

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 16<sup>th</sup> October, 2013

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

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

#### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

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

**The Speaker** (Hon. Ethuro): Hon. Senators, I am informed that we have a quorum. May we commence today's business.

#### PETITIONS

##### PLIGHT OF RICE FARMERS AT MWEA SETTLEMENT SCHEME

**Sen. Karaba:** Mr. Speaker, Sir, I am appealing to you to give a way forward as regards the issue of Petitions, some of which were filed three months ago. I presented one Petition that was directed to the Department of Agriculture through the Committee on Agriculture, Lands and Natural Resources. The Chair is here with us this afternoon. This Petition was on the plight of Mwea Rice Farmers who are languishing in a lot of problems and facing many challenges, especially relating to the marketing of rice.

**The Speaker** (Hon. Ethuro): Sen. Karaba, why should you hear from me when the Chairman is here? You should hear from him.

The Chairman of the Committee on Agriculture, Lands and Natural Resources, what is your reaction?

**Sen. Kivuti:** Mr. Speaker, Sir, I stand guided. First, I do not think that Petition was presented to this House three months ago. The period is much shorter than that. But that is not to say that the delay is warranted. The Petition concerned three Ministries because rice farmers raised issues to do with rice. This falls under the Ministry Agriculture, Livestock and Fisheries. There was also the issue of land ownership because

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they wish to get titles. This falls under the Ministry of Lands, Housing and Urban Development. They also raised the issue of water apportionment, what they call water users committees and boards. This falls under the Ministry of Environment, Water and Natural Resources.

Mr. Speaker, Sir, we have brought the matter to the attention of the three Cabinet Secretaries. Ordinarily, as we all know, a matter of Petition cannot be answered like a Statement sought in the House. That is why this requires more time because we believe there must be public participation and a report made to be tabled in this House.

Mr. Speaker, Sir, I beg your indulgence so that we get the responses from the three Cabinet Secretaries. I would like to assure Sen. Karaba that, as my good neighbour, the issue of rice farmers is also in my interest and it should not be resolved in a narrow manner, but all the issues must be addressed right from the grassroots level.

Mr. Speaker, Sir, I beg your guidance.

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

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

**Sen. Karaba:** Mr. Speaker, Sir, you have heard the Chairman say that the question of the Petition is a bit elaborate and he needs more time. He says that he has already consulted the three Cabinet Secretaries concerned over the Petition. He has said he needs more time. Could he tell us how much more time he needs to give a report because farmers in Mwea continue suffering from the same problems that were stated in the Petition?

**The Speaker** (Hon. Ethuro): Sen. Kivuti, could you respond to that?

**Sen. Kivuti:** Mr. Speaker, Sir, I did not come with the Petition with me to the House. But I have reason to believe that, ordinarily, a Petition should take at least 90 days.

Mr. Speaker, Sir, I beg your indulgence. We need your guidance on this matter. Nonetheless, I have clearly stated that our Committee is already seized of this matter. This matter has been discussed in three meetings. That is why we felt that comprehensive reports need to come from the Cabinet Secretaries.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, we have to wade into this issue because of the farmers. Farmers are very small people. Given that when you were last at the supermarket you saw rice from Egypt and Pakistan on the shelves; is it right for us to sit back and keep on giving the Chairman time to say he is not ready now when we know that one of the Cabinet Secretaries is very busy today fighting for another Bill where they want to collapse all the boards such as the Pyrethrum Board of Kenya (PBK), the Kenya Tea Development Authority (KTDA) and the Kenya Sugar Board (KSB). They want to amalgamate them. Therefore, the issue of rice farmers will be in the periphery. We must push this issue for the sake of our farmers. The Chair should give us an answer in the next 14 days or less.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Chairman stated that he has reason to believe that Petitions must take 90 days. That has gone into the HANSARD. Would I be in order to seek your guidance on that statement?

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**The Speaker** (Hon. Ethuro): Hon. Senators, let me start with the last question by Sen. (Dr.) Machage. Standing Order No.224(2) states:-

“Whenever a petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petition for not more than twenty minutes.”

Sen. Kivuti, you do not have the luxury of more than 60 days. The prayer was requested on 31<sup>st</sup> July, 2013. The month of August has 31 days and September has 30 days. Please, note here the operational word is “shall”. So, the least liberty we could have accorded you was by 29<sup>th</sup> September, 2013. Today is 16<sup>th</sup> October, 2013. So, you owe to the House some explanation, not just the petitioners through the Senator.

**Sen. Kivuti:** Mr. Speaker, Sir, thank you for the advice. I had indicated earlier that I sought your guidance and, at the same time, I had indicated to the petitioner that it is not even in my interest, both as the Chair of the Committee and as a colleague, to have this matter delayed. All said and done, I seek the indulgence of this House so that I can push the matter with the relevant Cabinet Secretaries, so that we have the answer brought within two weeks as suggested by Sen. (Dr.) Khalwale.

**The Speaker** (Hon. Ethuro): It is true the Chairman came to see me but it is also true that you came to see me after the event. That does not change the timeframe that our Standing Orders have provided for. We will give you 14 days. We encourage you and the Committee to work extremely hard to ensure that you get the relevant responses from the relevant Ministries.

Mr. Chairman, failure to do so, I am sure you know the consequences. I do not want them to be revisited on you. You can deal with the source of the information. The House will support you.

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

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

## STATEMENTS

### RELEASE OF FREE SECONDARY EDUCATION FUNDS

**Sen. Kagwe:** Mr. Speaker, Sir, yesterday, Sen. Karaba rose to ask a Statement regarding the matter of payments to schools on what is popularly known as the Free Day Education Programmes (FDEP).

I beg to give the following Statements:

The Ministry of Education has secured the funds from the National Treasury for Free Primary Education (FPE) and the Free Day Secondary Education (FDSE) programmes for third term 2013. A sum of Kshs1,798,000,000 towards FPE has already been disbursed to primary schools accounts. The money was released on 14<sup>th</sup> October, 2013.

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The FDSE funds amounting to Kshs3.9 billion will be released to secondary school accounts on Wednesday, 16<sup>th</sup> October, 2013. The latest money can be in respective school accounts is this Friday, 18<sup>th</sup> October, 2013.

Thank you, Mr. Speaker, Sir.

**Sen. Karaba:** Mr. Speaker, Sir, I rise to thank Sen. Kagwe for giving that brief Statement on the disbursement of money that is supposed to go towards secondary schools in Kenya. However, what is amazing is that as he says that the money will be released by Friday, that is the time that schools are supposed to be buying examination materials and equipment for exams scheduled to start on 22<sup>nd</sup> October, 2013. There are schools located in far off places like Turkana, Lodwar and Mandera. Officials from those schools will have to travel to Nairobi to buy the same equipment and materials. I have been a principal before and I know this business is a bit tricky. The KNEC has its own timetable. There is no way we can force the KNEC to fit the programme of the Ministry of Education.

It appears that there is somebody in the Ministry of Education who is sleeping on his or her job. This person should be named so that we do not have heads rolling when it comes to who will be blamed. We do not want heads of schools to suffer pecuniary embarrassment when they are unable to meet the costs of running exams. This is a pity. This programme was initiated by the national Government. Money should be paid on time.

As we note, schools will be closing on 15<sup>th</sup> November---

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba! Your job is to interrogate the Statement, not to make another one.

**Sen. Karaba:** Mr. Speaker, Sir, I have already done a lot of interrogation. I hope the Chairman will be able to answer all the questions.

**Sen. Kagwe:** Mr. Speaker, Sir, I sympathise with the Senator's remarks and, indeed, the situation in the country. One presumes that on the basis of the fact that the money was released on 14<sup>th</sup> October, 2013, the day before yesterday and the next batch of Kshs3.9 billion is being released today---. So, on that assumption, it is possible for schools to make arrangements with their financiers and suppliers. They know the money will be released to them. It is normal business practice when you are quite aware and confident that the money is coming, that you can extend a day or one week's credit to those institutions. They have been dealing with them for a long time.

**The Speaker** (Hon. Ethuro): Except, Sen. Kagwe, you have not addressed the issue of the timelines. The timelines were known in advance, so somebody must be sleeping on the job at the Ministry.

**Sen. Kagwe:** Mr. Speaker, Sir, indeed, there was delay in these payments. It is good to say where the buck stops. In this particular case, the buck does not stop at the Ministry of Education, but it stops at the National Treasury. From what you can see from my Statement, the money was never held at the Ministry. The money was disbursed from the National Treasury. So, if there is anybody who should be named or one who is sleeping on the job, it is certainly not Prof. Kaimenyi or the operatives from the Ministry of Education. This is actually at the Treasury. I agree that they should disburse this money as quickly as possible. The Committee on Education, Information and Technology

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will undertake to call the Cabinet Secretary in charge of the National Treasury to explain why this happened and to ensure that it does not happen again.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Chairman of the Committee has noted that there could be red tape to the disbursement of this money. It is a lengthy process to the extent that the money delays to reach institutions. He has suggested that schools should seek for extension of their credits to get these facilities. What insurance is the Ministry giving to schools which have no ability to get extension of credit?

**Sen. Kagwe:** Mr. Speaker, Sir, I appreciate the question by the hon. Senator but a word spoken on the Floor of this House is assumed to be as good as cash. Therefore, if a Statement is made on the Floor of this honorable House, it is bankable. You can take it to the bank.

