen. Mositet:** Mr. Speaker, Sir, it was very clear when the Chairperson of the Committee on Devolved Government said that at least those who were compensated by the Government are those who were displaced in areas which were gazetted such as forests. We have people who have been displaced by natural calamities like those living near Lake Baringo and Lake Bogoria. Quite a number of investors have lost a lot of property. What is the Government doing about those people who have been displaced and particularly the Njemps Community who are in Lake Baringo? Quite a number have been displaced, almost about 5,000. For the last two years, some do not even know where to live. Schools have been submerged by the lake. Are they likely to be compensated or is the Government looking for an alternative place to settle those people?

**Sen. Sang:** Mr. Speaker, Sir, the chairperson has eloquently captured the fact that some forest evictees from Embobut were paid Kshs400,000 as compensation including the Senator himself. He will be able to clarify that. In my county, we have over 3,500 forest evictees from Kipkurere Forest who have been out in the cold for the last six years. They have not been compensated. Can the Chairperson clarify why there seems to be that disparity? Why are some evictees being resettled while others have not been resettled?

**Sen. Okong'o:** On a point of order, Mr. Speaker, Sir.

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

**Sen. Okong'o:** Mr. Speaker, Sir, I am not Omogeni. This has been a problem for many years. You would rather refer to me as Kennedy because everywhere nobody knows my full names. My full names are Kennedy Mong'are Bwokong'o.

**The Speaker** (Hon. Ethuro): Sen. Mong'are.

**Sen. Okong'o:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Or Okong'o?

**Sen. Okong'o:** I do not know whether I am the only one who heard Sen. Sang insinuate that Sen. Murkomen is one of the IDPs. Is he an IDP? Was the Senator in order to insinuate as such?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Finally, Sen. (Eng.) Muriuki.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, as far as Nyandarua County is concerned, the bottom line is as follows:-

The first of the several issues which I raised is: What was the number of integrated IDPs as at the end of the year 2008? As of now, is the Government intending to compensate anyone out of the integrated IDPs in Nyandarua County?

Let me clarify one issue. The 132 IDPs the Chairperson is quoting, that is a group living at a place called Imogu Farm. We are not interested in that. There are many integrated IDPs who were given accommodation by various well wishers around the county. So, what was the number in 2008? As of now, is there any compensation expected for any of them?

**The Speaker** (Hon. Ethuro): Chairperson, you may respond now, including the one of Sen. Okong'o.

**Sen. Murkomen:** Mr. Speaker, Sir, allow me to start with the question by Sen. (Eng.) Muriuki because it is in reference to the statement itself. I do not know if I should read it again but as I said, part of the reason is because he does not have a copy. But it says that the profiled data at the end of 2008 shows that there were 16,228 IDPs in Nyandarua County representing 3,179 households, all of them integrated.

Later on in the resettlement programme, another 16,520 IDPs from Nakuru Stadium representing 3,304 families moved to Mawingo Farm in the county and pitched tents. So, the two groups totaling to 32,748 IDPs formed the only profiled IDPs in Nyandarua County as at the end of December, 2008. So, I think that answers the question.

Mr. Speaker, Sir, you will find that the report also notes that there are currently only 132 integrated IDPs in Nyandarua County that have not been paid the startup capital of Kshs10,000. Whether there is anything else to be paid over and above that is a different issue. Maybe it could be an issue of follow up.

Let me now address the question by Sen. (Dr.) Machage. It is important to note that the report from the beginning appreciates that there are integrated IDPs across the country. Some have been paid the startup capital, others have not. The most important question that needs to be a follow up, and which I should get back to the Ministry is; at what point in time can we say there is no one else who, as a result of the 2008 PEV, has not been paid? This is so that we say, including the 132 IDPs indicated here in Nyandarua County---. If they are more, then they should be able to tell us across the country, how many people are remaining and when they are going to be compensated. I do not think it is fair to say that certain areas have been discriminated. The point is, the programme has not been completed and, therefore, they should tell us when it will be completed. We will take this back as a follow up question.

On the issue of the IDPs in Trans Nzoia, Sen. Ndiema has pointed out that some people were resettled while others have not been. When are we going to complete the process of resettling the integrated IDPs? However, there is a more fundamental question that came from all the questions asked. That is what you heard Sen. Mositet talking about. There are various forms of displacements. If you visit Elgeyo-Marakwet County, apart from the Embobut issue, there are people displaced by landslides and other calamities. Sen. Mositet has talked about Baringo County. It is important that we get a comprehensive answer from the Ministry on how to deal with the question of displacement. This is to avoid a situation where you wait until a particular time to

compensate. What mechanism can be put in place under the new Constitution when there is a county or national disaster? I am willing to follow up this issue so that we can be able to bring the answer as soon as we come back.

The question by Sen. Munyes can only be answered once we get back to the Ministry because he wants to know about the incomplete projects in Turkana County. This was not part of the questions addressed here. So, we can only respond later.

We should not mix the question of the 2008 PEV IDPs together with that of the squatter problem in the country. That is a bigger problem. There are almost squatters everywhere whether in Kibra or Mathare. We have the squatter problem in every county. That is a problem that should be dealt with by the National Land Commission (NLC). The law is very clear about who is supposed to deal with the question of squatters.

On the issue of Sen. Sang, I do not want to abrogate myself the responsibility of the Cabinet Secretary in charge. But I am aware, and I am willing to go on record, that the reason displaced people from Kipkurere Forest have not been paid is as a result of one of them going to court and getting an injunction. It is a calamity occasioned by members in the midst of those who have suffered.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is the Chairperson of the Committee on Devolved Government in order to mislead this House that one of the Internally Displaced Persons (IDPs) went to court when the true position is that the person who went to court is an IDP from Uasin Gishu County and not from Nandi County?

**Sen. Murkomen:** Mr. Speaker, Sir, we have a problem in the region where I come from because we are all one family across counties. The report we have is that one of the displaced persons went to court because they were unhappy with the process of resettlement. I think the Government is engaging the necessary procedures of out of court settlement so that those people who have been profiled can be settled in Nandi and Uasin Gishu counties and those who have not been profiled or those who are remaining like the ones we still have in Embobut and other places can also move to the next phase.

As I said, we must bring a comprehensive answer. There was a small supplementary question as to whether the Chair is a beneficiary of the Embobut resettlement. Indeed, I ought to be the beneficiary because my family, my ancestral land where I was born and brought up, the Government took it and gazetted it as a forest. So, classically, by law, I should be one of the beneficiaries. But I thought that until that last time that the last person is settled in Elgeyo-Marakwet County, I made it clear to the Government and to the Ministry that I am not willing to be compensated. I am willing to forfeit my Kshs400,000 so that it can go to another more needy person. The Lord has been very gracious to me that despite the tough times and growing up as a squatter, I managed to get good education, good profession and also be elected to be a Senator in this House. So, I thought I am a little bit more privileged than the others and forfeited my constitutional and statutory entitlement for those who are not lucky like myself.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, although this Statement raised other connected problems, in Nyandarua, the matter can be rested very easily. Since the Chairman has confirmed that the Government paid out Kshs10,000 to integrated IDPs, surely, the Government must have a register of who they paid. Could the Chairman table a register of those integrated IDPs who were paid, even if it is that Kshs10,000 per person?

**Sen. Murkomen:** Mr. Speaker, Sir, I want to make another suggestion and if it is in the interest of this House, it can be adopted so that this issue can be settled once and for all that this issue be put before the Committee of Land and Natural Resources because it is the best place domiciled in terms of matters of resettlement so that they visit Nyandarua County and the other places across the country. Under our Standing Orders, if you look at our responsibilities, we are supposed to deal with matters of inter-county relations and so on and so forth. So, the Committee on Land and Natural Resources can look at it comprehensively and bring a report to this House that will capture, not only the Nyandarua issue but Trans Nzoia, Naivasha and Kisumu and we get a proper report that can come back to this House.

I am aware that you were part of a process in the last Parliament with some Members here who went round the country to look into that issue. If that Report can be relooked at, then a comprehensive answer can be given. But the question of Nyandarua, the Senator is asserting here that he has a contrary document that shows that there are more than 132 intergrated IDPs and I think it is only through evidence and if we put that question back to the Ministry that we can be able to come back here and say: Having interrogated the assertions of the Senator, this is what the Ministry is going to say. I think if I am not wrong, for a comprehensive answer, this Statement should be directed to the Committee on Lands and Natural Resources.

**Sen. Munyes:** On a point of order, Mr. Speaker, Sir. I do not think it is squarely a land issue because when it comes to compensation, some people may want specific items. I think we need a taskforce to re-look at the issue in totality so that every county has an account of how to compensate and settle the integrated IDPs.

**Sen. Mositet:** Mr. Speaker, Sir, I heard the Chairman evading what the Senator for Nyandarua had queried. He wanted to know whether the list of the 132 can be tabled so that he can see it and maybe settle the matter. The Chairman of has evaded by directing the Statement to the Committee on Lands and Natural Resources. I think he is not in order.

**The Speaker** (Hon. Ethuro): Order Senators. Let us dispose of this matter.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me the last one. Allow me to also add my voice to this issue of IDPs by asking the Chairman whom I have heard explaining---There are two categories of IDPs; there are those who were driven to camps and they were very visible and the issue was very political. We also have thousands of IDPs you will find in Trans Nzoia, Bungoma and many other places who were either thrown out of forests or fled from fluid political situations but did not go

to camps. They are living in homes of relatives and others are squatting around markets while others are destitute.

What is the Government policy because we have seen some very generous, politically coated donations made to IDPs in certain selected areas while IDPs in other areas have never been considered, remembered or even assisted? What is the policy of the Government in handling the IDP situation because the homes that are housing those IDPs are carrying very heavy but human burdens of keeping people who have been sent away from their homes? Could the generous contributions minus the political coating be extended everywhere?

**Sen. Murkomen:** Mr. Speaker, Sir, I think that question had been answered. So, I refer my colleague to the HANSARD.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The Chairman should answer the question. I have consulted my colleagues here and they are telling me that no such question has been answered and the Chair can guide me. He has no business running away from answering the question because he has a duty to the House and I am not speaking for myself.

**The Speaker** (Hon. Ethuro): Order Sen. Wetangula! That question has been answered. They may not have used the same words like coating, but the substance was the same and the Chairman answered. In fact, you are the one who is running the risk of being declared repetitive but I allowed you in recognition of where you sit to do so. Let us conclude. I was suggesting that the one of the register of the beneficiaries from Nyandarua County be tabled. The other issues that you have raised about the land to be taken to the Committee on Lands and Natural Resources, I agree completely because most of those submissions were about resettlement and the Ministry of Lands, Housing and Urban Development is the one actually dealing with it. So, we will get the Standing Committee on Lands and Natural Resources to give a more comprehensive situational analysis of the situation of IDPs all over the country. I think that is the way we should proceed.

**Sen. Murkomen:** Most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Next Order!

## MOTION

### ADOPTION OF REPORT ON APPEALS FOR THE TRANSFER OF FUNCTIONS TO COUNTIES

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move:-

THAT, the Senate adopts the Report of the Sessional Committee on Devolved Government on the appeals for the transfer of functions to the counties, pursuant to Section 23 (7) of the Transition to Devolved

Government Act, 2012 laid on the Table of the Senate, Thursday, 10<sup>th</sup> April, 2014.

Mr. Speaker, Sir, we are today one year down the line since the devolved governance system came into being. We are presiding over a very important exercise. This House is sitting as a quasi judicial institution and, under the Transition to County Government Act, Section 23(7), is considering appeals that came from the counties.

The Constitution provides, in the Sixth Schedule, paragraph 15 that the transition period in terms of transfer of functions, capacity of counties and ensuring that counties are fully operational is at the maximum of three years. I want to emphasize the fact that it says, up to three years. It does not say; for three years. The usage of the words “up to three years” is very important because there have been many accusations out there that counties have been given too many functions at once or that transition has been expedited; that it ought to have been three years. It is important to remind the country that the Constitution talks about “up to three years” and not three years.

Therefore, the Transition to County Government Act is one of the legislations that is anticipated in the Sixth Schedule, paragraph 15, that is required to assist and guide the process of transition. Under that Act, a very important institution was established, known as the Transition Authority and given the responsibility under the Act to ensure that they assess the competencies of the counties and be able to make a decision as to which functions can be transferred to the county in the first one year, the second year and finally in the third year, if need be.

Mr. Speaker, Sir, the Act was alive to the fact that the Transition Authority may consider giving some functions to the counties and retain others at the national Government. The Transition Authority performed its function under the Act, transferred some functions to the counties and retained other functions. Consequently, the counties exercised their legal power under the Transition to County Government Act, to appeal for those functions to this House. The responsibility of ensuring that we assess the capacity of the counties and whether or not we should give out these functions to the counties was left to the Committee on Devolved Government. The Committee considered that that responsibility was so weighty and that it was necessary that everybody was involved. Therefore, we devised a mechanism, divided ourselves in the various regions and ensured that every single Senator participated in the process of transferring these functions.