*(Applause)*

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, as the Senate, can we allow the Chairman to get away with that? Sen. (Dr.) Machage wants the Government to ensure that those schools that have no capacity to get that kind of credit at the bank do so. The Chairman says his word is bankable. Could he tell us how what he has said here will translate into an order to all banking institutions in the country, so that wherever the schools are, they can access money? This is not a laughing matter.

**Sen. Kagwe:** Mr. Speaker, Sir, the intention is not to make a statement to the banks or even to order the banks to give anybody any credit. What we are proposing is that on the basis of the fact that it is confirmed that this money is definitely going to the schools---- Schools have been making arrangements with their suppliers, banks and so on since time immemorial. This will not be the first time this is happening. As Sen. Karaba knows, since he was once a principal, he knows that head masters would go to banks and ask for some extension prior to arrival of Government money. It is known that sometimes the Government delays payments. But it is also known that the Government always pays.

**The Speaker** (Hon. Ethuro): The last one, Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, while I appreciate what the Chairman has said about us going to the banks, there are some people who cannot afford to negotiate for credit facilities, particularly those in day schools. What is important is that we should have and follow a programme for this money. If the money is to be paid during the first term, we should know up to when we should wait for this money. The same applies to second and third terms. We should not be looking like we are begging from the National Treasury. The payment programme should be known by schools, so that they are able to plan ahead of time.

**The Speaker** (Hon. Ethuro): Sen. Kagwe, you do not need to respond to that. Sen. Karaba you must thank your Chairman for working very diligently and fast to deliver the Statement. You sought it yesterday, he promised Thursday, with a possibility that if the phone call worked, he might bring it this afternoon. Apparently, he must have made the call which was received.

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He has also made an undertaking that the Committee, to which you are a member, will be considering those kinds of issues, especially on the delays and the schools that may not be having those kinds of facilities, so that they may be facilitated. In my view, if the money is being sent, I presume it is being sent electronically, you just wire and instantly the money should be available on the other end. That is what you should be now pursuing with your Chairman through your Committee.

Any other Statement? Proceed, Sen. Kagwe.

WITHHOLDING OF KCSE CERTIFICATES  
BY SCHOOL HEADS

**Sen. Kagwe:** Mr. Speaker, Sir, I rise to make a Statement on the question that was raised by the Senator for Kitui County, Sen. Musila. Pursuant to Standing Order No.43(2), he requested for a Statement from the Committee on Education, Information and Technology regarding the withholding of Kenya Certificate of Secondary Education Certificates by secondary schools heads contrary to the Kenya National Examination Council (KNEC) Act No.29 of 2012 which outlaws the withholding of examination certificates by any institution. The Statement was expected to address the following questions:-

1. Why are these certificates being withheld, depriving students, particularly from poor counties, an opportunity to seek employment?
2. When will the Cabinet Secretary issue instructions to all schools to release all certificates held by heads of institutions without any condition?

Mr. Speaker, Sir, I wish to respond to this issue as follows:-

The Ministry of Education is aware that pursuant to Section 10(1) (b) of the Kenya National Examinations Council Act, 2012, one of the functions of the KNEC is to award certificates or diplomas to candidates. The Ministry is also aware that such certificates or diplomas shall not be withheld from candidates by any person or institution. However, Section 59(n) and (o) of the Basic Education Act, 2013, authorises school boards of management to administer and manage the resources of their institutions and also to receive, collect and account for any funds accruing to their institutions. Further, and according to Section 67(1) and (2) of the Teachers Service Commission (TSC) code of regulations for teachers revised in 2005, non-collection of any authorized monies due to the Kenya Government, boards of management or district education boards will be deemed to be loss of public funds which will lead to disciplinary action against the head of the institution. This part of the law is meant to ensure that school heads manage the resources available to them prudently, to ensure that learners, not only remain in school, but are properly taken care of. Failure to collect any funds due to schools, therefore, will adversely affect learning and quality of education. The quality of education is likely to be compromised.

Mr. Speaker, Sir, the Ministry via its circular dated 9<sup>th</sup> January, 2008 issued guidelines to schools for the implementation of the Free Day Secondary Education programme, subsidizing students fees by issuing an annual grant of Kshs10,265 per

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student per annum. The grant is meant to cover tuition and other related services. But meals and boarding costs are the responsibility of parents or guardians. The issue of outstanding fees, therefore, arises from the failure on the part of the parents and guardians to pay for meals and other related costs for their children.

It is, therefore, expected that parents or guardians who are unable to pay these levies on time make individual arrangements with the respective institutions on the best way to fulfill their obligations. Otherwise, schools cannot operate effectively with colossal sums of money due to them outstanding. On the other hand, school heads have no choice, but to comply with the requirements of section 59(n) and (o) of the Basic Education Act, 2013, and sections 67(1) and (2) of the Teachers Service Commission (TSC) Code of Regulations for Teachers as detailed above. The Government is encouraging the development of more quality day secondary schools to mitigate against the high cost of boarding schools.

Thank you, Mr. Speaker, Sir.

**Sen. Musila:** I thank you, Mr. Speaker, Sir. First, I want to request that for such a Statement, I ought to be given a copy, as it is the practice.

Mr. Speaker, Sir, having said that, I hope that you have been listening carefully to the Statement as read out by my friend, the Chairperson of the Committee on Education, Information and Technology.

Mr. Speaker, Sir, the law as passed by the National Assembly on this matter is very clear; that no one individual or institution can withhold a certificate. The Minister has quoted the Basic Education Act to administer, receive and collect money. There is nowhere that the law requires institutions to hold certificates as collateral for uncollected fees. Also, the TSC regulations cannot be superior to a law.

Mr. Speaker, Sir, in view of what has happened this afternoon, I think it is very unfortunate that the Cabinet Secretary for Education is flouting the law knowingly, with impunity and that these people are unable to access employment simply because certificates are held by the Government against the law.

Mr. Speaker, Sir, would I be in order to request that this House asks the Committee on Legal Affairs and Human Rights to summon the hon. Attorney-General to explain to the Senate, through that Committee, whether it is lawful for the Cabinet Secretary for Education to withhold certificates of students as collateral?

Thank you, Mr. Speaker, Sir.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. We have listened keenly to the former Member for Mukurweini, Sen. Mutahi. Listening to his presentation, there was a very clear indication of inconsistencies of what was presented. The current problem which students face in our areas and all over the country cannot be solved through the bit that says “students must go to day primary schools,” yet all students go to day secondary schools. It is not the choice of the students at times to move to a day school or a boarding school.

Mr. Speaker, Sir, I want to support Sen. Musila. If the Ministry of Education finds that all these things are in conflict with each other, it has a mandatory obligation to ensure that they pick the one that supersedes all others, and that will be sensitive to the plight of the innocent Kenyan children. That is why we say a number of these technocrats

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who were deployed from out cannot help Kenyans, including the current Cabinet Secretary for Education. Can we have this matter referred to our Committee for Legal Affairs and Human Rights so that we address the inconsistencies in terms of the laws that relate to this particular aspect?

**Sen. Orenge:** Mr. Speaker, Sir, if I remember well, there was an amendment to the Kenya National Examinations Council Act which the learned Senator talked about. The amendment was to deal with the mischief of retaining these certificates. In fact, it was to address the practice by schools of retaining these certificates. What is being done now in the name of other laws is to frustrate a substantive Act of Parliament dealing with issue of certificates.

I think the Chairperson should explain this extensively, because if his argument can be taken to *extensor* and going to other fields, you may one day find that the Kenya Revenue Authority (KRA) might say that you cannot be issued with a Kenyan identity card because you have not paid your taxes; and you can find so many other examples like that. Now we know that the right to education is a constitutional right. It is not just education by sitting in a classroom, but reaping the benefits of education. Can the Ministry of Education comply with the Constitution if they sit on this basic right? The privileges of getting education are by getting those certificates. Can he explain that?

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. I would like to sympathize with the Chairperson and the Ministry of Education, especially the schools because I know what goes on when these children are allowed to pursue education in these schools. In fact, if the rules of payment of fees are applied, most of them will not even reach Form Four. That is also the other thing we have to consider; the teachers try to keep these children in school so that, at least, they can get some certificate. After they finish, either through getting some jobs or whatever, they pay. But I fully also understand that their rights are being violated because after completion, they need to get a job. There has to be a balance, because the fact is also that many children, because of the poverty, especially in our rural set ups---

**The Speaker (Hon. Ethuro):** Order, Sen. (Dr.) Kuti! This is not time for debate; this is time for Statements.

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. So, I think we ought to understand and maybe ask how the situation will be dealt with because there is also this other side to the coin.

**The Speaker (Hon. Ethuro):** Proceed, Sen. (Prof.) Lesan, if yours is a statement, although I appreciate the huge interest, let us be brief.

**Sen. (Prof.) Lesan:** Thank you, “Mr. Chairman”, Sir. I sit in the Committee on Education, Information and Technology and I was privileged to---

**The Speaker (Hon. Ethuro):** Sen. (Prof.) Lesan, there is no Chairman here.

*(Laughter)*

**Sen. (Prof.) Lesan:** I am sorry, Mr. Speaker, Sir.

**The Speaker (Hon. Ethuro):** Your Chairman is---

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, my Chairman, is actually denying me.

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Mr. Speaker, Sir, I sit in the Committee on Education, Information and Technology, and I had the privilege of interrogating the Cabinet Secretary for Education. Most of these schools that are retaining these certificates are actually community schools which rely almost entirely on the funds which are paid by the parents who have children in those schools. Considering that the Cabinet Secretary or the Government gives a portion of the money for academic purposes, the money which is accruing and which is not paid was actually meant for maintaining the students at school. It was basically for food. Therefore, this is an arrangement that has actually been done in order to benefit the students. Therefore, some of the parents who took this considerably have actually come back to school and given the school a substitute security which they can use so that they can have their certificates.