Initially, there was a feeling that it should have been only this Committee to do it on its own, but we thought in our responsibility to interact with the entities called county governments, it was important that we involve as many Senators as possible. Therefore, this exercise ensured that we travelled back to our counties where we held sessions with our people. Although this House took this responsibility seriously, we expected that the county governments were also going to take this responsibility seriously and particularly the men that that Constitution points out in Article 179 as the chief executive officers of the counties. What happened was shameful. It was unfortunate that in such a serious exercise, the Governors were not willing to participate.



It is unfortunate as the Report notes, that there were very few Governors that were able to participate in this process. I want to acknowledge the 15 Governors that participated in the process of transfer of functions. I want to acknowledge Governor Julius Malombe who came in person, Governor Peter Munya, Governor Ali Hassan Joho, Governor (Prof.) Kivutha Kibwana, Governor William Kabogo, Governor Evans Kidero, Governor Jack Ranguma, Governor Wycliffe Oparanya, Governor Mwangi wa Iria, Governor John Mruttu, Governor Salim Mvurya, Governor Moses Lenankulal, Governor Moses Akaranga, Governor Rasanga and Governor Isaac Rutto.

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. It is good to set the record straight. I was among the team that went to Nakuru and the Chairman was Sen. Gideon Moi. Governor Isaac Rutto never appeared in Nakuru and so the information being given by the Chairman is wrong. It is good to have factual information. Governor Mbugua of Nakuru attended and he has not been mentioned. Governor Cheboi from Baringo also attended despite the fact that he had another function to attend.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. If you follow the preceding Standing Order and the Statement that was made by the Senator in this House, it throws very bad aspersions on this Report that he is right from the start giving us a false report. Would I be in order to request that the Chairman rectifies those mistakes before we discuss it?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Machage. This is just a list of who participated and who did not. It does not validate the deliberations of the meetings.

**Sen. Murkomen:** Mr. Speaker, Sir, I hesitated to read the name of Governor Isaac Rutto because I am aware that he was not there. I think this was a typographical mistake in terms of the list and the necessary corrections will be made. Therefore, I want to first withdraw the assertion that Governor Isaac Rutto was present.

Mr. Speaker, Sir, what bothered the Senators were situations like when we were in Eldoret where I was chairing and some Governors came with their Deputy Governors and just when they were approaching the Boma Inn Hotel, the venue of our sessions, they found out that there was no other Governor in attendance and they left as though there was a conspiracy that they wanted to avoid to participate in such an important exercise. In fact, it was just weeks after that that we realized that there was a general conspiracy around, that Governors should not attend committee meetings of this House including being invited to come and clarify issues that were within the Committee on Finance, Commerce and Budget.

So, Mr. Speaker, Sir, I must be very clear that, going forward, Governors must appreciate that they have a responsibility under the Constitution and under the Act, and when they are required to take the responsibility, they must take it seriously. They must demonstrate to the residents of their counties because the reason Senators were unhappy across the board is the fact that the Governors – in funerals, barazas and in church meetings – were complaining of certain functions that had not been transferred. But when the opportunity came for them to appear before the Committee, they ran around avoiding

to come and deal with the issue. But because this House is composed of men, like Wole Soyinka once said, who have no fear and who do not want to demonstrate that they are powerful; people like Sen. (Prof.) Anyang'-Nyong'o, who are professors of many years standing---

**Sen. (Prof.) Anyang'-Nyong'o:** *Makofi!*

*(Laughter)*

**Sen. Murkomen:** Mr. Speaker, Sir, people like the Attorney-General, with over 20 years experience; people like Sen. (Prof.) Kindiki, these people understood that they are senior enough, but the Constitution says that they are servants and, therefore, they did not need to demonstrate that they are big. Therefore, we were reduced to listening to everybody because we respect every Kenyan.

So, therefore, Mr. Speaker, Sir, in some places, we only listened to people who are called County Executive Committees (CECs); others just sent somebody called county attorney – and that is when we realized that even counties have an equivalent of the Attorney-General. But we said we want to listen because we have a greater duty to devolution than demonstrating who is bigger and who is smaller. Therefore, the message must go out very clearly that this exercise was not taken seriously by Governors. That even if they do not take it seriously, it does not mean, consequently, that Senators cannot take the responsibility seriously. We took our responsibility seriously; we listened to the submissions from the officers from the counties and, therefore, decided that we were going to play our role---

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

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

**Sen. Kajwang:** Mr. Speaker, Sir, I did not want to interfere with my brother because, actually, he is speaking what I believe is the case. But at what time, in terms of direction, are we going to deal with this issue as a legal issue? If they did not appear, do we conclude that because they sent somebody called an “attorney” or some other person, then they appeared and, consequently, the appeal was heard and determined? Or is it that they did not appear? At what time are we likely to deal with that legal issue?

**The Speaker** (Hon. Ethuro): Mr. Chairperson?

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. Before we pass the report or towards the end of my presentation, I will be saying what decision we took as a Committee, even in situations where a Governor did not appear. But I want to commend all these Senators for their humility; this House has continued to be a House that must be emulated across the country. Even in situations where actions have been taken by individuals – whether the courts, Governors, Members of County Assembly (MCAs) or whoever else; even whether it is the national Government or counties that humiliate this House – this House has conducted itself in a more mature manner and with decorum. I think this is the spirit because we do not need to boss around about our powers. But we

know that when the time comes, we will act accordingly and according to the Constitution.

*(Laughter)*

Mr. Speaker, Sir, during the debate, we realized that people were confusing the transfer of functions of Article 186 and the transfer of functions of Article 187. As the Constitution makes it clearly, Article 186 provides the functions that are for counties and the functions that are for the national Government, which is now enumerated in the Fourth Schedule. But there is also the requirement of Article 187, that counties can sit down and decide that county X wants these functions transferred to the national Government; or the national Government can agree to transfer its functions to county governments. That transfer of functions in Article 187, which is captured in the Inter-Governmental Relations Act, was not subject of appeal. But as we heard the appeals from the counties, you would hear some counties saying that “we want the education function to come to the counties;” or “we want the security function to come to the counties;” or “we want the immigration function to come to the counties.” That discussion is not a discussion within the transition period; it is a discussion that can be initiated between the two levels of government without requiring this House to mediate in the first instance, unless this House passes a legislation similar to what the Senate Majority Leader was attempting to pass yesterday that will then mandate counties to sign agreements in a particular function; or to allow that a particular function be transferred.

So, Mr. Speaker, Sir, it is important, therefore, to know that this Committee confined itself to the transfer of the existing constitutional functions that go to the counties as per the Constitution. What are these functions? The functions that go to the counties are categorized into three functions; first, we have what we call “exclusive functions.” These are functions that, under the Fourth Schedule, are fully given to a particular level of government, for example, the function of security, which is a function of the national Government; or the function of agriculture, which is a function of county governments, although the agriculture policies is a function of the national Government. These exclusive functions are functions that each level of government is expected to deliver on. But a proper study of all functions all over the world where they practice devolved systems of government, it became difficult to really find a situation where functions are fully exclusive. Even when functions are related to security, some countries have made a decision that even though a function has been listed such as security, there are certain overlaps because of the responsibility required of the structures of government that are required to deliver those functions which use or look into the county government structures. Therefore, although the Constitution lists exclusive functions, there is recognition that there is an overlap in terms of what is expected of a certain level of government to assist the other to achieve its constitutional responsibility in their functions.

Secondly, Mr. Speaker, Sir, we have concurrent functions, which are listed in the Constitution, for example, we have a function like disaster management. You will find that under Paragraph 1 of the Fourth Schedule, disaster management is a function of the national Government and the county governments. If you look at the Fourth Schedule, you will find that the function of electricity reticulation and regulation is a function of both the national and county governments. You will find that when it comes to health, it is also a concurrent function; it is both a function of the national Government and the county governments. For example, you will find that all hospital facilities are functions of county governments except the referral hospitals. But the question that one needs to define is; what is a referral hospital? What would you call a referral hospital? Where is it defined that a certain hospital is referral and the other one is a county facility? That is the responsibility that comes to this House, because you will find that in the concurrent functions, we must be very careful in terms of how we will classify what functions goes to the counties. What would you do in a situation where we are told that electricity reticulation is both a county as well as a national Government function?

Mr. Speaker, Sir, I was a Member of the Taskforce on Devolved Government. This taskforce looked at these types of functions; the concurrent, the exclusive and the residual functions. One advise given in this report is that there must be clear enumeration in areas where there are concurrent functions like, as I said, health, matters of electricity reticulation and regulation and in the functions of gambling – because gambling is a function of both the county and national Government. There must be a clear unbundling of those functions; there must be a clear functional analysis and competent assignment. The report says that if we do not do that, and I want to read in page 11:-

“Failure to do that will result in duplication of services, ineffective services, unfunded services, increased contestation and wastage in funds expenditure. In the worst cases, it results in macro-economic imbalance with negative consequences for the wider economy. The latter situation needs to be avoided.”

So, Mr. Speaker, Sir, the report of the Taskforce on Devolved Government points out already that we are likely to have a situation where if we do not clearly indicate what-- Let us say, for example, the question of gambling – I know many people do not want to discuss the issue of gambling because it looks like--- In Kiswahili, if you say that I was supporting *kupiga kamari*, many people would think that you are a bad person. But gambling includes what you see in television all the time where they tell you “if you send a message to this number, you are likely to win this amount of money.”

Many countries use this kind of mechanism to raise money for funding sports and certain programmes that are important. I think there is already a serious debate on how the Betting and Licensing Board should be changed; something akin to what the Senate Majority Leader was doing yesterday so that it becomes inter-governmental in nature to assist both the county and national Government, because these functions are concurrent. In fact, that needs to be done because as the report says, if we do not do it, there will be duplication of services, ineffective services, unfunded services, increased contestation

and wastage of public funds. So, there is a responsibility that is in this House and I remember yesterday--- I hope the Senate Majority Leader can listen to me.

*(Sen. (Prof.) Kindiki consulted other Senators)*

Mr. Speaker, Sir, the Senate Majority Leader is interacting intensely with one of the Senators, but I wanted him to listen to this fact. That it is what he did yesterday in terms of trying to attempt to bring the Bill on the Kenya Medical Supplies Authority (KEMSA); which is an exercise that this House must do for about 10, 20 or so legislations in this country.

*(Applause)*

Because if we do not do that, we will have a situation where there will be duplication. Ask yourself what will happen in the area of energy regulation and electricity reticulation, because it is fully a function of both national and county governments?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Do you want to be informed, Sen. Murkomen?

**Sen. Murkomen:** I am willing, Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I just wanted to inform Sen. Murkomen on the particular issue of the Bill, that the Council of Governors (CoGs) has today supported the Bill which I had brought yesterday and they have said that, that is the route to go. So, at an appropriate time, I will be having my day on this Dispatch Box!

*(Applause)*

**Sen. Murkomen:** Mr. Speaker, Sir, that is useful information, but it will be more useful during the particular time when that Bill comes back. I really want to beg colleagues not to divert to that direction because what I am seeing is that they want to do that.

Mr. Speaker, Sir, the reason I pleaded with this House yesterday to be more sober on the debates of Bills of that nature is because we will be having more of those Bills. We will have a Bill here on electricity, for example, to agree on whether counties should sign agreements with the national Government, or whether they should continue generating their electricity on their own because the Constitution allows it. What will happen to the question of wastage? What will happen to the situation of unfunded functions? We need to come back with a Bill in this House to discuss the Betting and Licensing Board and ask ourselves: should counties form their small boards, or is it better to have one board because it is a concurring function to deal with? So, it is an area that

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we will navigate, and we must continue to remain sober because if we do not, we will be dividing ourselves here into a group that will only be chasing – as somebody said yesterday – unnecessary wars at the expense of the legislation that we need to pass.

So, Mr. Speaker, Sir, on the concurrent area, we have a big job. We have a big job to change all the agriculture laws so that it can respond to the fact that the national Government only does the agricultural policy, while the counties do the actual agriculture – which is a very serious responsibility – including the question of pest control. How do you control pests in Trans Nzoia County without affecting Uasin Gishu, Elgeyo-Marakwet and Bungoma? How will you do that? Is it not better, for example, for counties to sign an agreement with a national entity that deals with pests so that the issue of pests can be done centrally?

Mr. Speaker, Sir, what happens in questions of health, for example? Already, national vaccines – vaccines that are dealing with---

**The Senate Minority Leader** (Sen. Wetangula): On a point of information, Mr. Speaker, Sir.

**Sen. Murkomen:** Mr. Speaker, Sir, I want to allow him to inform me, but I hope my colleagues can reduce the requests for points of information so that we can move on.

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

**The Senate Minority Leader** (Sen. Wetangula): Actually, the point that you are making is good, but you also know that throughout the stream of the Constitution, national policy on everything is retained by the national Government. So, the national Government can always formulate policy that will encompass all the worries that you are trying to tell us.

**Sen. Murkomen:** Mr. Speaker, Sir, that is useful information, but it is a quarter of the story; it is not even a quarter, the real story is where actually the county has a responsibility and it cannot be cured by a policy because you will need a legislative framework where the county allows its function to be done by an entity that is national in nature. Let us take, for example, vaccines. I mean, it is not indicated in the Constitution whether it should be done by the county or national Government. There is a debate on whether it is a concurrent function or it is a residual function. We will come to that, but I wanted to point out that this House has a great responsibility because some people have been saying “we have no legislation” or “we do not have what.”

Mr. Speaker, Sir, in relation to this report that we have tabled, we have pointed out that there are various legislations, for example, in the area of agriculture, we have the Agriculture, Fisheries and Food Authority Act; the Agriculture Act itself and the National Cereals and Produce Board Act that must be amended so that the counties can do their work in terms of cereal storage as we also allow the national Government to continue retaining certain strategic reserves for purposes of national security. So, all these issues must be ventilated by this House.

Mr. Speaker, Sir, let us look at another example of roads, which is an example of a concurrent function. The Constitution just says that the counties will do county roads

while the national Government will do national trunk roads. The current classification of roads is a classification based on quality. But in my opinion, if you look at the Constitution, it is like the classification anticipated is in terms of connectivity; because if you talk about national trunk roads, at what stage can you say a road is national in nature? How many counties must a road cross? Is it a must for a road to connect two counties for it to be a national road? Or is it necessary that it should cross more than four counties? And, again, the necessary Committee, as we have recommended here, will have to relook at that issue, because if we do not do that, again the Taskforce had said then that it will lead to a situation where some functions are unfunded or they are poorly funded; or that there are not enough resources to fund the particular area.

So, Mr. Speaker, Sir---

**Sen. Mositet:** On a point of order, Mr. Speaker, Sir. I just wish to correct the distinguished Senator that the current classification of roads is not based on quality, as he has said, but on connectivity.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I will insist that, that is my opinion and what he has said is his own opinion. But if you look at what is called Class A, there is more focus on something to do with the quality of the road – whether it will be tarmacked---

*(Loud consultations)*

I think, Mr. Speaker, Sir, that I am willing to be corrected accordingly. The most important thing is that this House must bring a classification that is not going to marginalize other counties. This is because the historical classification is also littered with historical political marginalization, because some counties do not have Class A, others do not have Class B; in some counties, a road which is Class C in one county is class A in another county. Therefore, this new process that we are proposing must capture that kind of issue.

Mr. Speaker, Sir, the second type of function is concurrent function. The third is the residual function. The Constitution in Article 186 states that any function that is not indicated currently as being in Schedule Four, part (a)(1) and (2) is a function that is for the national Government. That means that the national Government retains the responsibility to deal with issues like vaccination. This function is not identified per se whether it is a county or a national function. Therefore, it is possible that if there is proper legislation it could be a national responsibility for purposes of dealing with the national Government. Thus we need to be able to do this.

In assigning these functions, what principles must be observed? First, we have to look at the principle of subsidiarity. The principle of subsidiarity is an old Catholic principle. Its objective is to ensure that a function can better be performed at a very local level. That function then can be transferred to an entity that is able to do it effectively. In the same manner if a function for purpose of economies of scale can be performed at a

regional or national level, it should be done at that regional or national level. So, there are functions that can be performed by a Pope in Vatican and there are those that can be done by a priest in a parish. Therefore, that principle should guide this House even when we are legislating in so far as transferring certain functions to the counties or transferring certain functions to the centre.

Let me point out here because many people say that if you transfer functions from a county to the national Government, you are becoming centralist or clawing back. That is not the objective. The objective of the principle of subsidiarity is to look at the effectiveness. We will be debating such a thing in the future. In fact, in my considered opinion what Sen. Orenge was saying here is correct position. We must look at legislation at the state in which it is at the moment. Does it facilitate a procedure where you can procure medicine for all counties at once if they are expensive and benefit from economies of scale than to allow Elgeyo Marakwet alone, which has a population of a half a million people, to procure the medicine on their own from Switzerland? This is a debate that must come back so that we have a discussion about the subsidiarity principle. What can be done at the local level should be done at that level and what can be done in Vatican, as in that example, should be done there. Secondly, we should look at transferability of a function. Is it possible to transfer a particular function to a certain level? Is it possible to leave security to a governor who comes from a particular clan in a county where he has demonstrated that he is fighting for his clan at the expense of all other clans, for example? Or is it better to remain with an entity that will be neutral in terms of enforcing a security function in a certain area. So, is it possible to transfer that function? We must look at Article 187 of the Constitution to determine whether the function can be transferred. Is it possible for the function to be put in a certain level? Can you transfer management of a dispensary from a county to a national level? This is impracticable so the transferability of that function is not possible.

Thirdly, there is alignment of capital, that is, expenditure and recurrent expenditure. Sometimes, a function remains at a national level because it requires capital expenditure. National level bills are at a particular hospital. We cannot tell the counties to equip and run the recurrent expenditure. What happens to that county if they are unable to run a general hospital or a provincial hospital? Is it possible, therefore, that the county may be overwhelmed because they have a big capital expenditure, but they do not have recurrent money that can run that hospital? In that situation, the Senate must innovatively, during the division of revenue be able to look at facilities that maybe assisting more than one county and provide for a specific grant that will support those counties because if they are thrown into division of revenue they may not be able to run those facilities. If they are unable to do it, they will disadvantage more than one county. We must also look at the issue of one who makes policy formulation and standards and the question of implementation.

The national Government, for example, in the Constitution has been left with the responsibility of policy formulation and standards. The county governments are expected



to implement those standards. Now, who takes the responsibility of enforcement of those standards? What kind of an entity can go and say county “x” is not observing certain required health standards without infringing on the responsibility of that county. We should pass a legislation drafted by our Committee on Roads, for example, and we say that the standard of a road for it to qualify to be Class “D” must be this way in county “x”. Which officer is given the responsibility to do the enforcement without infringing on the independence of the third level of government? You can say that it is a fallacy to say that counties are so independent from the national Government because that interaction of policy formulation and standard setting *vis-à-vis* implementation is so close that the two parties must work together. It is not necessary that you have a huge hospital in a particular area, but the health standards in that hospital do not conform to the regulations and the standards set at the national level. So, the question we must ask ourselves is the issue of enforcement. What do we do to institutions like Kenya Pharmacy and Poisons Board (KPPB) to ensure that the medicines procured by a county or the national Government are of a particular standard? What do we do with the question of roads and so on?

In essence, we must also, as we look at legislation that will deal with matters of devolution, be careful to ensure that the interaction between the policy formulation, standard setting and the implementation at the local level is proper. That then brings me to this issue: That considering this interaction between national and county level, there is no legislation that should not come to this House. I cannot imagine a legislation that cannot come to the Senate of the Republic of Kenya because it is not a confinement of one level of government. The standard setting legislation is a function of national government. The counties have a responsibility. This House also has a responsibility to relook at those legislations.

Mr. Speaker, Sir, except for money Bills which are very clear in the Constitution, all other Bills must come to the Senate of the Republic of Kenya. This is not a by-the-way, but a substantive point. It is a very important point that must be understood by both men and women. Therefore, all legislation that were passed by the National Assembly in the last four regimes for the last 50 years must be relooked at by the relevant Committees of this House. They must be amended and aligned so that they can correspond to the devolved system of governance.

Mr. Speaker, Sir, I want to read the report of the House in terms of the functions that were appealed and the conclusions of this House. In the preliminary, I want to say that we, as a House and as a Committee, made what we call political and practical decisions. We agreed that some governors were not responsive. We agreed that some counties were not serious. The appeals were generic. It is true that some counties have better capacity than others. We said that if we were to allow a county that has capacity to get the function earlier, we would run into the problem of continuation of marginalization. We said that on balance of probability, and lawyers would understand this, that although this House considers that some counties have more capacity than

others, we agreed that all functions that were appealed we will consider them uniformly and transfer them uniformly to the counties. The point was that, indeed, if we do not do that we will divide the country, this House and make some of the counties to continue lagging behind. This is the decision of the Committee and we are requesting this House to adopt this Report.

Mr. Speaker, Sir, regarding the agricultural sector, the Committee decided that as part of the national security function, the National Cereals and Produce Board (NCPB) silos should remain as part of the national strategic grain reserves. The county government should be able to establish their own silos and grain storage facilities in accordance with their needs. In other words, as a concurrence function, the counties should set up their own silos. The agriculture machinery services should be devolved fully. The national Government should device mechanisms of sharing the existing machinery amongst the counties. The Summit which brings together the county and national Government should table this sharing agreement in the Senate by 31<sup>st</sup> October, 2014. In other words, we have given the timelines within which they will apportion which machine to be given to which county or whether those counties can sign sharing agreements so that they can jointly maintain them. I hear that Busia and Bungoma counties are sharing certain road machines. It is important that those agreements be deposited in this House.

Let me use this opportunity to say that I was part of some discussions as the Chairperson of the Committee on Devolved Government where governors were telling us that Rural Electrification Authority (REA) should continue with electricity projects and also vaccines should continue with the national Government. They told us that the Summit has agreed that the procurement of medicine should continue with Kenya Medical Supplies Agency (KEMSA) for an indefinite period. The law says that any agreement by the Summit must be in writing and must be seen by this House. Therefore, let me use this opportunity to say that whatever purported agreements must be signed and deposited with this Senate so that we can agree whether it is in consonant with the Constitution.

Mr. Speaker, Sir, regarding the most controversial matter of roads, I am saying “controversial” because you are aware that our brothers in the National Assembly play a particular responsibility when it comes to roads at their constituency. The governors have been making a lot of noise as to whether they should do the roads and what kind of roads they will construct. The Senate Committee has decided that Class A, B and C roads for the time being should be classified as national roads. Class D and E, together with unclassified roads, will be county roads as a transition period to measure county service delivery. The national Government should develop a spatial data base for all roads in the country. Lastly, Parliament should enact legislation on the classification of roads in the entire country to respond to the devolved structure. The Senate Committee dealing with transport should engage with the Transition Authority (TA) on why ferries and harbours were not gazetted and how to unbundle the function and report to this House.

Mr. Speaker, Sir, the reason for that is that we are receiving appeals for functions that have been allocated to the counties. The ferries and harbours were not gazetted anywhere. There is a more fundamental question; how do you classify Likoni Ferry? Likoni Ferry is connecting a national road. It is a link between a Class A road from Tanzania to Lamu. If you look at it clearly, it comes up to Nairobi and to other countries like Uganda, Rwanda and so on. So, what happens to such a ferry that connects a national road? So, classification must be done. Therefore, we have said that the Committee on Roads and Transport should sit down with the TA and find out why these roads were initially not transferred, do proper classification and then report to this House.

Mr. Speaker, Sir, regarding the rural electrification, the Committee decided that this is a concurrent function which both levels of government can perform. The two levels of government, in the spirit of consultation and co-operation, should devise pragmatic mechanisms to execute the function and avoid any duplication in the execution of the function. Any county government that has the necessary capacity to perform the function on its own should do so without any hindrance.

I want to emphasize here that electricity reticulation at the moment in the country is a function that is with REA. It is a function that is being done by Kenya Power (KP). The initial discussion was that REA should go to the counties, but that should not occur because that function is also for the national government. The national government should continue doing electrification reticulation using REA and KP. Even if they want to amalgamate, they should do so. The counties should also be free to participate in the same function. We have said that for practicality considering the capital investment in energy, the counties should find a way of working with the national government, but this should not stop them from investing in energy. This is because if I am in north eastern, I will decide that instead of using other sources of power, I want to put money in solar energy. Therefore, we must not stop the counties from investing on matters of energy, reticulation and energy regulations because, again, the Constitution allows them. They should use Article 187 of the Constitution to do further discussions and find a way of moving forward. Therefore, counties should be free to invest in energy reticulation.

Mr. Speaker, Sir, the Constitution does not give counties the function of energy generation. It is rightly so, because it is a capital intensive sector. It only gives them the power to distribute it in various areas. This is good because there are certain marginalized areas that have not received energy for a long time and the county can put money in expediting and working together with the national government.

Mr. Speaker, Sir, the other issue is about natural resources and environment. I want the Senators to follow this because they are the ones who came with reports. When the counties appeared before us, they wanted all the forests. They wanted to manage the forests because it is their right. Others wanted to manage the water sources. Those are good suggestions, but the Constitution does not give them the power to manage the water and forest resources. The other day, I was in a meeting where one county was saying that their water was being consumed in the other county for free and they must tax them. I

want to make this very clear. The water that flows from Elgeyo Marakwet to Uasin Gishu is not being sold. You cannot put price on water resources. The fee that is being charged for water distribution is a service charge to ensure that water is continuously being distributed. Whatever goes to any area is not profit. So, the discussion should not be about one county making profit from what has come from another county. This is not an area we can commercialise.