Some of these students whose certificates are held in schools are very successful business people elsewhere. Therefore, they can actually help to sustain the schools by making alternative arrangements rather than forcing the schools to give out these certificates and actually go bankrupt and close down. It might be better that some arrangement is made. I am glad that there are a lot of parents who have actually provided alternative security for this because they understand the need for the students to---

*(Sen. (Dr.) Khalwale stood up in his place)*

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

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Is Sen. (Prof.) Lesan in order to attempt to respond to issues that have been raised by fellow Senators? Is he the Chairman?

**Hon. Senators:** No, he is not!

*(Laughter)*

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, as I said, I am a Member of the Committee on Education, Information and Technology and I sat in this interrogation of the Cabinet Secretary. I think we work as a very good team in that Committee. There is nothing wrong in supporting my Chairperson.

Thank you, Mr. Speaker, Sir.

*(Several hon. Senators stood up in their places)*

**The Speaker (Hon. Ethuro):** I want to believe that your points of order are similar to the one raised by Sen. (Dr.) Khalwale and I agree completely with him. I want Sen. (Prof.) Lesan to desist from being excited about unity of purpose and team spirit of the Committee.

*(Laughter)*

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That must be displayed at the Committee level. When it comes to the plenary, we get it through your Chairperson. You should be satisfied that he will fully represent what you experienced at the Committee level, but you do not have to come and demonstrate it. But, more importantly, hon. Senators should not really be attempting to answer the issues raised by the other Senators. They are being addressed to the Chair. If you feel compelled to assist the Chair, there is a procedure of doing so; you wait for the Chair to come and respond and then you can rise and give him more information. In that case, you will need the assent of the Chair. That is why that role is there; it is up to the Chair to decide whether he needs that information or not. If he decides that he does not need your information, then that is it.

So, let us have the last two really interrogating the Statement by the Chair. If you are going to offer solutions or sympathy, it is not for here. Your job is to interrogate the Statement.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I had the privilege when I was practicing to represent Sen. Musila in a suit that he filed in 2006 concerning this issue, which, in fact, led to the enactment of law to make this practice of withholding certificates illegal. In fact, at that material time, after filing our legal suit, I remember then the Government came up with the policy of free secondary education, *et cetera*. But it is even worse, because in 2006/2007, the people who were most affected during that time were from Makueni and Kitui. But it was much worse than this because the people who were being denied these certificates were unable to get school leaving certificates; they could not register to get identity cards. Therefore, they were not registered voters and they could not even get jobs. So, it cannot be a policy that we punish young people in this country for the poverty of their parents or their inability to pay school fees. It cannot be policy or law. It is illegal and we must condemn it in the strongest terms possible. It cannot be allowed. This must be the only country where young people are denied opportunities to a reasonable livelihood by the mistakes, inheritance or, maybe, lack thereof of their parents.

Mr. Speaker, Sir, I support Sen. Musila in seeking further clarification, in fact, summoning the responsible persons because we cannot allow them to violate the rights of young people in our country on account of their parents poverty.

Thank you very much, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., you are a bit lucky that you have a history on the matter. Ordinarily, if the same submission came from Sen. Orendo, I would have been harsh with him.

**Sen. Karaba:** Mr. Speaker, Sir, I stand here as a friend to the Chairman. This matter is very serious. It is serious to the extent that for a Form Four student to get a certificate, he must have had problems with arrears from Form One to Form Four. It is through the understanding of the parents and the head teacher that the final certificate of Form Four is given. So, if this student was to be denied---

**The Speaker** (Hon. Ethuro): Order, Sen. Karaba! While I appreciate your other life of being a principal and a good one at that, it is now time for your Chairman to respond.

**Sen. Kagwe:** Mr. Speaker, Sir, first of all, I would like to thank everybody who has contributed to this question. The position of the Education and Information Technology Committee, just to set the record straight, is that all children in Kenya should get their certificates. That is the position of the Committee. That was where we started from the word go.

In our communication and interrogation of the Cabinet Secretary, we made that very clear. However, as you have noted from the statement that has been made, there are a number of contradictory laws that relate to this matter. From the outset, I would like to say that Prof. Kaimenyi, the Cabinet Secretary, unlike what Sen. Hassan Abdirahman wants us to believe, is a very able professor and has been in the area of education for a long time. He appreciates this. Speaking as the Senator for Nyeri County, there is nothing I would want to see more than the students of Nyeri County getting their certificates. We have also heard that there is another law---

**The Speaker** (Hon. Ethuro): Order, Sen. Kagwe! As the Chairman, you are supposed to speak for all the counties.

**Sen. Kagwe:** Mr. Speaker, Sir, I was using Nyeri County as an example. I want to speak for the 47 counties and to say that no Senator here would want to see any child at home due to lack of fees. I think it is also important for us to appreciate the conditions and difficulties that the head teachers are operating in. They are saying that if they release one certificate and yet they are bound by law to collect the money, how will they, as head teachers, explain this? There is a clear understanding that they should not be hoarding certificates. There is also an understanding that they should not let anybody go with money that belongs to the school. Therefore, these people are sitting between a rock and a hard place. It is difficult for them to operate.

We have been insisting and I, personally, went to see the Cabinet Secretary in his office and to emphasise to him the fact that, notwithstanding all the other laws, we must be sympathetic to our children and release these certificates to them. The other understanding I have is that the Ministry is pursuing all the necessary means to ensure that they get different collaterals so that they release the certificates.

With regard to the Attorney-General and his involvement in this matter, that is not for me to respond. I believe that any Committee is allowed by the Standing Orders to summon anybody, including the Attorney-General, to respond and pursue this particular matter. We welcome it. The more we can do to help these children, the better. I believe that the Ministry concerned is also doing as much as it can to make sure that the certificates are released to the students as soon as possible.

**The Speaker** (Hon. Ethuro): Yes, Senator from Kitui.

**Sen. Musila:** Mr. Speaker, Sir, I cannot believe that you have forgotten my name.

**The Speaker** (Hon. Ethuro): Sen. Musila, I just want to confirm that I know your name. However, I do not want to be repetitive and to use the same name always. I am at liberty to appreciate your county.

**Sen. Musila:** Mr. Speaker, Sir, I believe that this requires your guidance. The law the former Minister is quoting does not empower the Ministry to use a certificate as collateral. The law that we passed recently does not bar a teacher from collecting money, but bars a teacher from hoarding certificates. Let not this former Minister or Chairman get away with this. We want to continue with this matter because these children are desperate.

These certificates have been held since 2007. We are talking about 2007 because, as you may recall, the Government released certificates from 2006 backwards. The certificates we are talking about are from 2007 to date. I think you will be helping this country if you make a ruling that these certificates are released to the children.

**Sen. Abdirahman:** Mr. Speaker, Sir, we should not let the Chairman get away with the response we have heard this afternoon which, in our understanding, is unsatisfactory. I say so, because you cannot have your cake and eat it. If the chairmanship is for the Executive in this case, then he should have offered solutions, including a waiver or options of reviewing legislations that are inconsistent. We are not getting proper messages from the Chairman. If he cannot provide proper answers this afternoon, can he go back and discuss with the relevant Ministries? You cannot say that you are supporting and, at the same time, support the Executive in this case. Could we have some direction?

**The Speaker (Hon. Ethuro):** I do not think there is a way of getting to the Chairman that will redeem our cause this afternoon.

I would like to make the following observations. Sen. Musila had requested for a copy of the Statement. I hope, Mr. Chairman, that you have handed one to him. The Speaker is also in need of such a statement. I am completely sympathetic to the request by Sen. Musila. I do think that this is a matter of huge national importance. I was party to the amendment of that particular law by Sen. Musila, then Member for Kitui South Constituency. He has also raised an important issue about the relation between hoarding of certificates and the collection of fees and whether one should act as collateral for the other, which I do not think we got a satisfactory answer from the Chair of the Committee. I submit that collecting fees should not necessarily involve retaining certificates for the good reasons that Sen. Mutula Kilonzo Jnr. has explained and many other Senators.

I will not take this to the Committee on Legal Affairs and Human Rights, but I will send it back to the same Committee. If they want to draw some expertise from the Committee on Legal Affairs and Human Rights, of course, they are at liberty to do so.

As the Chair of the Committee on Education and Information Technology has observed, the Committee is at liberty to interrogate any matter. This is really an issue about education. I would urge the Committee to interrogate the matter further and ensure that other options are found. We now have the benefit; we know the history of this matter. Before the law was amended, there was a court process. This is an issue where one individual has taken the burden of a nation. I think it is time for the Senate to relieve that burden, which is, not only carried by that one individual, but, obviously, from the view of Senators, a public concern.

We want our country to work out a solution for this particular problem, and obviously, through our time in this Senate. If we do so, this will, not only be good for this

Republic, but we will have honoured one gallant son of the soil called Sen. Musila in a contribution that will make a difference in the lives of Kenyans.

**Sen. Kagwe:** Thank you, Mr. Speaker, Sir. I think you have, very well, summarized that statement. In your statement, you have summarized the matter. We will pursue this matter with the Cabinet Secretary concerned, with a view of coming up with solutions that will satisfy the rest of the country. I believe that this is a very serious matter.

Mr. Speaker, Sir, I also had another statement.