If you want to know that listen to this. This bottle of water may be selling at about Kshs50 or Kshs70.

*(Sen. Murkomen raised a bottle of water)*

However, if you were to sell the water that goes into houses in Nairobi in same manner as this bottle of water, then it would be impossible to put a price on it because water is more important than oil or anything else. Its importance can only be equated to air.

We want to encourage counties, including mine, Uasin Gishu, and others, to turn their discussions and compare their situation to that of the next county. We should see how much the next county has collected in terms of service charge and the surplus in terms of money. We should invest for the future generations. Can we agree to sign an agreement and say that since water comes from a certain county, we should also invest money in distributing water to the people of Chabara where the water comes from?

That discussion cannot be done in an environment where people are issuing threats. There must be cooperation and consultations. It is important that county governments and governors lead in a process of negotiation and discussion so that if water is coming from Ndakaini, we also ask ourselves whether Nairobi has surplus as a result of that water and how much can be used to distribute water to Murang'a County. Water should not just be given to Murang'a County. The county should carry out the same responsibility of distributing water to other areas.

The same should also apply to Kajiado County. One time, the Kajiado people said that they would block the water that was going to Machakos and Nairobi. If we are not careful in our discussion in the way that we discuss issues of water distribution, we are likely to have unnecessary conflicts and fights.

I have been in a situation where I have been trying to tell both sides; my county and Uasin Gishu that we are brothers and that we need to work on a formula that will ensure that water distribution in Elgeyo-Marakwet can be assisted by the amount of surplus that comes to the county. It is important that this discussion be put before this House. The House Committee, having read the Constitution, again and again realized that the function of managing forests is not under the counties. The function of managing water resources is not under the counties. What falls under the county is water distribution.

We have written in the Constitution, which we allowed to pass, that we must transfer matters of forests. The functions must be clearly unbundled and the national

Government should identify and schedule specific policies on natural resources and environmental conservation such as forests which the county government should implement.

Remember the Constitution just talks about certain specific policies that the national Government has given to the counties to implement. Once the policy has been drafted by the Cabinet Secretary and is forwarded to this House for approval, then it will identify the functions. The other way to go about it is to have an amendment of the Environment Act, Forest Act and all the necessary Acts. We must insert in those Acts specific policies that counties can carry out. For instance, can they assist in terms of management of forests in the counties?

In terms of water, the function should be clearly unbundled. The national Government should identify and schedule, the specific policies of natural resources and environmental conservation such as water which the county government should implement. Once scheduled, this policy should accordingly be devolved to the county governments for implementation.

Finally is the matter of library services. Libraries are very important. Since Independence, there are some counties that have not had a library. They have not tasted what a library looks like. Some counties have very big libraries. There is a very big magnificent library that is being put up in Upper Hill, Nairobi. This library will serve the people of Nairobi County. This is a magnificent library that you will not find in Elgeyo-Marakwet.

I must commend the Kenya National Library Services (KNLS) for setting up a small library in Elgeyo-Marakwet County at a place called Chesongoch. I doubt whether Turkana has a similar library. Counties like Bungoma may not have the same library. Bungoma, with such a population has no single library that people can use. I do not know whether Trans Nzoia has one. Probably, it has a small one in Kitale. We have said that the KNLS headquarters should remain a function of the national Government so as to issue policy guidelines in library services and to handle areas beyond the remit of county governments. For example, there is the issue of classification of the ISBN, classified of books and connections to international levels in terms of library services.

This is an area that we need a lot of investment. If you visit the Library of Congress – I have once used the Library of Congress – you will not be told that there is a book that is missing as long as it has been published. If the book you want can only be found in Australia, then you are asked to go back after two weeks after which they source for the book. It is important that we invest in library services because of our research as a country.

We are one country that needs to do a lot in terms of educational research. We do not value research. However, it is a pity where people have spend a lot time to do research, we allow the books to gather dust somewhere in some library. It is important that we inculcate in our people the culture of reading so that we reduce rumours. We want people who are intellectual enough to do what they are doing. You do not have to

go through an education system just to get employment. Education is for self growth of an individual. We want people who read books for individual growth.

Our youth are spending more time on *facebook*, *WhatsApp*, or *Twitter* than on reading books. They are not reading as we used to read before. Those are good interactive social areas. Your interaction in those areas cannot be quality if you are not reading books and replenishing your mind. If you do not replenish your mind, you cannot even engage. Therefore, it is important that counties invest in libraries so that every county has a library that benefits people in that local area.

What we were debating here about adult education and distance learning should be possible. Somewhere in Tot, Chepkorio or Loyangalani, it should be possible for one to go to a library and carry on his studies in Australia through online services that are provided for by various libraries. Therefore, counties should develop their libraries, equip them and assist our people, as a country to progress.

I want to conclude by passing a very important message to our brothers in the devolution business like us; the Governors and MCAs. The last one year has been a year of excuses. People have saying that they have been learning. Even here, we used to make mistakes and Mr. Speaker, Sir, used to pardon us because we were still on the learning process. However, I see how harsh and strict the Chair is nowadays because the period of learning is over. It is important that we pass this message to our counties that the period of excuses and lamentations is over. We do not want another Book of Lamentations to be written. The one that Jeremiah wrote in the Bible is enough.

This year is about delivery of services to our people. There will be no excuses if the roads are not done because we have transferred the function. There will be no excuse if the libraries are not done because we have transferred them. There will be no excuse if our farms are not tilled and better yields realized. We have transferred the machinery, including the storage. It is important that those who are in the business of devolution, especially the county governments prepare themselves well and be ready to perform their functions.

I was reading the newspaper, recently, about a Governor who was saying that the Senate is not protecting devolution. I think it was my Governor. I think it is important that we pass the right message. It is important to say that devolution is not about the Governor. I like what the Senate Majority Leader said at one time in a meeting where we were. He said that if devolution is our baby, we will protect it as long as no one drinks the baby's milk.

So, we are telling those who have been given the responsibility to protect devolution to wake up now and work because the people of Kenya are expecting results. The national Government should do its part and the county governments should do their part. We want to see the last of the wrangles between one level of Government and another and between one institution of governance and another. People must realise that this Constitution was about consultation and cooperation. It is not about conflict and completion.

With those many remarks, I beg to move and to ask Sen. Wako to second.

**Sen. Wako:** Thank you, Mr. Speaker, Sir and the Mover of this Motion for giving me this opportunity to second this very extremely important Motion.

The Senate has many functions. Some of them are quasi-judicial. We need to exercise our quasi-judicial functions during the impeachment process. This is yet another quasi-judicial function that we are exercising. Therefore, this debate is in many ways very historical. It is a function which goes to the root of our mandate; our mandate being to protect the interests of counties and their governments. It is a function that goes to the root of the county Government. We are here determining the extent of the functions that can be exercised by the county governments at this point in time. As the Mover of the Motion has said, this being an appeal or a court, I will send a message to the county governments. The broad message is this; your appeal has succeeded and has been allowed by the Senate. Of course, it is a pity that only 17 or so Governors personally attended to this very important matter leaving out about 30 who never came. I can speak on behalf of some of the 30 Governors, particularly those from the Western Province because I was the chairperson. Apart from Oparanya who came personally, the others send their deputy governors and gave reasons why they would not be attending which were that some were out of the country; others were in Mombasa for some important conference and so on. Some of them had good intentions and were doing important work. In sending their messages of apology, they said that we should look at their appeals carefully. I would like to comment on this as the person who chaired the panel in Western Province. Some of them were very well prepared. They touched on every point that we wanted discussed as had been outlined by the Committee on Devolved Government with documentation, figures and everything. When we allow this appeal, we will be allowing them because they are well presented before us.

Having said that, let me start by saying that allowing this appeal shows that whether a function is exclusive, concurrent or residual, there is need for the unbundling of important functions, particularly the ones that were touched on in the appeal. These are crosscutting like the ones on agriculture, roads, rural electrification, natural resources and environment, including water and library services. There is need for unbundling some of those functions. I say so because when you read the Constitution, you will see that this is put very clearly. Although they set out the functions to be performed by the national Government, and although they have set out the functions to be performed by the county Governments, the Constitution says that there will be need for Parliament to legislate for better clarity of these functions. This is a very important statement coming from the Constitution itself. There is need for unbundling of the functions.

There was a Bill that was brought yesterday by Sen. (Prof.) Kindiki. This Bill meant that as we go forward, unbundling has to be done very urgently and professionally. It is not something that can be done by every person who comes here to say that we must unbundle certain functions. Some expertise is needed in this area so that we come up with appropriate legislation.

If you read the Report, you will see that on the issue of rural electrification, there is need for unbundling of functions there. On the issue of natural resources and environment, as long as there is concurrent jurisdiction, the function should be clearly unbundled. The water function should be clearly unbundled and so on.

Who is responsible for unbundling? I think under our legislation, the institution that is responsible for unbundling is the TA. We have to ask whether the TA has been given the capacity in terms of resources, both human and financial to carry out the important exercise of unbundling. The only decision we did not make and which we threw back to the TA was the one on the ports. The Senate Committee on Roads and Transport should engage the TA on why ferries and harbours were not gazetted and on how to clearly unbundle the function.

I entirely agree with the Mover of this Motion that there is no legislation that does not touch on the counties even if it is legislation which touches on the exclusive jurisdiction of the national Government such as national security which has become a major problem in this country. There is no way you will deal with insecurity in this country unless the county governments and the people of this country are involved.

Any legislation, therefore, that touches home security must make provision for the involvement of the county governments and sub counties, wards, local communities and the *Nyumba Kumi* initiative. That legislation must involve all that. Although it is an exclusive function of the national Government, when it comes to legislation, there is no way, as a Senate, that we can miss out because we very much touch on the county governments and the people of this country. There is no legislation, whatsoever that can be said is not a proper jurisdiction of this Senate to discuss, more so, when you come to concurrent jurisdiction and residual jurisdiction.

Mr. Speaker, Sir, you and I, were at two functions this morning. One of them was the relaunch of the Law Reform Commission. The Law Reform Commission is being relaunched because we have a new Act. In that Act, they have been asked to ensure that all the laws enacted and the practices of the Government and everything else are in accordance with the Constitution. They have been asked to also inform the public on the legislation that is coming. We were told that there has to be an audit of over 700 legislations already on our Statute books; to make them compliant with the new Constitution. Most of these legislations were passed when the devolved government was not there. So, we need an input in those legislations and we shall soon be debating the Statutes Law Miscellaneous (Amendment) Bill which has touched on some of the legislations that were passed as the Constitution came into the picture. But after coming into the picture, the Tenth Parliament still went on to pass legislation which did not take cognizance of the new Constitution. That is an important point that was made. We have recommended in these recommendations the priority areas of legislation, particularly in this area, which we must cover.

Mr. Speaker, Sir, the common theme in the Constitution is that money must follow functions. In other words, functions must be costed. When you are transferring a



function from one national level to another, you must give that other, who is going to perform those functions, the resources with which to perform and deliver those functions. One of the great weaknesses that we have had up to now is the fact that up to point in time, the costing of functions has not been done at all. The element of costing of functions should really be the basis of our budgeting process. Although in the first year we said that there was lack of time and, therefore, could not go into all that, we have to go into the history on how much was being spent on this particular function and maybe, add 10 per cent or six per cent to it. Although, again, the same thing has happened, my plea is that we should begin now and ensure that the third Budget should be on the new premises completely, based on the costing of functions plus development money. Then one can accuse the county governments and say: "The costing was right and we have given them money for development. Where is the development that you are doing?" But now everything is in a confused state.

Mr. Speaker, Sir, although we now know that the county governments literary are now performing all the functions that they are supposed to perform, the time has now come when the costing of those functions must be undertaken as a matter of urgency. Now, the only institution that can do this as of now, unless we put another institution into place, is the TA. The TA has been given three years from the time of elections, but it is now almost going. It either has to be there, or if it goes, we, as the Senate, must ensure that the responsibility of costing these functions, as a matter of urgency, is placed on a recognizable body, so that the next year's budgeting process can start on a proper footing.

Mr. Speaker, Sir, I have already touched on some of the laws that need amendment. They are already in the Report and I do not have to mention them. For example, there is the Kenya Roads Board Act and so on. The Committee on Roads and Transportation will have a bigger mandate to play, because infrastructure is key to development. All roads must be classified. Therefore, this is a very big challenge to the Committee on Roads and Transport, to ensure that all roads are classified and that we have a new classification. Based on that, we can now say: "This is for the national Government and this is to the county governments."

Mr. Speaker, Sir, I have said what I wanted to say for today.