**The Speaker** (Hon. Ethuro): Before you move on to the next Statement, let us hear whether there is anyone else who wants to speak on the same.

**Sen. Musila:** Mr. Speaker, Sir, I want to thank you for your direction. The Chair has agreed, but has not given this matter a time frame. It is in the interest of this House that we are told when the Committee will come back and give the report because students are suffering and we cannot wait any longer.

**Sen. Kagwe:** Mr. Speaker, Sir, we will write a letter to the Cabinet Secretary immediately. We will expect him to come up with a long term solution to these problems in a statement that will be read here in the next three weeks.

**The Speaker** (Hon. Ethuro): Let us give the Chairman three weeks. I am satisfied that the Committee has done its best and will continue to do so. This is an issue where he will be looking for many options and may require a bit of time. We do not want him to come and report progress, but to come with some final thoughts on the matter.

**Sen. Kagwe:** Mr. Speaker, Sir, there was also a Statement that was requested by Sen. Obure, who happens not to be in the House. I do not know whether I should continue with the Statement or read it at a time when Sen. Obure is here? I need your guidance.

**The Speaker** (Hon. Ethuro): Was it due today?

**Sen. Kagwe:** It was due tomorrow, that is, Thursday.

**The Speaker** (Hon. Ethuro): Then you have no reason to proceed. Maybe he is acting on that expectation.

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir.

#### PERFORMANCE OF SENATE REPRESENTATIVE IN SRC

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

I rise on a point of order to request for your guidance on an issue. Yesterday, the Senate adjourned to discuss the challenges facing the Members of the County Assemblies (MCAs). We took three hours to discuss some of these things. You remember that approximately three months ago, we had a similar Motion moved by Sen. Murkomen and we had the same discussion. Having heard these two Motions of Adjournment to discuss the issue, we are wondering because if you look at Article 230 of the Constitution on the composition of the Salaries and Remuneration Commission (SRC), we have a responsibility as a Senate to nominate one person on behalf of county governments. Maybe this is where we need to explore. I am seeking your guidance as to whether we have complied with Article 230(2) (b) of the Constitution where the Senate needs to

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nominate one person to represent county governments in the SRC. If yes, whether we can get progress from that particular representative on how far he has gone and what he is doing in terms of looking at the interest of officers serving within the county governments. If not, the Senate can make corrective measures to make sure that we have representation of county governments' interest in that Commission. I am seeking your guidance.

**The Speaker** (Hon. Ethuro): I must admit that the Chair has been ambushed. The practice usually is that you notify the Chair of your intentions. I thought it was something like the other procedures.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, like Sen. Sang has said, the issue of the SRC and the issue of MCAs took the whole of the afternoon yesterday because it was an important issue to be discussed. The issue of whether the Senate has a member in the Commission arose. You recall that when we had a seminar for Senators and Governors in Mombasa, this issue also arose. So, it is important for us to know whether we are represented or not. I say this because if you look at the composition of the SRC under Article 230 of the Constitution, you will find that the Judicial Service Commission is represented there, but it is not subject to the SRC.

It is like the United States of America (USA) being a member of the United Nations Security Council, but it is not a signatory to the Rome Statute and still makes decisions based on the Rome Statute. It is that kind of anomaly. This is a very important issue that we need to deal with and know whether we are represented. We need to have someone we can interrogate because we, as Senators, are becoming very concerned at the plight of the MCAs. Therefore, it is important to let us know this position so that we can deal with it, once and for all.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the issue being canvassed by both Sen. Sang and Sen. Kembi-Gitura might very well be answered by what we did in the last Parliament. You remember that when all these commissions were being constituted, in areas where the Senate was supposed to play a particular role, the Constitution provides in the transition clause that it would be discharged by the National Assembly. So, as far as we are concerned, all the commissions that were constituted were done properly. Our understanding is that whatever the Senate was entitled to was discharged by the National Assembly. Therefore, it is superfluous for us to ask the Chair to do a job which we can do ourselves. We can go and find out the composition of the SRC and who represents which body. We do not need the Speaker of the Senate to do a job which your personal assistant can do for you. Is he in order to expect the Speaker to do the job of his personal assistant?

**The Speaker** (Hon. Ethuro): First, I want to confirm that the Senator for Nandi is perfectly in order to request the Chair to perform a task where the Senate is represented. I do not think that is the job of his personal assistant. If he had asked me to do a job of his personal assistant, then you know what I would have done. I do not do such tasks. The one he is asking is in terms of somebody sitting as a commissioner representing the Senate in SRC. So, I will give the matter a considered ruling on Tuesday.

In the meantime, you have raised the issue where the Senate was supposed to be represented before it came into being. I know for a fact that there are two commissioners representing Parliament in SRC; that is, one is representing the Senate and another one

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representing the National Assembly. I will give you more details on Tuesday. To me, the fundamental point being raised by Sen. Sang is about our performance. If you are given a job, does your employer get feedback or benefit from your services? That is an ordinary question that is being sought. I am sure even the people in the industry will appreciate that kind of questioning. So, let us deal with it substantively on Tuesday.

Next Order.

### MOTION

#### REDUCTION OF PUBLICATION PERIOD OF COUNTY GOVERNMENTS PUBLIC FINANCE MANAGEMENT TRANSITION (AMENDMENT) BILL, 2013

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

THAT, pursuant to the provisions of Standing Order No.123, the Senate resolves that the publication period for the County Government Public Finance Transition (Amendment) Bill, 2013, be reduced from 14 days to 11 days.

Mr. Speaker, Sir, at the moment, the Act that the county governments have been using has been repealed and lapsed on 30<sup>th</sup> September. This means that the issues of finances in the county governments and the guidance that they should get through the Finance Management Act cannot be dealt with.

I wish to beg this House to move with speed and ensure that we have a new Act in place, so that county governments can discharge their mandate.

I beg to move and request Sen. Sang to second.

**Sen. Sang** seconded

*(Question proposed)*

*(Question put and agreed to)*

### BILL

#### *First Reading*

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

*(Order for the First Reading read- Read the First Time  
and ordered to be referred to the relevant Departmental Committee)*

### MOTION

#### ADOPTION OF REPORT OF DEVOLUTION/LEGAL

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AFFAIRS COMMITTEES ON JOINT COUNTY VISITS  
TO MOMBASA AND KILIFI

**The Speaker** (Hon. Ethuro): Hon. Senators, you will notice that on the Order Paper, after the terms of this Motion, we have the words; “Resumption of Debate interrupted on Wednesday Morning Sitting”. This Motion was also listed in the morning. So, when we did the afternoon Order Paper, the assumption was that we would continue, but because we did not transact the Motion in the Morning Sitting, it is being moved for the first time now.

Proceed, Sen. Sang.

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

THAT, the Senate adopts the Report of the Sessional Committee on Devolved Government and the Standing Committee on Legal Affairs and Human Rights on the joint county visits to Mombasa and Kilifi Counties, laid on the Table of the House on Thursday, 10<sup>th</sup> October, 2013.

Mr. Speaker, Sir, this is a report of the joint committee between the Sessional Committee on Devolved Government and the Standing Committee on Legal Affairs and Human Rights. The two committees carried out county visits and the purpose of the visit was to enable members of the two committees to have an opportunity to visit the counties and discuss a number of issues that had been raised within the various counties. The issues and the areas that were discussed during the visit included:-

The devolution process and transfer of functions – you remember that we have had challenges and discussions within our 47 counties on the process of transfer of functions within our counties.

We also had an opportunity to discuss issues relating to the role and functions of county governments in terms of assessing their preparedness. More importantly, we looked at the procedural support of the county assemblies by the Senate. Finally, we assessed the capacity of the county assemblies in terms of handling businesses.

Mr. Speaker, Sir, the Committee visited two counties. In the County of Mombasa, I want to highlight a number of issues that we came across. In each of the two counties that we visited, we had an opportunity to engage with the county executive, assemblies and members of the public within the two counties.

Mr. Speaker, Sir, I want to start by highlighting a number of issues that we encountered within the County of Mombasa. During our visit to the County Assembly of Mombasa, we met with the Members of the County Assembly (MCAs) and they raised a number of issues that I want to highlight. One of the major challenges that were raised by the MCAs is remuneration. This is something that we have discussed in this House before. It is an issue that is almost crippling the operations of county assemblies. It is important that this House, based on even the discussions that we had yesterday, shows solidarity and continues to press on in terms of handling the issue of remuneration.

Beyond that, an issue was raised within our counties that the MCAs are unable to develop legislation and Bills within their counties. We need to build the capacity of county assemblies within our counties. I know that this is not just with regard to Mombasa County, but something that is replicated across this country. My own MCAs in

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Nandi have the same challenge in terms of processing Bills within our county assemblies. It is important that the county assembly service boards are able to recruit competent personnel to help our MCAs to proceed with their legislative mandate.

Mr. Speaker, Sir, the other issue that was raised within the Mombasa County Assembly was the challenge of lack of adequate staff. The county assembly also does not have office space for the MCAs to operate from. Most of them are meeting their electorate and business people in hotels. This is something that needs to be addressed.

Mr. Speaker, Sir, the other issue that was raised within the Mombasa County Assembly is the fact that whereas the county assemblies are expected to play an oversight role over county governments, they are not getting information from the county executive. This is also something that we need to look at. The county executive at the county level need to know that for the MCAs to do their jobs responsibly, they need to get and access information. They are expected to process the county budgets. However, most of them did not have adequate time to scrutinize their budgets. These are some of the issues that were raised.