**The Speaker** (Hon. Ethuro): Order! Your time is up!

**Sen. Wako:** Mr. Speaker, Sir, with those remarks, I beg to second.

*(Question proposed)*

**Sen. (Dr.) Machage:** Bw. Spika, nataka kuunga mkono kazi nzuri iliyotekelezwa na Kamati hii ya Ugatuzi. Nimependezwa sana na ufasaha na wingi wa maneno ambayo yametumika kuwazilisha Ripoti hii kwa Seneti.

Bw. Spika, nawapongeza wanachama wote wa Kamati hii kwa kazi nzuri. Baada ya kupata ripoti kutoka kwa wenzetu, Magavana, wameweka pamoja akili zao na mawazo yao. Sehemu ambazo wangetaka zigatuliwe ni mambo ya ukulima, barabara,

mazingira, umeme na maktaba. Kwa hii Ripoti mambo ya ugatuji wa sehemu ya afya hayakuonekana kwamba yanahitaji kugatuliwa wakati huu. Serikali iliwapa Magavana kazi hii ya afya mapema mno. Pengine hii ndio sababu tunaona shida nyingi katika sekta hii. Kumekuwa na migomo, ukosefu wa madawa na kadhalika katika zihanati zetu kule mashinani. Kweli haraka haraka haina baraka kama vile Waswahili husema.

Bw. Spika, lakini ningetaka kulaani kitendo cha Magavana wakati walialikwa kuhudhuria mikutano ya kupendekeza mawazo yao kwa kazi ambazo walitaka ugatuji uangaliwe na wapewe. Katika Kaunti yangu ya Migori ilikuwa aibu. Mimi nilikuwa Kisumu na nina hakika kwamba walipata ujumbe. Tulipotuma ujumbe tukiwaomba kufika, tulianza kuambiwa: “Niko njiani nakuja. Nimefika huku na huku.” Kumbe hata hakuwa ametoka nyumbani. Ilikuwa aibu kwa sababu hawakutia maanani umuhimu wa Bunge hili la Seneti kwa kuamua mambo mengine ambayo ni ya faida kwao na nchi nzima. Ninawasihi kwamba wafungue mawazo yao na wafungue vitabu vyao vya Katiba ili wajue kwamba mambo mengine si ya kuchukulia kwa upuzi. Mambo mengine ni ya maana na muhimu na yanahitajika wakati huo. Kwa hivyo, wakiitwa, waajibike na kukimbia haraka kwa sababu hii Seneti ndio inayoangalia maslahi yao.

Bw. Spika, Kamati hii imeangaza wale waliohudhuria mikutano hiyo ikiwemo waakilishi wa Tume inayohusika na Ugatuji. Ninawashukuru sana kwa sababu wao walikuwa na waakilishi kwa Kamati zote 47. Walitoa mawazo yao na kuangaza shida zao na mbio wanazokimbizwa kugatua mambo kama hayo. Lakini walijitahidi kisabuni kuhakikisha kwamba kwa uwezo wao wamefadhili na kuwezesha Serikali hizi za mitaa kufanya kazi zao. Ukisome Ripoti hii kuanzi Ukurasa wa 120 na kuendelea mbele, utaona imeangaza mawazo yao ya kutafsiri mambo yote waliopewa na kutoa hukumu yao. Halafu baada ya hapo, wakaangaza kwa undani sana jambo ambalo wanalitaka lifanyike. Ninaomba kwamba Magavana, popote pale walipo wakitafuli hiki kitabu kwa sababu mimi nina hakika kwamba tutapitisha Ripoti hii. Maadili yaliyowekwa hapa yatawafaa kwa uamuzi wa kesho kabla ya miaka matatu ya ugatuji kumalizika. Muda umeyoyoma. Kwa hivyo, ni lazima waangaze mawazo yao kwa haya mambo ambayo yamependekezwa na hawa wasomi wakuu wa Bunge hili. Kama vile kujenga uwezo wao mashinani na kuangalia mambo ya kustawisha sheria mashinani.

Ni kweli kabisa kwamba mabaraza mengi mashinani hayajakuwa na sheria za kuangalia mambo haya ya ugatuji. Wamekaa kitako. Kazi yao kubwa imekuwa ni ulimwengu mzima; mara wako Australia, Misri na Israel. Pesa nyingi zimetumika kwa minajili ya mambo kama hayo ya kutembea na kujifurahisha. Inafaa waangazia wamefikia wapi katika kustawisha mambo ya mapinduzi mashinani kutoka kwa ile Katiba ya zamani hadi Katiba mpya. Waangalie mambo ya kuanzisha mara moja na yale yatakayokuja baadaye. Waangalie uhusiano uliopo kati ya kaunti tofauti tofauti, kwa sababu mambo mengi si ya kuhusu kaunti vile tumeelezwa na Mwenyekiti. Mambo kama ya chanjo na maji. Huwezi kutarajia mvua vile unavyotaka, hio ni kudra ya Mungu na binadamu hana uwezo kuhusu hali hiyo. Kila mtu ana haki ya kupata maji na hewa. Bila hayo, huwezi kuishi. Inafaa mambo ya umeme na mashirika ya Serikali yaangaliwe yana

faida gani mashinani. Umuhimu wa kuangalia bajeti yao iwe ya kiasi na ya faida kwao. Inafaa waseme wanataka ugatuzi wa sehemu gani kutoka kwa Serikali ya Taifa. Kwa hivyo, mambo ambayo tunayazungumzia hapa si ya mchezo.

Bw. Spika ninafikiri tutapitisha Ripoti hii na sera zake, lakini si mwisho. Kuna sheria nyingi ambazo zinahitaji kutungwa katika Seneti hii na hayo mabaraza ya kaunti ili mradi kuratibitisha na kueneza na kutekeleza yale ambayo tumeambiwa siku ya leo na Mwenyekiti wa Kamati hii.

Bw. Spika, kwa hayo machache, ninaunga mkono.

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

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

**Sen. (Eng.) Muriuki:** Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. Devolution came and Kenyans were yearning for devolution so that some of the services could be brought closer to their localities and more so, through their elected governments. It is very unfortunate that the Governors when called to important forums like this, many of them found it unworthy for whatever reasons they had. We do hope that they have heard the sentiments of the Mover and other Senators so that next time there is an initiative to help them and the *wananchi* they lead, they show up.

Some of the functions which even in the Constitution have put under the national Government, for example, education, when I personally look at it, it looks like the primary and secondary schools education should have been a function of the county. When we look at it now, for example, when the Ministry of Education releases results, the people on the ground look upon the county Government for good results. As and when there will be time to look at what functions go where, perhaps, it would be a good time to revisit the issue of primary and secondary schools education. In the meantime, there could be some negotiation so that between the national Government and the county Government, at least the facilities can go to the county Government together with the resources which are required.

Mr. Deputy Speaker, Sir, there are other issues which came out during these round of talks with the county governments like electricity. This unit called the REA is doing a good job if my place is anything to go by. They have a very long way to go, but we have seen this far is commendable. That does not mean that because it is a unit within the national Government that its functions cannot be under the county Government. All we are saying is that this is a Government unit, it is duly funded, but it is the county Government and the leadership in the county who know where their priorities to install electricity are. So, some way of working together must be found.

Then there is the issue of the roads. First of all, the Constitution talks about trunk roads being a national function. But as far as I know as an engineer, the word “trunk” is just a good word to refer to the main roads but it is not clearly defined. So, I would go by

the suggestion by the Mover that we do classify Roads “A” “B” and “C” as trunks specifically so that we know that wherever there is a class “C” road even if it is within the county, the funding will be from the national Government. The Mover was twice corrected that the classification of the roads is not based on the quality of the roads or the tarmac. It is based on the connectivity from one population area to another. That is the principle all over the world. The Mover should note that because he will have to reply at some stage.

Mr. Deputy Speaker, Sir, then there is the issue of Roads “A” “B” and “C” being national, then “D” and “E” and others belonging to the county. This issue of others is very crucial because some counties have their roads duly classified almost 100 per cent whereas in other counties whoever was classifying forgot many of the roads. In my county Nyandarua, one time we did a complete survey of every stretch of the road that we have in the county. We had a total of 5,600 kilometres yet the then Ministry of Works in their books had only 1,200. So the classified roads in our county were less than a quarter of what the people on the ground want improved. It is important that the Committee on Roads and Transportation takes up the matter, even if it means revisiting the Kenya Roads Board Act so that this classification is done regularly. Reclassification could be done every ten to 20 years so that it is in the law books and so that we know for sure that classification will be done so that those roads which are very small in terms of the populations they are serving, after some years, they become very major. If they are not reclassified, they could be forgotten and the people on the ground will suffer. There is also the issue of health, whereas the county governments are appealing that health services, which constitutionally are theirs, were not given to them soon enough, there is also the issue of the Constitution being not very clear. When you say “referral,” like the Mover of the Motion said, it is not very clear what we mean by the term “referral.” Maybe the medics amongst us should guide us because as far as we are concerned on the ground, if something happens at a dispensary, you refer the case to a higher level, which could be a sub-sub district hospital. If that is not enough, then you refer the case higher up. So, the issue of referral needs to be defined where we are.

Mr. Deputy Speaker, Sir, there is also the issue of upgrading. When devolution came, there are some counties which found themselves with several Levels 4 and 5 hospitals, which are well equipped, while other counties did not have any. So, there is the issue of upgrading these facilities. That means that if you leave it to the Governor and his or her staff, considering the money allocated to them, they will not be able to upgrade these facilities. So, this is an issue again when we come to the County Revenue Allocation Bill, which is the responsibility of this House, both between the national Government and the county governments, although last year we had some argument with the national Government. The input of this House is very important so that the division of revenue between the national Government and the county governments is looked at clearly so that those counties which were left behind can come up. You do recall that this Senate, through the Committee on Devolved Government, raised an issue that going by

the formula given by the Commission on Revenue Allocation (CRA), some counties were being left with inadequate funds which could not facilitate them to perform the functions they had been allocated when devolution came. Other counties did not have any deficiency because they did not have the facilities; perhaps, they did not have any Levels 4 or 5 hospitals. They have no dispensaries worth talking about and that is why the Senate had to come up and say: “let us also uplift those counties which had been left behind before devolution came.”

Mr. Deputy Speaker, Sir, I would also like to remind the House that three counties among the 47; that is, Nyandarua, Tana River and Tharaka Nithi, also found themselves with no facilities at all as far as offices are concerned because before devolution came. They had no municipal or county councils. It is, therefore, important that when the County Division of Revenue Bill comes to this Senate before very long, we should remember those three counties so that, at least, they are favoured a little bit so that they can come closer to the other counties in terms of development. You can imagine if we said we have a Senate; we have Members who are duly elected, but we did not have this Chamber where we come to debate. Like now, when you go to our county assembly, it is being hosted in a Church building. Luckily, the substantive Speaker, hon. Ethuro, had the opportunity to come to Nyandarua County two weeks ago accompanied by a number of Senators. They saw that the county assembly actually meets in a Church building; that the Governor sits in some place above some shops. This is because the funds allocated to the county are already designated to be used for this or the other purpose. So, we need affirmative action from the Senate to cater for the development of county headquarters facilities

Last but not the least, Mr. Deputy Speaker, Sir, the nation is now involved in who is more pro-devolution than the other. You will find the Governors shouting “Oh, we are pro-devolution; the national Government does not want devolution; they are fighting devolution; the Senate is anti-devolution, *et cetera*.” Senators also say they are the ones who are doing devolution and not so and so. Let us agree that we are all pro-devolution. No one is more pro-devolution than the other and we are all moving together. Therefore, each one of us should put in their efforts to make sure that devolution works.

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

**Sen. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I was consulting Sen. Obure, having been the former Minister for Public Works. I was telling him that at one time, I saw an advertisement that all counties should provide land, especially for all county headquarters, and the money would come from the national Government. This was to ensure that, at least, we can put together some semblance of a county headquarters with the offices for the Governor, the county assembly and some offices for the government at the county level. I was asking him what happened to that plan, because having advertised it, I thought it was something that was provided for. He has just been telling me that, actually, it was provided for and the Treasury actually put some money together. But he did not know who that powerful individual who withdrew it. Then, now,

we started having conflicts at the county level with the provincial administration as to who should occupy which offices. The TA thought that we should inherit the provincial administration offices, which were not even adequate in some counties. There was an ugly scene in Kisumu over the big provincial headquarters as to whether the Governor should be the one to move in there or whether it should remain with the provincial administration. I remember that when the Governor got in there almost forcibly and he put some other name to it. I think he called it “Prosperity House”. The provincial commissioner was not impressed. He came and brought the name down. Up to now, we are not sure whether it is Prosperity House or Provincial Administration House. We all know that there is no provincial administration in the law. So, I think this is something that this Senate can debate and agree on. We should actually ask the central Government to set aside money to develop county headquarters at least with necessary provisions like the offices of the Governor and his ministers, offices of the county assembly and all those things that make a government look like a government. When people meet on top of shops and in Churches, we do not look like a government. We look like a relief agency.