Mr. Speaker, Sir, several issues were raised by the governor, deputy governor and some county executive committee members of the Mombasa County. One of the issues that were raised by the county executive is that there is need to carry out a detailed audit on the debts, assets and liabilities of the local authorities that they inherited. We do not want to burden the county executive with debts that were not accrued by them. This is something that this House, on several occasions, has discussed in terms of the Motions that we have passed.

Mr. Speaker, Sir, the other issue that was raised is the challenge of transfer of functions. We know that the Transition Authority (TA) was given the responsibility of overseeing and facilitating the transfer of functions. One of the challenges that came from the county executive is the fact that they are ready to carry out the 14 functions, as stipulated within the Constitution, but the TA identified the functions and transferred some of them. This is a task that now rests with the Senate. We know that the Constitution and law indicates that once the functions have been transferred to county governments, if a county government feels that some functions have not been transferred, yet they have the capacity to do it, then they need to appeal to the Senate. Therefore, we, as a Committee of this Senate, urge that the Senate considers some of the appeals, if at all any have been forwarded to it, so that we are able to assess the capacity of the counties and look at the functions that they were not allocated.

Mr. Speaker, Sir, the issue of land was raised in Mombasa. Within Mombasa County, we know that the Jubilee Government is in the process of issuing title deeds. By the time we went to Mombasa, the process had not started. But the county executive raised the issue, that whereas the national Government is undertaking this process of issuance of title deeds, it is important that they be able to negotiate, discuss and consult the county governments. This is because the issuance of title deeds has an impact in terms of land usage and processes that need to be undertaken by the county governments in terms of physical planning. We are very happy that before this happened in Mombasa County, as we are reliably informed, the national Government actually held consultations

with the governor and the leadership of Mombasa County. This is an issue that they raised then, but the national Government was able to handle it.

Mr. Speaker, Sir, the other issue that was raised by the county executive relates to staffing. This is one of the challenges that we are facing in our counties. This is a problem that Nairobi County faced the other day, where the county governments are inheriting a bloated workforce within our counties. It is important that we carry out an audit of the staff and the county governments be given the opportunity to absorb the staff that they need. If we have some staff members that were recruited by the local authorities in the previous dispensation and the county governments do not need them, it is important that the county assemblies are allowed to absorb staff that they need. The national Government will then find a way of redeploying the staff that they do not need. This is quite important, so that we do not create a crisis. We do not want our county governments to inherit a bloated workforce and spend a lot of resources in paying salaries, yet they do not need the services of all the staff. I think that this is one of the issues that are quite important.

Mr. Speaker, Sir, I want to look at the issues that were raised within the Kilifi County Government. I will start with the issues that the county executive raised. Some of them quite well mirror those that were raised in Mombasa, in terms of bloated staff and functions that they feel they are ready to undertake, but the TA did not transfer those functions. The County Government of Kilifi has a budget deficit. This is one of the challenges that all our counties face. We need to look at some of these budget deficits, so that in the next financial year, as we deal with the Division of Revenue Bill and the County Allocation of Revenue Bill, we consider the counties that have challenges.

Mr. Speaker, Sir, the other issue that was raised relates to the workforce that they inherited from the defunct local government, which is similar to the issues raised by the Mombasa County government. The issues are similar in the County Assembly of Kilifi. This mirrors the issues that all the county assemblies in this country face. There are issues of remuneration, capacity and undertaking their oversight role within their county governments. Therefore, as a Committee or the two joint Committees of Devolved Government and Legal Affairs and Human Rights, we have various recommendations that we want to ask this House to adopt.

One of the recommendations is that although the process of auditing assets and liabilities is ongoing, we need to fast-track it. The Auditor General needs to fast-track the process of auditing of assets and liabilities and the Senate has to play a key role in ensuring that at the time of distribution of assets between the national Government and county governments, we are able to have fairness, so that county governments can have adequate resources and assets to carry out their responsibilities.

Mr. Speaker, Sir, the other issue is that the House needs to invite the TA to update it on how far the process of auditing of assets of liabilities has gone. We also recommend that with regard to staffing at the county governments, before payment of salaries on behalf of county governments is done, they should be given a list of all the staff that the national Government is paying salaries. We have a situation where a lot of resources belonging to county governments are being paid to ghost workers. This is unacceptable. We need the county governments to have a list of the staff that the national

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Government has put on the payroll with regard to each of the 47 counties, so that they can be verified to ensure that no ghost workers are being paid using the resources that county governments would have used in other development projects.

Mr. Speaker, Sir, we also recommend that in order to address the budget deficits, counties should consider public/private partnership models in terms of raising more revenue. The county governments need to be told that, at the end of the day, they need to look at the resources coming from the national Government as start-up. They need to invest more in their capacity to collect and generate local revenue to enable them to run their operations at the county level. Otherwise, if we have county governments relying on the revenue allocated to them from the national Government, then we are going to run into trouble with the budgets. Definitely, the budget deficits will increase with years.

Mr. Speaker, Sir, we also recommend that the settlement of squatters is necessary within the region. This is a region that has a lot of issues with regard to squatters. But it is important that the national Government, in the process of issuing title deeds, consults the county governments, to be able to address the issues of land use. This will help county governments in terms of planning.

Mr. Speaker, Sir, we also recommend as a Committee that the Senate should be able to create some synergy between the national Government institutions operating within the counties and the county governments. Right now, we have serious programmes at the national level with regard to massive irrigation projects, but some of these projects are being implemented within the counties when the county governments are not aware. We need to develop or instill the culture of consultation and co-operation between the national Government and county governments at that level.

Mr. Speaker, Sir, we also recommend that counties need to invest in training and research; they should also set up institutions that can help them build the capacity of county governments. This is a very important component. The kind of budgets that we saw coming from county governments in this financial year is a clear indicator that the county governments lack capacity to develop the right budgets for their counties. It is important that we use this first year as a learning process. However, in the subsequent years, we should be able to get budgets that are done in accordance with the law, balanced and workable. This can only be achieved if county governments will invest in capacity building.

Mr. Speaker, Sir, it is important that the counties prepare a report based on the various issues and suggestions. We recommend that they need to brief the Senate and pass their petitions to the Senate, through their respective Senators. This should be able to help us. But more fundamental, we recommend that in every financial year, the Senate publishes a report called “the state of devolution,” that will be able to capture all these issues and the challenges that the county governments are facing and, more importantly, the progress that has been made within our counties. This will help most of the counties to learn from each other. As I speak right now, some of the counties are doing pretty well, while others are lagging behind. It is important for us to create a forum. Through this publication, various counties can learn the best practices from the other counties within our region and nation. This will also inform the policies, Motions and legislations that we need to develop in this House.

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Mr. Speaker, Sir, as we debate this Motion, let us not just look at it as a report reflecting Kilifi and Mombasa counties, but as a report that reflects on the state of affairs across the country. The issues that were raised in Mombasa pretty much mirror those that I face within Nandi County. I know that this applies to all the counties.

Mr. Speaker, Sir, with those remarks, I beg to move and request that Sen. Elachi seconds the Motion.

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. I also rise to support and second the Motion knowing very well that, indeed, as Sen. Sang has said, these are similar challenges that we are facing, especially when you look at the reports of both Mombasa and Kilifi counties. Knowing very well that we have different committees that have gone around the country, and I am really hoping that they will also table their reports so that we are able now to bring up one major report of our six months since we started as the Senate and since devolution started within the country. It will guide us now to look at whether, indeed, the TA is still needed. We, as a Senate, believe the Attorney-General is right when he says he wants to turn the TA into a committee.

Mr. Speaker, Sir, as I look at the report, there is one major issue that is raised across the board. This is the issue of auditing the assets and liabilities within those counties. Hon. Senators will agree with me that in a transitional period, there is a lot of confusion. This is the period most counties are losing their assets. So, when you hear counties demanding for audit of their assets and liabilities, it is important for us, as the Senate, to urge the national Government to expedite this exercise. It is important to know what belongs to these counties and what belongs to the national Government.

The other issue is about the staff of counties. When you look at the staff today, they are also worried. Most of them have worked for many years, but in different positions. Most of them are now worried about their pensions and other benefits. They would like to know who is responsible for their retirement benefits. They would like to know how many of them will be retained in the counties and those who will be deployed by the national Government and how many of them will be retained by their line Ministries, but still work in counties. These are some of the issues they would like to be clarified to them.

We want to see this done in a transparent manner and that nobody will be victimized. This exercise of deploying or retaining staff within a country must be done above board and within the provisions of our Constitution. We must ensure that we safeguard our people through the Constitution. The Constitution stipulates that everybody has a right and freedom to work in any part of this country. Therefore, as a Senate, we must protect all the employees and make sure that those who will opt to retire get their benefits.

Mr. Speaker, Sir, the other thing in the report which came out very clearly is the issue of the Public Finance Management Act. I am worried because governors might find themselves in conflict with this Act. We will find them not able to deal with donors and other development partners who would wish to support their counties. This Act might also discourage investors from investing in those counties. The Senate needs to look at that and assist the counties to come up with a clear framework. We should review this

provision of 5 per cent and probably increase it to ten per cent so that when they are borrowing, they are within limits.

Mr. Speaker, Sir, there is one more thing that is very worrying which we noticed as we went round the counties, especially in Kilifi and Mombasa. We realized that in Mombasa, the governor is doing so well. He is able to get private investors who are willing to assist in security matters and so on. But it is important also that we, as the Senate, ensure that the country moves forward in unity; that there is also a standard framework. It is very good if we get vehicles for the police. However, we forget that when we had county councils that were taken over by county governments, we had the *askaris*; where did they go at that time? It is the same thing we need to ask ourselves very critically; if I am a police officer and the working conditions are poor--- If I am given incentives to work well, at the end of the day, where does my allegiance lie?

This is something over which the Senate has to help the country. This is a framework. When we have metropolitan police now moving all over - we do not go for a system like Canada, where each person has their own police, but we should have a system which covers the whole country. We know security is a national function and is more critical in the counties. The national Government should start cautioning that while we leave it for the governors to ensure that the police have good working conditions, how do we ensure that it remains a national function where it will not bring conflict in between so that you do not come again and find yourselves in conflict with a governor who was doing the right thing because he has observed the problem for many years and you were not assisting him, and now he has tried something that works? Again, we shall start coming in.

So, before it gets to that level, I think the Senate should bring in a framework that says the *askaris* that worked for the county councils must be absorbed within the metropolitan police systems that are coming up and work together so that we bring in a level of balancing. I am saying this with all due respect, knowing that this is a very delicate issue. It is an issue over which the Senate must ensure Kenya moves forward as one country.

Mr. Speaker, Sir, you have reminded us that – and we are excited about this – that counties are moving forward but, then, it is a question of asking ourselves “how do we ensure---” That is why you find some counties are moving very fast while others are lagging behind because of the different political dynamics that they have. But as a country, let us just remember that Kenya has to move as one country. Therefore, county A and county B must be similar so that when a young person is growing up, he is able to walk around and say “I am still in Kenya.” This is one thing that the Senate should remind the governors; to always remember that we shall still be in Kenya. As Senators, we want to see our counties developing, but at the same pace. The State remains one unitary state. That is one thing we have to remind our governors.

Mr. Speaker, Sir, when we look at the county assemblies, one of the challenges that they face is the lack of drafters who can assist them in drafting legislation so that even if they are doing policies, they can borrow; so that, also, they remind themselves. We have realized that they will come up with policies and nobody is there to remind them that we have Vision 2030 or that they have to be consistent with our main document,

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which is the Constitution. Therefore, we come up with policies forgetting that there are some that will discriminate and some that will be okay. This is something that we have to now urge the national Government, as the Senate, that within this report, in terms of capacity building, one of the things they need to give the county governors are drafters to assist them in terms of legislation, so that the laws that they bring are best to guide them in the counties, but also ensure that they are in line with the policies and the Constitution that we have.

Lastly, Mr. Speaker, Sir, it is important to note that in the same way we look at the counties and, therefore, our role as the Senate--- I will again give the example of Mombasa County; they have 40 members, all of them from CORD and, therefore, they need to understand--- We said that it is important also that within the members themselves to have their own checks and balances. Because they were saying, if we are all CORD members or we are all TNA members, then why should the issue of minority and majority arise? And we said it depends with the views; that we may all belong to TNA, but our views may not be the same and we may not always be in agreement. Therefore, we also need to build their capacity in terms of understanding that the county assemblies are debating institutions and, therefore, everyone has a right to come in with an opinion regardless of the party they believe in. This will help them to open up their mindsets and help them have a better way of debating issues, rather than just looking at what the party says and how to toe the party line.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**The Speaker** (Hon. Ethuro): There are no contributors? This is a Motion that is not time-bound. We have 30 minutes each to speak while the Senate Leader of Majority and Leader of Minority have one hour each.

**Sen. Karaba:** Mr. Speaker, Sir, thank you very much for giving me the chance again to support of this wonderful Motion which has been moved and seconded by two very eloquent Senators.

Mr. Speaker, Sir, what we have heard and what we have read from the report is replicated in many counties. You will find that the limitations that we have seen and heard from the report are a replica of what others are doing. I would urge other committees to emulate what the Committee on Legal Affairs and Human Rights has already done; visiting such counties like Mombasa and Kilifi, and even include more counties. This will be an eye opener when we compare Kenya as counties. I would also encourage the Committee to proceed and include more counties apart from the coastal counties. I would urge them to move to central, western Kenya, the lake region and other parts of the country. They must find out how county governments are doing in those regions.

Mr. Speaker, Sir, we also had a chance of visiting Mombasa with my Committee on Education, Information and Technology. It seems like Mombasa is seriously geared towards moving to greater heights. This is a county which might give other counties a run for their money. I am sure that Mombasa County could be one of the counties which are

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moving very fast in terms of positioning itself in the new dispensation. I recommend all Committees of this House to visit Mombasa.

Mr. Speaker, Sir, you will agree with me that most counties are not up and running. They are engaged in endless wrangles. Every time they are fighting their speakers, governors, the majority leader and other leaders. These are our county assemblies. They are not engaging themselves in constructive debates. So, it is, therefore, important if prudent attention is given so that the MCAs can learn from one another. That is the reason we have video conferencing so that counties that are far from one another can learn what other counties are doing.

With the help of the fibre optic cables that we are connecting, all counties will benefit a lot. They will learn a lot from other counties. We have counties that will lag behind to the detriment of their residents. Counties have their members drawn from within their localities; they are elected by the residents. Therefore, they are supposed to protect what happens in the counties. If they are not exposed to know what is happening elsewhere, they will become a closed shop and will continue to lag behind. They will not even learn anything from outside. Their level of exposure will be limited.

For this reason, we encourage counties to move and compare themselves with others that have been doing well. Let them not feel as if they are being belittled when they are told that some other counties are doing better than them. Let them not feel as if they are lagging behind. As they learn from others, we should give credit where it belongs. We should learn and be seen to move in the right direction.

I encourage committees to continue with their work. Let them table whatever they have found out there, so that we can compare that with other counties. If such exposures are not made here, you will be surprised to discover that some of the money you have given out has been misused and cannot be accounted for. They will not be interested to know what is happening elsewhere. They will not even know that there are people who can scrutinize their budgets. It is through such scrutiny that their problems can be known. It is through this that they become careful in discharging their duties.

I support this Motion and urge more committees to do the same. I hope that one of these days, they will visit Kirinyaga County and table the report here, so that we compare it with Mombasa, Turkana and Siaya counties, among others. I suggest that if some counties will not have used the monies that will have been allocated to them on a monthly basis, they should not be allowed to withdraw money in subsequent months. They should use the money that they have first and account for it through the CRA.

If we sit here and assume that all is well in our counties, one day we will be shocked to learn that we are throwing money into the dustbin. This will be money going to waste. Let us, first, see that the Kshs210 billion that was given by the CRA is prudently used. Those counties which will not have used the money properly should be reprimanded. They should not get more money subsequent to surrendering that month's money. We should support the counties in terms of even telling them what the money should be used for.

Some of these counties are just seeing a lot of money in their counties and yet they have not handled such amounts of money. They are now planning how to visit countries such as Great Britain, South Africa, China, Japan, among others, without first

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doing what they are supposed to do. I am sure the travel overheads will be very high. That is why I am saying that we should act as a House to check and balance whatever expenditures the counties are incurring. They should not be allowed to overspend in luxuries without caring. That is why this report is important. I encourage other committees to do so.

I am sure that the Committee on Education and Information Technology will table a report too because we have done a bit of trips out there. Committees that are not doing that should be reprimanded so that we know why they were formed. There are some committees that are not doing well. We know that they were set up for other reasons and not because of what they should be doing. We should know what other committees have done. Committees should also be allocated money for specific purposes and not just money for trips. We have been to many places - Let us not allow chairpersons to travel when they have not tabled reports. We should check and balance ourselves. We should not just judge ourselves. Let people judge us. We can only be judged through our contributions.

I support the Motion.

**The Speaker** (Hon. Ethuro): Sen. Karaba, you should not worry about that. That is a requirement. Travelling is based on productivity.

**Sen. Musila:** Thank you, Mr. Speaker, Sir. I stand here to support this Motion and to particularly congratulate the two committees for taking time out to visit our institutions as an oversight organ of this House.

I have listened very carefully to the Chairman's recommendations and I agree with the Committee on many issues. First, I agree with the issue of assets. This is a very important issue. Whenever there is a change of Constitution or administrative arrangement, assets are key components of any functional institution. Therefore, the national Government, having been the custodian of all these assets, it is fair that an independent body oversees the division of the assets. I was saddened to hear that the TA was being disbanded prematurely. This is premature because there is a lot of work that should be done by this Authority, one of which is the supervision of the sharing of assets. If this is not done properly, I see a situation where the national Government will take every single asset. If we share, we will, probably, share assets which are out of use. This has happened before. For example, the equipment of the Ministry of Roads has been placed on top of stones in yards. I will not be surprised to see the national Government sharing equipment that is placed on stones with the county governments and keeping the good equipment. We need fair distribution of assets, be they buildings, equipment or anything else.

As Sen. Elachi has said, we are a nation. Sharing of these assets should not be seen as taking away equipment. These institutions should get the best equipment because they are weak in finances and the national Government can acquire others. Similarly, when it comes to buildings, we have seen situations where members of the Provincial Administration have refused or ejected governors from buildings because they claim that the buildings belong to the national Government. These are some of the assets that should squarely go to the devolved units so that they take off smoothly.