Mr. Deputy Speaker, Sir, in Kisumu, where I attended the meetings – and Sen. Orendo was our very good Chairman – we were very strict with the Governors. If a Governor did not appear and he did not send the Deputy Governor, we would not listen to that delegation. I remember we sent away the delegation from Nyamira, Migori and quite a few other delegations. We were happy that the Governors of Kisumu and Siaya attended; while the Governors of Homa Bay and Kisii sent their deputies, but we refused to listen to all the others. In fact, this magnanimity that I have now heard from the Chairperson of the Committee was not intended, because if you really want to be taken seriously, you do not become too magnanimous and says: “although you did not come, although you ignored us, although you thought you were very important, we are very magnanimous because we are very senior. We will just listen to you even when you did not send anybody.” You should have thought that in our resolutions, we should have said that “for the counties that did not send the Governors or Deputy Governors, we will not transfer those functions” so that they feel the pinch. This is a serious matter of a constitutional nature. It is their responsibility to do it so that it can go down to the people who elected them. The people should know that it is so and so who mishandled their matter and that is why there are no roads or hospitals.

I remember the Governor of Kisumu had to come from very far to attend because he knew the consequences of not attending, but the Governor of Migori started going the other direction. Instead of coming towards Kisumu, he started going to Tanzania thinking that he was giving us the contempt that we deserve. That kind of thing must be punished because this is a House of law and we must apply it strictly. When we come to that resolution, I will seek to make that amendment. The areas that did not send their governors or deputies with instructions to carry the functions can appeal again when they are ready.

Mr. Deputy Speaker, Sir, I am in agreement with most of the recommendations that have been made, except to add something on referral hospitals. I have heard the engineer mention them. At that time referral hospitals were only two, that is, Kenyatta National Hospital (KNH) and Moi Teaching and Referral Hospital, Eldoret. It is extremely unfair to some hospitals that are just as big as those ones and covers bigger regions. For example, look at Jaramogi Oginga Odinga Hospital in Kisumu. This hospital serves the whole of Nyanza region. Kakamega Hospital serves the whole region as a referral hospital.

**Sen. (Dr.) Machage:** On a point of information, Mr. Deputy Speaker, Sir.

**Sen. Kajwang:** I will appreciate.

**Sen. (Dr.) Machage:** May I inform Sen. Kajwang that referral hospitals as referral in the hospital nomenclature refers to Level 6 hospitals.

**Sen. Kajwang:** Thank you very much, Sen. (Dr.) Machage. He is an expert in this field. Last time we were trying to learn all about these levels. It is a new system that has been created by those who are experts in this field. I am glad that now I know that Level 6 are referral hospitals. We could say that, probably, it is KNH and Moi Teaching and Referral Hospital which are in Level 6. What is important is to bring other hospitals to that level. We must do so with national resources because county governments do not have those resources. We must do that with the one in Kisumu, the one in Kakamega, the one in Mombasa and so on. Actually these are what used to be called provincial hospitals, if we really want to fair to this country. What used to be called provincial hospitals must now be brought to Level 6. In fact, if we agree with the national Government that way, then every region will have a hospital that has facilities and capacity to handle some of the complicated cases that referral hospitals were intended to handle.

Mr. Deputy Speaker, Sir, let me say something about the classification of roads. Our Committee in charge of Roads and Transport is seized of this matter. In fact, there is a draft Bill, policy and statement that we are looking at and I think we will consult widely with the Senate before the Bill comes to the two Houses. Of course, there will be pull and push between this House and the Lower House. Currently, the Lower House is enjoying some executive functions of handling certain resources at the constituency level, including the monies given to Kenya Rural Roads Authority (KeRRA). In fact, one of them told me that they are going to make all roads to be national roads. The Constitution provides that there are county roads and national roads so one cannot make all roads to be national. I am just warning us that there will some kind tag of war, pull and push regarding this matter, but we hope that we will come to some agreement. If you say that a county should construct Class "C" road, and this is a road that moves from one county to another county, should be constructed by one county and, probably, they do not have the resources then it would not be possible. So, we should leave that to the national Government, but take all the others that can be fixed with the little monies we have.

Mr. Deputy Speaker, Sir, I want to talk about education. If you look at the Constitution, the way it was written, the intention was very clear. That we are going to

leave university education and national polytechnics to the national government and the rest should go to the county governments. That was the original thinking. If you look at the way that Constitution was written, it is like there was a mistake. It was an afterthought because it is quite mixed up. The reason we all went the way we went, which was a mistake, is that the Kenya National Union of Teachers (KNUT) was very loud and they feared that they would be swallowed. They thought that they would be paid by the county governments which are broke. They thought that they were going to be like municipalities and county councils. They did not know that even if that function was given to the county, the Teachers Service Commission (TSC) would still be the one employing and paying them and that the education level would still be handled at the national level. The county would be dealing with infrastructure and equipment in schools.

If you go to every secondary school that is what every board and what every head-teacher is telling you. They need assistance from the county. When you tell them that the function is with the national Government, they request for assistance from county Government. Most of the facilities in the schools are owned by the community. Most primary schools were started by churches and communities. Most secondary schools were started through *harambees* and supported by Parents-Teachers Association (PTA). The Government has shared those responsibilities for almost 20 years. The Government gives teachers and the community does the infrastructure. Now that the county government has some money which they plan to spend on infrastructure, now the Control of Budget is saying that she cannot allow that. It is almost a contradiction of the intention of this Constitution. Devolution is about capacity building of individuals. We want to create wealth for individuals. Unless someone is empowered, a road may pass near your home, but you have no use for it. So, the primary thing is to develop the individual. There is no way of developing an individual better than teaching and training that person. That is what we are talking about. The national Government should tell the Controller of Budget to allow the county governments to budget for those schools with the little resources they have. This is to support the schools of excellence that we started just a year before elections. We put some money there called them schools of excellence. We are very serious about them, but unless we support them with grants, infrastructure and equipment base, we will not be helping them. They will be worse than the day schools that we know about. I want to support and, at a later time, we may want to bring some amendments.

I am glad that some counties were talking about schooling infrastructure. They think that the national Government should not interfere with the county governments. If they want to spend their money on schools, they should be allowed to do so. If they want to build libraries, laboratories and equipment for laboratories, they should be allowed to do so. If they want to bring in additional grants to support additional teachers which the Teachers Service Commission (TSC) cannot employ, especially graduates who have no jobs – the school boards are now paying them Kshs10,000 to help in the schools – that is okay because these are very good teachers. They are youthful, energetic and brilliant.



However, these schools are at times very poor to support them. We should open up so that the county governments can carry out these functions.

The county governments are now spending money on certain things that if you ask me are not very useful. If they were allowed to spend money on education, they would do very useful things for those counties, especially teaching and training.

With those very many remarks, I support.

**Sen (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir for giving me an opportunity to make a contribution on this very important Motion.

First, I wish to thank my colleagues, Senators, who took time to go and listen to the appeals made by the Governors in all the places that they met them. The membership of the Committee that I was with in Nakuru, central and south Rift is not reflected here. However, nevertheless, we appeared and met several delegates from various counties. I would like to contribute on an issue regarding storage.

It is recommended, in the Report that we made here, that the cereals silos which are there should remain under the national Government and that the county governments should construct others. On second thinking, I think this should be done the other way round. The silos that we have are not very significant for national security as we understand. These are storage facilities for civilian use. The ones that are there, at the moment, are good enough and can remain in the counties.

The national Government should construct national storage silos. These are silos that are strategically located, probably, underground in bunkers for them to serve as security storage. They need to be strategically located, not on road sides, but near barracks and constructed differently than the ones that we have. If we had an aircraft carrier, for instance, this would be the best place to store our national storage in terms of security.

The Report recommends that the silos that are there should remain in the national Government. I think this should be the other way round. The silos should remain under the county governments. The national Government should construct silos that will truly serve us so that we have a national capacity to feed ourselves in times of difficult situations. This is one of the recommendations that we, as the Senate, can make.

Second is the issue of water. Water will be a very difficult issue. I am glad that we have said that we will unbundle some issues regarding water. We will unbundle this so that the water becomes useful to us. It was mentioned that it is difficult to use water because power generation is very expensive. I would like to differ with that. Already, the village I come from has developed three megawatts of power from the river. I am sure this will be done by so that we have several other five megawatts power stations around the river.

In Bomet County, there is one very short river that rises from the Mau and very quickly flows to Sondu Miriu. In that short distance, it drops close to 1,000 feet. That can generate a lot of power. We can develop five megawatts of power and still allow water to go to Sen. (Prof.) Anyang'-Nyong'o's County where he can use it for whatever else that

he needs without any confrontation. This is not a question of unbundling water that we can make good use of.

Lastly, I know that we have devolved some functions. One of the functions that we have devolved is the Early Childhood Development Education (ECDE). However, from the education tours that we have made, the county governments have hardly made any headway in terms of changing or developing early childhood education. In fact, there are a lot of funds available for this. We have made recommendations on what type of facilities to recommend. However, I can almost say that most counties, although this is a devolved function that has been given to them and funded, it has not been done appropriately. I would like to request that on functions which have been devolved, Governors and others who are concerned should make a difference as we continue to devolve the other functions that we feel should move to the county governments. The ECDE is one of them. I expect that the entire country will have similar facilities for ECDE irrespective of the county. We thought that by now we would have made ECDE schools comfortable by feeding programmes. This would allow the three year olds to stay in school for four hours. Otherwise, they would hate school forever because this would be a camp for them to stay in and remain hungry.

We want to request Governors to make use of devolved functions and to make a difference with the Funds that have been given to them. With regard to roads, reclassification of roads is the key to unraveling some of the difficulties we have in this area. We are lucky that this is a legislative function that falls within our ambit. I am sure that this is an area where a lot is expected from this House with regard to reclassification of the roads and unbundling them so that both county and the national Governments can make significant contribution in our road network in the country.

With that, I wish to support this Report. This is a where we have put a lot of our energies. It should take us somewhere both in terms of the image of this House and in terms of our contribution to the nation.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Deputy Speaker, Sir. I definitely support Sen. (Prof.) Lesan and Kajwang on what they have said regarding this Report.

First, Sen. Kajwang referred to the issue of referral hospitals. When I was the Minister for Medical Services, we proposed to transform 22 large volume hospitals, both provincial and others to be referral facilities. This was precisely because of the reason that Sen. Kajwang is advancing. We foresaw that counties would not be in a position, in a devolved system of Government, to run referral facilities. That Cabinet Memo which was also a Bill to the National Assembly was opposed by the Constitution Implementation Committee (CIC) under the argument that it was against devolution. Since the health sector had been devolved to the counties, it was agreed that the national Government should keep away from handling hospitals. This is a very partial reading of the Constitution.

The Constitution also says, in Article 4, that we have two levels of Government; that is, the national and county governments. They are inter-dependent and they should

run their affairs through consultation and cooperation. In areas where the county governments do not have the capacity to deliver essential services like health, it is important that there is very close collaboration between the national Government and the county governments. After all, these two types of governments serve the Kenyan people. Without the Kenyan people living, there will be no national Government or county governments. So, I would really collaborate with the Committee on Health of this House, to introduce that Bill in this House, so that we can consider how to strengthen referral facilities nationally and involve both the national Government and county governments in running these hospitals. This is because to tell you the truth, we are sitting on a time-bomb where the delivery of healthcare--- In Article 43 of the Constitution, every Kenyan has a right to quality health, including reproductive health. If Kenyans have a right to health, they can actually take the Government to court when the health system breaks down and they cannot be properly treated.

Mr. Deputy Speaker, Sir, take, for example, the recent proposal by the Jubilee Government, that maternity care should be free in hospitals. You do realize that the national Government only gives hospitals, like Kenyatta National Hospital, Kshs17,000 for every delivery. This amount cannot cover a delivery which involves caesarean section or post-delivery complications. So, what is happening in most hospitals is that they will only give you free maternity care just delivering, because that is what the money covers. Subsequently, it is up to you to get some money to cover the extra costs. These are some of the half measures that we take that do not really satisfy the Kenyans' needs.

Mr. Deputy Speaker, Sir, secondly, with regard to the Bill that was discussed in Parliament yesterday, I am glad that it was deferred because that was also my proposal, when I was Minister for Medical Services, knowing full well that medicine is a very sensitive area. If you leave every county government with their low capacity at the moment, in terms of professionals or even knowledge of pharmaceuticals, they are likely to fall victim to all kinds of quacks, who will come and tender for the delivery of pharmaceuticals. Very soon, because we have a major problem globally of counterfeits, things that we had done away with in the health system on how to deal with counterfeits at the national level, through the Kenya Medical Supplies Agency (KEMSA) will rear their ugly heads again. These are some of the things that I think are so important to look into, especially if we do not go dogmatic. There is a tendency in this nation to go dogmatic and think that there is a clear-cut line, that this is either county or national. It is not usually that clear-cut in real life until you deal with the functions.

Mr. Deputy Speaker, Sir, the good thing with this Report is that we are trying to deal with the issue of functions. Exactly what types of functions do we take to the counties and how much resource do we need to ensure that those functions are fulfilled? The same should happen to the national Government. If, indeed, it is functions to which money should go, the national Government should also lay it bear and indicate why some money is being retained at the national Government level. So, functions should not just

be a one-way affair. Function is a governance affair and that should be made very clear when we are dealing with Budget issues. So, I think that this is the first step where there will be logic in allocation of resources, when the Budget is discussed. We shall be able to see where money is going in terms of work performed. It is unfortunate that some Governors – not all – did not realize that this is a very important function and responsibility in what they are doing. This debate should be continued after we have adopted this Report from our Committee. I think that we should really follow it with a very serious seminar or workshop with the Governors. This is because I have a feeling that there are many people who do not understand the Constitution and speak through guesswork.

Mr. Deputy Speaker, Sir, the other one is county assemblies. They do not really know that they should do oversight. Many of them are busy doing exactly what councilors did; looking for tenders in counties and fighting Speakers over tenders. Many of them are involved too much in looking for plots. There are some good Members of County Assemblies (MCAs), but, unfortunately, the good name of county assemblies is being besmirched by those very aggressive ones who think that the county assemblies should be a rent-seeking arena.

Mr. Deputy Speaker, Sir, finally, there is another issue that I want us to look at in terms of functions. The area of health ambulatory and emergency services is very important. Indeed, the Constitution says that Kenyans have a right to emergency services, but I would bet my bottom dollar or shilling, that the majority of counties today are very ill-prepared to deal with emergency services. They think that emergency services are just a creation of purchasing ambulances, which is a mistake that the national Government made for a long time. So, you will find a lot of Combis being bought and delivered to health centres as ambulances. All they have is a siren on top, a cross on the body and a few benches inside. That cannot be an emergency service. It is absolutely ridiculous.

When I became Minister, I found that we had so many of these things in the yards of hospitals. In fact, there were “cemeteries” of ambulances, which were not serving anything, and people were asking for more. I told the National Hospital Insurance Fund (NHIF): “Please do not deliver these Combis or *matatus*, because it is a waste of Government money. Let us have proper national ambulatory and emergency services.” We did have a proposal and policy paper in the Ministry, for national ambulatory and emergency services. But, unfortunately, devolution came along and it was said that ambulatory services was the province of counties. They are back to buying Combis and things with crosses on them. They say this is an emergency service. It cannot be an emergency service. People are going to die like flies with these things fails to work. So, I think that it is upon this House, really, to come up with a proper policy on national ambulatory and emergency services, to save this country from yet another 50 years of no proper ambulatory and emergency services.

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

**Sen. Obure:** Thank you very much, Mr. Deputy Speaker, Sir. First, I want to thank the Chairman of the Committee on Devolved Government for the able manner in which he moved this Motion. I also want to thank the Members of his Committee for a good job done in compiling this Report. I also want to thank Sen. Amos Wako for eloquently clarifying some of the issues, when he seconded this Motion.

Mr. Deputy Speaker, Sir, I want to take a brief moment to clarify a little on what Sen. Kajwang alluded to earlier on. Before commencement of devolution, Sen. (Prof.) Lonyangapuo and I worked together at the Ministry of Public Works. We felt at the time that there was need to assist the would-be county governments in putting up basic infrastructure in their various areas. This is because a survey that we had carried out indicated that while some counties were fortunate to have structures in place, there were other areas where these structures were not available at all. Counties like Nyandarua and Tharaka-Nithi did not have any structure that would be suitable for accommodating, for example, the headquarters of the county or workings of the assemblies and even residences. So, we felt that there was need to do some prototype structures across all the counties, so that all counties commence on equal footing.

This is what we wanted to do. So, discussions were held with the Treasury at the time and an agreement was reached. In fact, funds were identified. They assisted us with the initial funds to carry out surveys and do the drawings and all that. But then, some opposition arose in the Government at that time, from certain quarters within the Government Ministries and institutions which felt that they should be the ones doing these jobs. That resulted in a stalemate, as a result of which, no progress was achieved. That is why today some counties are still disadvantaged. They have no place to work from or are working from makeshift structures. I believe that if we had been allowed to do what we had wanted to do, this would have provided a proper environment for all the counties to start work at the same time.

Mr. Deputy Speaker, Sir, the Speaker constituted committees comprising of Senators to listen to appeals that had been made by the Governors on behalf of their various governments. I happen to have been in the Committee that sat in Kisumu to listen to appeals made by governments in Siaya, Kisumu, Nyamira, Migori, Homa Bay and Kisii. I was extremely disappointed and, in fact, very surprised to note that some of the Governors who had made appeals did not want to appear before Senators essentially on the grounds that they will feel uncomfortable and that this would give an indication that the Senators are more superior. These supremacy wars do not help. Wananchi are not interested in those supremacy wars. The Constitution is very clear and it gives each one of us a role to play. I think we should begin to read and understand the provisions of the Constitution we all endorsed overwhelmingly.

Those who came before us in Kisumu were very well prepared. The information they gave us helped us to discharge and complete the task we had been given. I also want to take this opportunity to thank the Governors and their Deputies who appeared before us in Kisumu. I entirely agree with the recommendations contained in this Report, but I

also want to say that it is not enough for county governments to just acquire functions. It is important for them to perform these functions effectively and ensure that services are delivered effectively to the satisfaction of the people they serve. Today in our counties, the condition of roads is very pathetic everywhere. The roads have not been attended to for a long time. Some of them have become impassable; *wananchi* are unable to move from one point to the other and are disadvantaged a great deal because the goods cannot move around; they are not enabled to trade. This is because there is confusion on who is responsible for what road; what role KeRRA, KenNHA, KURA and the county governments are supposed to play. The sooner this matter is resolved, the better for everybody.

Mr. Deputy Speaker, Sir, personally, I have read the recommendations in this Report regarding the road sector and it is my view that those roads that have been classified as “A” to “D” should be the responsibility of the national Government. Roads that were initially classified as “E” and those that were not classified at all should be the responsibility of county governments. That way, I think the county governments will be left with roads “E” and the unclassified ones so that they can open up these areas, particularly in respect to unclassified roads. I think the resources available to them will be just about enough to enable them undertake these improvements and maintenance of roads “E” and the unclassified ones. The national Government, in my view should take responsibility for Roads “A” to “D”.

Sen. (Eng.) Muriuki and Sen. Kajwang alluded in their contribution to education. We all know that education is the function of the national Government. However, I am very concerned because when you go out to the schools in the rural areas, the situation is pathetic. The infrastructure in both primary and secondary schools is very poor. Classrooms and laboratories are non-existent if they exist at all. In fact, they do not exist. You will find there are children in those classrooms, but there are no desks. In many areas, roofs of some of the buildings have been blown off. This task has been left to parents and yet it is not possible for parents to shoulder this responsibility. We know that we vote large sums of money to the national Government to enable them put up infrastructure in the various schools. It is not possible for the national Government to go down to the ground to identify which schools need what assistance.

I am appealing that although this is a function of the national Government, we, as a nation, could do by invoking relationships between the two levels of Government so that this particular function of putting up infrastructure, through an arrangement, can be passed over to the county government because they are closer to the locations where those schools are built. I am sure working together we will be able to uplift the conditions by putting up more decent infrastructure for our children in our schools.

With those few remarks, I support.

**Sen. Wangari:** Thank you, Mr. Speaker, Sir. I want to start by saying that I support this Report. I do not know whether it is an omission but, of course, the Committee that went to Central Rift Valley is not indicated in the list of the Committees.

That was the Committee that was listening to the appeals from about seven counties, because we had Nakuru, Samburu, Nyandarua, Bomet, Baringo and Narok. I hope that, that can also be corrected.

Mr. Speaker, Sir, having been the Vice Chairperson of that Committee since its inception, I know that we really worked very hard to make sure that every Senator participates in this exercise. We actually had to postpone it severally so that we could get the very best time that the whole Senate can participate, owing to the importance of the matter that was on our table. From the genesis, we know that about 29 counties had appealed for certain functions, but from the Committee, we actually agreed that we should extrapolate this to all the counties because the issues were really cross cutting. It was very unfortunate for some of the Governors not to take it as seriously as it was. I also want to congratulate those that took their time in the Committee that I was in, that sat in Nakuru. We actually had the Nakuru Governor showing up; we also had the Baringo Governor coming from very far to attend that meeting.

Mr. Speaker, Sir, these issues were mostly cross cutting, as has been reported in this Report and one of the issues that was thorny in all the counties that we listened to on that day was definitely the issue of roads. It was not really open to the public. I am sure if the public was allowed to sit in those meetings – and I am sure some did, because they were not closed meetings – what the Kenyans really want to see is better lives. They really want to see the impact of devolution, because we know as it is right now, there are some areas that for the past one year of devolution, they have received more money than they have ever received in the last 50 years. I think that is what Kenyans want to see.

So, having also sat in the Committee on Energy, Roads and Transportation for the past one year, I was also a part of the back and forth discussions that really happened in terms of the roads, and we had a very hard time. At some point, we even had to get arbitration when things got really tough on that issue. But I think we had made very good progress in terms of even getting the draft Roads Bill as a Committee. I hope that the new Committee will submit it to this House when the time is right; or, rather, it will be tabled in this House when it is ready so that this can be dealt with once and for all.

Mr. Speaker, Sir, the other issue that came up was on natural resources, especially the forests. Some of the counties were concerned – and one of the ones which were very vocal in the meeting that I sat in was Samburu – with the management of forests. In our meeting, we were also lucky to have the Vice Chairperson of the Transition Authority (TA) sitting in, so that we could answer some of these questions. If you refer to one of the annexes on the questionnaire that we used, these questions, especially on ascertaining the capacity of the counties, was the role that was given to the TA. Having the Vice Chairperson with us also helped in terms of answering these questions. Of course, we must be alive to the fact that the expectations of Kenyans are very high and they do not really have the time to wait. That is one of the challenges that we have had, because as you can hear from my fellow Senators, for some of these systems and structures, we are

actually starting afresh, starting from where the county governments sit. It has been one year and it has not been easy.

Even the TA – the body that was charged with being the midwife of the process in terms of ensuring that the counties have the capacities to deal with these functions – was also in a very funny position because the Governors want the functions right there and then. But they also had to consider the matter objectively as a Commission or as a body, to look at how best these functions would be carried out. I know some of these bodies – like the Rural Electrification Authority (REA) – had a very good working relationship with the counties. Somehow, they managed, through talking to each other and talking with each other, to even get a way of working, and we are still seeing their work being carried out at the counties.

Mr. Speaker, Sir, having sat in the Committee on Energy, Roads and Transportation for the past one year, we have also had the chance to discuss the draft Energy Policy with the Ministry, which I am sure will be tabled in Parliament very soon. We have had to put in our input as Senators in terms of our role in protecting counties when we are talking about energy issues. I am sure that, that can also be emulated by other bodies.

Mr. Speaker, Sir, there is also the issue of library services. In the Fourth Schedule, library services are actually supposed to be carried out by the counties, except the Kenya National Library Services (KNLS). I think there has to be a way, maybe by using Article 187 in terms of agreements that can be entered into between the two levels of government, of some of these issues getting a way forward in terms of making them be useful to the counties and also in terms of giving the counties a part to play in order to make them to be performed in the best way possible.

Mr. Speaker, Sir, on the issue of wildlife – and I know this also came up, especially with the counties that have national parks – I know it came up with Nakuru in terms of the role of public participation. I know that in the recent past, this issue has also been in the media in terms of what some of these organs of Government, like the Kenya Wildlife Service (KWS), are doing to tackle some menaces like poaching. I saw it in the media yesterday or the day before that we have counties already protesting when we say that we want to hire rangers only through the National Youth Service (NYS). To them, this is trying to lock out the people who are at the county level. These are some of the issues we also need to talk about so that we can get the right procedure and so that we are also inclusive. That way, then, we will be talking about having a successful fight on poaching.

The other issue, Mr. Speaker, Sir, is in terms of education. I know a lot has been said about it, and my issue is on the Early Childhood Development (ECD). I have seen some counties which have put up advertisements in terms of hiring ECD teachers. We have also seen the Kenya National Union of Teachers (KNUT) protesting that decision and saying that the county has no capacity to hire ECD teachers. We have said in this House that we need to relook at some of these functions by looking at what level is it best



performed at. It is not just about transferring functions; it is about transferring these functions with the knowledge that these functions will need resources and capacity. I know we are saying that, that cannot be an excuse of not transferring a function; it is supposed to be the national Government creating that capacity. But we also must be realistic in the pace that we take. With this conversation – and I am hoping that this conversation, as it has been proposed by one of the Senators, that we need very serious sittings as a follow up of this exercise – we will sit together as Governors and Senators on one table and agree on how best to do these things. This pointing of fingers is really not helping this country. The people want services, and they want them done, and done efficiently.