We have also seen, recently, wrangles within devolved units. We have seen Members of the County Assemblies not working in cooperation with the Executive arm of the devolved units. I have in mind, a case where in the County of Makueni; the Governor has threatened to resign because he feels harassed, as he puts it, by Members of the County Assembly. I am not sure if this is so but I know that there is no harmony. Harmony is necessary if we are to take this devolution ahead. I give an allowance because this is a new system. People must strive to follow the Constitution and learn from it, what other parameters can be used like how far the county assembly can go and how far the governor can go so that they work in harmony. All of us are serving the same people. I gave an example of Makueni but it is not the only one.

Mr. Speaker, Sir, all the authorities in the 47 counties have issues here and there between the executive arm of the Government and the legislative arm of the devolved units. Therefore, I want to urge that there should be harmony between the two units of the Government so that we take off, without which this Senate will be seen to be failing. When something happens in the devolved units of government and yet this Senate is supposed to be providing oversight role, we will be failing. That is why I support the Chairman's suggestion that we should be preparing reports annually to show the state of devolution in the country so that counties that are weak can see in which areas they are weak and be assisted.

Mr. Speaker, Sir, we have gone through the difficulties of preparation of budgets and it was obvious that the budgets prepared by counties were not based on anything. It was just a matter of how much we are receiving and this is how much we want to spend, for example, on travelling and so on. It is true that we should get people with knowledge and that is why I support the proposal for capacity building. These units do not have financial or administrative people who have the capacity to run governments because these are governments. Therefore, I think the first priority should be to ensure that these counties have the necessary personnel in order to carry out the functions as detailed in the Constitution. That is a very sound recommendation by these two committees and it should be implemented.

Mr. Speaker, Sir, this House allocated Kshs210 billion to the counties and it looks like the county governments are only talking about that money. They are not talking about how much revenue the counties are going to generate. It is not just the 15 per cent or so that the national Government is giving that is supposed to run counties. We would like to hear counties telling us how much they have collected. We have already started the new financial year 2013/2014 but they do not talk about revenue generation within their counties. They only seem to talk about the amount of money coming from the national Government. I think it is very important that counties develop their revenue bases by way of how much money they are getting so that what comes from the national Government is just a top up of the revenues that the counties are able to collect. This must be observed because we have been hearing too much talk about 15 per cent but they are not talking about the revenue they are collecting.

Mr. Speaker, Sir, there is also the issue in this Report about national Government personnel who are being seconded to counties. I think this matter again must be addressed properly. With respect to the national Government, particularly the former

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Ministry of Local Government, I am told that they have simply taken out lists of staff without any evaluation and without assessing the needs of counties so that they only post people who are needed there. What they have done is just count numbers and post them to Kitui County, for example. Some of them are probably people who have had bad records and the Ministries are trying to get rid of the so-called bad officers at the expense of counties. Again, the money that we are giving to counties - most of it is being used to pay salaries of these officers who may not be necessary in the counties. Therefore, I am urging that there should be close consultations. The counties should give their requirements to the national Government. They should be able to say how many accountants they want and how many administrators they want and then forward the names with their files. Some interview process should be done so that counties are taking only what they want but not to be given staff who they do not require or whose capacity is wanting.

Mr. Speaker, Sir, these are very important issues that we must resolve. We have had challenges this financial year and I want to believe that these are teething problems. I would like to believe that come next financial year, we are going to see stand-alone counties that are able to deliver. As I speak, out there, *wananchi* are disillusioned. On one hand, they are not getting services from the national Government because the national Government is saying that these activities are under the Fourth Schedule. They say that these activities are devolved. On the other hand, the counties have not taken off. An example is the state of roads in this country. Two years ago, there were heavy rains that washed away bridges and roads but the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA) have not released funds to maintain these roads. The sufferers are *wananchi* who are not able to access their areas.

Very soon, we are going to have rains again and God knows what is going to happen to communication and transportation within our counties because of this impasse where people are looking at the national Government and yet it is saying that this is a function of the county government. In the process, we are going to suffer a lot. I would like to urge that the national Government quickly goes into the process of releasing funds for all the functions that are to be devolved without wasting time.

Mr. Speaker, Sir, there has been the issue of releasing money on a monthly basis. It cannot work. You cannot be releasing money every month and there are delays but we expect services to be delivered by the counties. We want money to be released twice per year or at least quarterly. By releasing money monthly, you will find workers and contractors not being paid on time. Therefore, this will be inviting stoppages, strikes and discontent among workers and suppliers of goods and services. Therefore, I want to urge the national Government to release money that is going to run for quite some time in the counties so that they can provide the required services.

Mr. Speaker, Sir, the final point I want to make was alluded to by Sen. Karaba and this concerns the harmony within the county assemblies. Hardly a day goes by without reading in the press about squabbles to remove the speaker or impeaching the governor, the removal of the Majority Leader and so on. These squabbles are reminiscent of the former county councils. I want to plead with Members of the County Assemblies (MCAs) to know that they have graduated from that era of being county councilors. They

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are now legislators. Therefore, everyday squabbles will not help in taking forward the devolution that we are so much gearing to do. In fact, the members of the public may start having to think that we are just going there to fight. Imagine if the Senators here were removing the Speaker every other day, then we will be wasting a lot of valuable time. Therefore, I want to plead for harmony throughout the Republic in the county assemblies so that they work in close co-operation to deliver services to the public.

I would like to see, as Sen. Karaba has said, more committees visiting counties to assess the performance in all those areas which have been devolved like education, roads and health. These areas are yearning for services to be rendered by our counties and such services cannot be provided when there are squabbles in the county assemblies or the executive. I want to urge sobriety, tolerance, consultation and co-operation in the running of counties.

With those few remarks, I beg to support.

**Sen. Lesuuda:** Mr. Speaker, Sir, I would like to support this Motion and congratulate these two committees; the Sessional Committee on Devolved Government and also the Standing Committee on Legal Affairs and Human Rights, for undertaking this very important activity to go out to one of our counties and see how devolution is working. Just as Sen. Sang has said, this is just a reflection of what is happening in many of our counties. Many of the recommendations here are views that we received in the counties that we visited and after interacting with some of the Members of the County Assembly (MCAs). It is important to also note that many of the recommendations that have been made by these two committees are contained in the Motions that we have been passing in this Senate. So, the MCAs and the public have the same aspirations that we have been having here in this Senate.

We have passed several Motions here where we have recommended that the Government needs to think about training and capacity building of our MCAs. This is something we have passed here through a Motion. There are other Motions we have passed here, for example, the need for a college similar to the Kenya School of Government model that would train staff at the county level.

Therefore, it is important and imperative for us to think of how we can realize these issues so that it is not a matter of whether or if the governor at that particular time or the county assembly of that particular time feels like. It should be a law that should be followed and adhered to. Some of these recommendations are very key and are things that we have been grappling with. For example, there is a Bill that Sen. Sang has been talking about; there is a Bill talking about how we are going to manage the funds going to the county governments. We have the county funds going to the governor's office, we have the Constituencies Development Fund (CDF) and now we have the *Uwezo* Fund which will also be devolved to the counties. So, it is important for us to think beyond the supremacy battles.

Mr. Speaker, Sir, in our nation, the person who has the money that can do a few projects at the constituency or the county level is seen to be working than somebody who is going to provide oversight. For example, people are asking why the Senators are not fighting to control any funds or developmental issues at the county level. Therefore, it is important that apart from those battles we are having, we should think about these issues

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critically and in a sober manner so that there is no duplication of projects. The resources we devolve to the counties are supposed to offer services to the people in the counties. It is also important for us to note that the mentality of councilors is still there. This is also reflected by the Motion of adjournment we had yesterday where we talked about remuneration of Members of the County Assemblies (MCAs).

If we have really lifted their stature, then they need to know their work because they are now more of legislators at the county level. They are expected to pass laws that would govern the counties that are there. So, it is important that we give them the respect that they deserve and they should also show respect for themselves in the way that they manage the counties. When the members of the public see them at the counties, then they will know that they have a representative who represents their views and aspirations through passing laws that serve them.

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

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

Madam Temporary Speaker, it is important for me to note that our Members of the County Assemblies (MCAs), the county executive led by the governor and we, the Senators, really know that many Kenyans are looking up to us. This is because one of the reasons they passed this Constitution was because of devolution. For the longest time, we have been waiting for services to be provided to us by the national Government. One of the key reasons for passing the Constitution was because Kenyans heard or read that services would trickle down to them. So, in the manner that we behave and conduct our businesses at the county assemblies and executive, it is important for us never to lose sight of that very important factor; why Kenyans passed the Constitution.

Madam Temporary Speaker, we know that some counties have standoffs, especially with the recruitment of staff at the county level. We know that there are staff who were recruited under the executive or the governor's office and those who were recruited at the county assemblies under the speaker's office. I know that there has been a tussle in some counties. For example, we have heard MCAs saying that the administrators at the ward level are a threat and that they have been brought by the governors to undermine their work. Therefore, any time that the Governor brings a Motion or list to be passed in the county assembly, he is held at ransom and told: "You have to first review what you brought here, so that we can also pass your list." Really, I think we should think beyond the personalities at our counties and our own personal interests in the counties. We should think about the interests of the people whom we represent at the county level.

Madam Temporary Speaker, still on the working relationship between the executive and MCAs at the county level, it is important to also note that when we talk about the trickling of money from the national Government to the county government, severally, we just hear from the governor that some Kshs60 million, for example, has come down to the county. You know that the staff have to be paid and there is a budget that was created which includes issues to do with development. I think that it is important

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for this Committee also to sit with the governors, so that they can see how they are actually spending the money that is being sent to the counties. This is because one wonders whether it is meant just to pay salaries and at what point they will start programmes or projects at the county level.