Mr. Speaker, Sir, I remember that in my Committee, we sat in Nakuru headed by Sen. Moi. I do not know whether that was put here because we had actually agreed that, yes, we will listen to the County Executive Committee (CEC) members who come. But there had to be repercussions, because we cannot think that is business as usual; that you can decide that you would not just show up and there are no consequences. Then that means that it is really an exercise in futility. I think what we had said in my sub-committee was that we will listen, but we still will summon the Governors of the counties that were not represented when we will be tabling this report. I still hope that we can still pick it up, because it should not just end here. I think the importance of these appeals has been put forward; it was the counties that actually used this route as provided for in the Constitution, to contest what had already been done. Then how do you contest and you are not even there to defend it? I think it should be that simple; that there should be consequences, and we should be seen to implement and carry out those consequences.

With those few remarks, Mr. Speaker, Sir, I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Chelule.

**Sen. Chelule:** Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. First, I want to congratulate all the Senators who visited various counties. I hope the purpose of us visiting counties was to know how the transfer of functions has impacted positively on *wananchi*. It is for that purpose that we are here as a Senate.

*(Microphone failure)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Try another one. Go to the Dispatch Box, if you must.

**Sen. Chelule:** Mr. Deputy Speaker, Sir, I was thanking you for giving me this opportunity to also support this Motion. I want to thank all those Senators who visited various counties. I hope the purpose of our visit to counties was to determine whether the transfer of functions to the counties was impacting positively on the people we represent. As a Senate, we represent counties and I am surprised that some governors were not willing to attend those meetings. I do not know whether it is due to supremacy wars. As Senators, we wanted to know whether the act of transferring the functions to the counties

has yielded benefits to the people. I want to thank the Chairman for making arrangements for all of us to be there. It was good knowing the problems of our people at the grassroots. I was sitting in Nakuru County where around seven counties were represented. Most of the issues were cross-cutting. These include issues to do with roads, agriculture and education.

Mr. Deputy Speaker, Sir, I noted with a lot of concern that there are issues about agriculture. I want to request the Chairman of this Committee to make sure that each and every item comes out clearly in this report. The issue of agriculture in most of the counties is a problem. We all know that there is a problem with potatoes and pyrethrum. Currently, farmers are not dealing with pyrethrum because of the problem in that industry. The issue of potatoes is about planning materials. Right now, we all know that potato farmers are suffering because there are no seeds. They do not have good seeds. They also have a problem in packaging and marketing.

Otherwise we were so happy to have gone round the country and I think arrangements should be made again for us to visit those counties. We should do so until everyone is happy with the services at the county level. The people we are representing would like to know which functions have been fully devolved and which ones have been partially devolved. We all know that agriculture has been devolved and we would want the citizens to be very much aware. We also want this House to be aware of the problems facing farmers. We all know that farming is a key activity in our county and we are here as Senators and also as farmers. Farmers of this country need to be represented fully and I think this is the right House to represent them. This House should know that the agriculture in Kenya is not up to date. There are a lot of problems especially when it comes to seeds and other things.

Mr. Deputy Speaker, Sir, I want to request the Chair to make the same arrangements so that sometime this year, we can go back to visit the counties and come with a report.

With those few remarks, I support this Motion.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, first, I want to thank the Committee and indeed all the Senators for the manner in which they handled the petitions. It was indeed a very consultative process and a very good experience for many Senators. The decisions which have been arrived at are quite reasoned and in the interest of the counties and also quite frankly in accordance with the Constitution.

Mr. Deputy Speaker, Sir, the functions which will be devolved will indeed require funding. The next step that we should be looking at is once this Motion is approved and the functions are devolved, we should ensure that there is adequate allocation. There will be challenges especially in areas where there are shared responsibilities. We should be able to come up with a formula of sharing such funds. It would be of no use to devolve functions and not give the counties the necessary support in terms of funding.

We admit that in terms of devolution, we have moved faster than perhaps we anticipated initially. Most of the functions, within the first and second year, are devolved.

In the third year, perhaps, we should be through. As we devolve, questions are arising as to whether the services that are being offered have actually improved or not. It is of concern to the people. We know that counties are still developing capacity but there is an apparent indication that this is very slow. As we are speaking now, even the personnel and experts required to work, have not been recruited. The chief officers who are the equivalent of the principal secretaries have not been recruited. We really wonder whether chief officers are necessary. At the national level, you can imagine if permanent secretaries or principal secretaries were not recruited for a whole year. This is an area that the counties should take seriously. Functions have been devolved but there is no capacity.

Mr. Deputy Speaker, Sir, the public expects better services, better roads, better health facilities and so forth. Unless there is change which can be seen by the people, the attitude towards devolution might not be the one we expect. When you talk about roads, we know that Kenya Rural Roads Authority (KeRRA) has been doing some roads in counties and constituencies. They have done a good job in some counties and we expect that the county governments should even do better. I want to encourage them to do that so that we do not dampen the spirits and expectations of the public.

Mr. Deputy Speaker, Sir, as we go along, we expect county governments to lead in giving legislative proposals to the Senate so that we can support them. Legislative framework is very important for them to implement the devolution aspects that we are talking about. Counties are now craving for more functions to be devolved beyond the ones devolved under the Constitution. As a Senate, we support this because we believe in devolution. Our function is to promote devolution. We have to see that the devolved functions are implemented properly. Polytechnics are a function of the county governments but implementation is something we are yet to see.

Counties should also improve the Early Childhood Development Education (ECDE). We are now seeing requests for security functions to be devolved. They should try to, first, implement what has already been devolved so that we have the courage and ability to support them.

The other issue is about the attitude of various levels or organs of Government towards devolution. We are all servants of the people; whether we are in the Senate, whether we are Governors, Cabinet Secretaries or Chief Officers. Talking about who is senior to who should not arise because, at the end of the day, we serve the same Republic. The role of the Senate, according to the Constitution, is to represent counties. We should represent counties wholesomely including the Governor, county assemblies and so forth. Our responsibility is also to serve and to protect the interests of counties and their governments.

The Constitution does not limit us to the functions that have been devolved when we are representing counties. Therefore, when it comes to legislation, I support the view that we represent counties in all matters concerning legislation including those concerning foreign affairs. Our counties are part and parcel of Kenya and anything that

happens abroad will affect us including matters of insecurity. We should also see how Money Bills can come to the purview of the Senate.

With those few remarks, I support and thank my Committee and the Senators who have participated in this process. I support.

**Sen. Mositet:** Thank you Mr. Deputy Speaker, Sir, for giving me this chance. From the outset, let me congratulate the Committee and its Chairperson, Sen. Murkomen, because it did a good job. They made sure that the whole exercise was carried out by all Senators, meaning that all counties were well represented and took part in the exercise.

From the outset, I support the Report. I would like to say that Governors appealed and did so in writing. They wanted some functions to be devolved to them. When the Senate asked them to present their issues and to put them in black and white, they felt that they were too superior to appear before the Senate. The issue of seniority should be trashed in this country. We need to remind them that when devolution was born in this country, it was supposed to serve *wananchi* and Wanjiku who is in the village. The issue of superiority should not have been played into when they were requested to come and present their issues.

I also join my colleagues in saying that Governors who did not come and did not apologise for their absence should not see the Senate as a House to use so that things can reach them. We need to remind them that they cannot function without the Senate. In fact, it is this Senate which makes sure that funds go to counties so that Governors become managers of those funds. When we do that, we do not want them to misuse the funds. We want them to make sure that they serve *wananchi* through the correct ways.

I want to pick on something that one of the Senators has raised which this Senate needs to look at. We have some officers at the county level called the County Executive Committee members (CECs). We also have Chief Officers. The two cadres of officers have the same qualifications. We are told that the CECs are supposed to make policies. Their work is to sit in the office but the others are signatories of the Authority to Incur Expenditure (AIEs). In one way of the other, one officer is redundant. As we talk about wastage of funds or wage bills, it is also good to note that at the county level, we need one officer there and not two.

With regard to functions which are being devolved, I agree, totally with the Committees and the Chairpersons that the funds must also be devolved. Kenyans now feel that they have achieved Independence. With devolution, many areas of this country which had not been attended to feel that there is a Government in place. It is only with Kshs210 billion that Kenyans are feeling the difference in governance. This is a challenge to the entire Senate. In my county, with only Kshs3.9 billion, we are already appealing for more. In the Budget that was read, the national Government took about Kshs1.3 trillion.

I have tried to ask whether apart from the National Youth Service (NYS) which has a small vote; D9 or D8 and has done few water pans in my county whether there is

anything else for us. We also have the Rural Electrification Authority (REA) people who have done something. We need to ask how the national Government is being felt. Let us not concentrate so much on the Kshs210 billion which we are already seeing. We need to see what the Kshs1.3 trillion has done in the last one year. Where has it been used? I believe that the Senate has a responsibility of oversighting the national Government in knowing how particular counties gained.

The REA which is a national institution has really been felt in the country. I listened to one Senator who said that in his county, the REA is being felt. I believe that this is one of the areas where the Jubilee Government, once it gets ready to devolve the laptop project, will gain from. The REA has been seen on site and we can almost say that each and every primary school is on the grid and will be connected to electricity.

Mr. Deputy Speaker, Sir, when it comes to roads, I have no words other than to support the Committee. In fact, they agree that Class D roads and below should be classified as county roads and devolved to the counties. I believe that, that is the best way to go, because Class D roads just traverse constituencies or divisions, but still within the counties.

Mr. Deputy Speaker, Sir, as the Chairman said, it is clear in the Constitution that the forest service should be left to the national Government. But the institution which has been entrusted to look after forests and make sure that the forest cover that we have in the country is enough, or the old trees can be converted into timber or other useful products, is responsible for the depletion of the forest cover. The forest cover is being depleted and the only people who can feel the pain of losing the forest are the owners, who are the county people. As much as the Constitution says that the forest service should be left to the national Government, I think that the Senate needs also to use its authority. We need to legislate and see to it that the county governments will not just be there to watch the forest cover being depleted in the counties. They should really be allowed to manage the forests.

Mr. Deputy Speaker, Sir, as much as we have the Kenya Wildlife Service (KWS) rangers, we also have the Kenya Forest Service *askaris*. All of them are in the forests and take care of the animals and guard them against poaching. But in this country, rangers and those who take care of the forests have turned out to be the enemies of the very natural resources that they have been entrusted to care for. We are aware that some people are protesting after hearing that the rangers will be recruited from the National Youth Service (NYS). I think that they have a point. With regard to the Mara, if you ask the laymen, they will tell you without mincing words that the poachers are the KWS rangers. Before the KWS was deployed to the Mara, there was no poaching, but the moment they were deployed there, poaching started. So, there is no other way that you can describe who the poachers are.

Mr. Deputy Speaker, Sir, on education, I also agree fully with my colleagues, that in this country education is the backbone of development. There is no way that we can develop without education. Therefore, we cannot let the counties to run only the Early

Childhood Development (ECD) education. We know very well the status of primary education. I think that it is the high time that the Senate comes up with some laws to make sure that the infrastructure for both primary schools and secondary schools is taken up by county governments.

Mr. Deputy Speaker, Sir, every year we cry about our youth being on the streets without jobs and yet we create them every year. We create them immediately they sit for their Standard Eight examinations. Immediately the results are read out, 85 percent of that population are left without any hope of joining secondary school or any institution. From there, we start breeding a society which is a burden to this Government. The only way to do it is to make sure that in every primary school, we should have an equivalent secondary school. The other way to do it is to make sure that as much as we say that there is free primary education, we should also offer free secondary school education.

The education curriculum should be improved so that some skills can be taught at this level. It is not really good when after Form Four, the graduates still need further training as artisans, tailoring or carpentry. These courses can be introduced within the four years in secondary school so that after the fourth year, they have grades as, for example, Artisan Grade I, II or III and from here, we can get the best painter, plumber, carpenter and tailor. This way, we can have people who are self-reliant. This will enable us to solve the unemployment problem we are having.

We also need to come up with middle level colleges where we shall reinforce and emphasize on technical courses. The way it is right now, we are having mass production of managers and you wonder who they are going to manage when they do not have staff. We should allow the counties to handle the education infrastructure.

Mr. Deputy Speaker, Sir, I also fully agree with the Chairman that the library services should be a role of the counties. I do not see how we can really recognize and appreciate devolution other than when you go to a constituency and find a library. There should be a chance for the pupils to run to the library and read when they are not in school. As the Mover of the Motion said, our nation is being reduced to a nation where the youth are just on Facebook, Twitter and WhatsApp. The other day I went to visit a senior citizen of this country, Hon. John Keen, and I was really challenged because I found him reading. We may think we are becoming digital whereas we are degenerating to a level where illiteracy will be bred.

I support.

## ADJOURNMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! It is time to adjourn the business of the Senate. This Senate stands adjourned until tomorrow, 17<sup>th</sup> April, 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m.

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