Of course, I am sure that they will be doing them in bits, but it is also important to determine how effective the national Government is transmitting money to the county governments, so that five years do not just pass and nothing substantial in terms of development has taken place or been implemented at the county level.

Madam Temporary Speaker, it is also important to note that many Kenyans had hope in devolution and that is why many of them applied for the jobs that were being advertized at the county level. Many of them have gone there and do not know what they are supposed to do. I do not know whether some of them have offices. Really, we will be wasting some of the best brains that we have in this country if we just lump them in the counties and not give them clear guidelines of what they need to do and provide them with the resources, so that they can do the work that needs to be done.

Madam Temporary Speaker, it is also important to note that as these two committees have come to realize, Kenyans are not only looking at the functions that have already been transferred--- They are hoping that with regard to other functions that have been left at the national Government, for example, the issuance of identity cards, they could still work with the county governments so that some of these functions that are still at the national Government are devolved. It is not logical at this time and age that we still have people travelling all the way to Nairobi to get their passports or national identity cards which take so long to reach them at the grassroots. These are things that we need to think about and ensure that they actually happen at the county level.

Madam Temporary Speaker, it is noteworthy that our county governments are realizing the importance of media, publicity, reporting and sharing of information on what they are doing. Of course, we know that the media would like to know which governor is fighting with which Member of the County Assembly. Having been a journalist myself, that would be news, but then, the county governments have to be creative and think outside the box on how they can share information. This actually shows how that county government is transforming the lives of Kenyans. When there is no information about what you are doing, planning to do or already done, then people will just become so disillusioned that they will say that there was no point having this devolution, because we just have so many people who we are paying from our taxpayers' money and not seeing the services being delivered to us.

Madam Temporary Speaker, having said all these things, I think that it is also important for us to note that a journey of many miles has to start with a step. I think that all of us, who are custodians of protecting devolution, remain focused so that we can ensure that it actually happens. The steps that we are taking are positive. A Committee is going down to the counties to see what is working and not working.

The last recommendation of the Committee is that a report should be prepared at the end of the financial year on the state of devolution. If we do not keep track of what we are doing, we might lose focus. It is good if we can get to know early enough what we

need to correct or put in place, so that we do not encounter the same challenges in the following year.

Madam Temporary Speaker, also in the spirit of what we saw today when His Excellency the President was launching the 30 per cent procurement reserved for women, young people and people living with disability, this is an area that our county governments should also emulate or think about. This is because I know that many of the Governors, Senators and even Members of Parliament, when they were campaigning, based their promises on the young people and women who form the largest population in our counties. Given that we have used them for long to get into power, I think it is important that our county governments, in the spirit of upholding devolution, even at the county level prepare their procurement procedures and - I know that a chunk of their money will also go into procuring services and goods – reserve this for young people, women and people with disability.

I know that in the next election year, problems affecting the youth will be an issue of the past. People will be voting not based on the promises that are made to them. It is important also that we walk with them in this journey of devolution, so that they feel that they are part of it. Once we give this young people work to do and make sure that they access the money that is circulating in our national Government and county level, definitely, we will have a more secure and prosperous country.

Madam Temporary Speaker, once again, I would like to thank the two committees for the work that they have done. I do hope that other committees will also follow suit. During my induction, I was told that the work of a committee is also measured by the reports that you have tabled. So, these two committees have maybe passed one mark. I hope that many other committees will follow suit and ensure we go around our counties to see how they are working.

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I rise to support the recommendations made by these two committees.

I will start with the last recommendation. I do not think that it is viable to attempt or even state that the Committee will prepare a report at the end of the financial year. My recommendation would be that these reports be made periodically to the Senate, so that we follow what the county governments and assemblies do periodically. This is because it is possible that if we wait for the end of the year, it will be too late and we might find our counties on the death bed.

Madam Temporary Speaker, in terms of audit of assets, this mirrors very closely to my heart and county. This is because one of the frustrations that my governor is facing is that he has no office. The County Commissioner is donating office space in installments. Part of the reason why the County Assembly has relocated its sittings to a town called Malili is because my Governor and the County Assembly are holed up in one place, which used to be the Municipal Council of Makueni. It is absolutely unacceptable.

We recently witnessed members of the national Government being evicted from Jogoo House. There is no reason whatsoever why county governments should be squatters in their counties. It is, in fact, my Governor who should be offering space to the County Commissioner and his officials. The pretext that these buildings belong to the

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national Government is absolutely unacceptable and contrary to devolution. It is unacceptable for the County Commissioner to be occupying several floors and the Governor and his County Assembly staff are put in a building which suggests that they are squatters. Therefore, I agree with the finding on auditing of assets and this must be done as quickly as possible.

Madam Temporary Speaker, in terms of sampling of the counties that they have done, I would suggest that instead of having two counties like Kilifi and Mombasa which would most likely have similar issues, we should suggest that this Committee travels all the way to Samburu, Makueni, Machakos and other far-flung areas, so that the recommendations that they make will cover what, in statistics would be a proper sample. Kilifi and Mombasa, in my own perspective, cannot be called a sample of all counties.

Madam Temporary Speaker, with regard to staffing, I recall that recently it was reported in the Press that the Governor of Machakos was having problems with employees of the national Government. He called a Press conference and terminated the services of these people. This recommendation is critical because one of the things that most counties, including Makueni, are facing is payment. This is because a large chunk of the budget which they have been given is going to payment of salaries, as opposed to development.

Therefore, these recommendations are timely and action must be taken as quickly as possible. I concur entirely with the sentiments expressed by Sen. Musila in so far as the formula of revenue sharing is concerned. We must find another formula of doing this and the faster we do it, the better, because it is important. Take judicial notice of the fact that the 47 counties in this country, receiving equal amounts of funding are not equal because of the injustices created by all the previous governments in so far as development is concerned. Some counties have been left dwindling in terms of development especially in the lower part of eastern, and they think that Independence never came to this country because they have never seen tarmacked roads, health facilities, *et cetera*, while some counties in this country have tarmacked roads all the way to cattle dips. It is absolutely unacceptable.

Madam Temporary Speaker, in order to address this question of the budget deficits, there are provisions in the County Government Act for making what they call the County Integrated Development Plan (CIPD), which looks at this law again because in the first Budget, countries were allowed to make their budgets and plans. Under normal circumstances, you make your plans and then make your budgets. The reason why most counties are having problems with their budgets is because they started with looking for money and then planning, which has then put them in a quagmire because they have planned yet they have no funds, or *vice versa*. Therefore, I agree that part of the solution to this problem is what the Senator for Samburu stated; that there should be building of capacity because these people are soon realizing that budget making is not one plus one or two plus two; that it is much more difficult than that.

Secondly, Madam Temporary Speaker, the settlement of squatters is something that was mentioned in our Committee on Legal Affairs and Human Rights. We have proposed an amendment to Section 11 of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 ( No.56 of 2012).

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This particular section of the Act leaves the pressure of settling displaced persons to the national Government. We have proposed that the county governments be involved in this process. The law as it is today leaves this particular provision in Section 11 of Act 56 to the national Government alone. You saw the Jubilee Government giving Kshs400, 000 to people in Rift Valley while squatters in Kibwezi have squatted for the last 15 years yet they have not been resettled; but they were given allotment letters.

The only way to remove this skewed allocation for resettlement of displaced squatters is to ensure that this recommendation is followed by yet another recommendation; that the Act be amended so that county governments can participate in this process and, therefore, the discrimination that we see can then be removed.

Madam Temporary Speaker, issues to do with roads are one of things that are piling before the Senate, so that the discrimination which is being propagated –whether deliberately or otherwise – by the Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA) over roads is also done away with. While some counties in this country can take pride in saying that they have 300 or 400 kilometres of road, I am afraid that in places like Makueni, the road network is not something that is worth discussing because there are no roads. Therefore, these recommendations are timely. But there is also a Motion I believe we passed so that the counties can take over the works on our roads, particularly, Class D downwards, which will necessitate that the allocation of revenue in terms of revenue sharing will increase so that we are able, as counties, to develop our own roads without waiting for the national Government to do so.

Madam Temporary Speaker, the issue of land laws has been addressed in the CIPD, which I had alluded to before under the County Governments Act and there is no need to belabor the point. There is something skewed about it. I am happy that this has been discussed in my Committee; that as Senators, we must be involved in some of these things particularly in my county. I was only sent a notice to mobilize people for this particular purpose, yet it is a five-year plan where there is no formula about other leaders getting involved. Therefore, we have a plan created by our county for five years. Leaders have not been included; there is no formula; the law does not encompass, for example, the formula of involving Members of Parliament, Senators, Women Representatives, *et cetera*, yet that county is running and our role as Senators is to do with oversight. In the end, therefore, we have no input, we are left behind and we cannot perform our role as Senators or as the Senate.

Madam Temporary Speaker, in terms of the roles to be played by the national Government, I am aware that in part 2 of the Fourth Schedule under county governments – allow me to read – there is a provision for:

“Implementation of specific national government policies on natural resources and environmental conservation, including—

- (a) soil and water conservation; and
- (b) forestry.”

Whereas county governments are supposed to implement these national Government policies on soil and water conservation, there exists, to my own knowledge, no policy on water conservation anywhere in the country which the national Government can implement. Therefore, the recommendation made by these two committees is timely

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so that, then, the national Government can be compelled to have such policies, particularly in areas that are challenged, like in my own county, so that we can have water harvesting instead of waiting for rain.

Madam Temporary Speaker, coincidentally, while most people are waiting for rain in counties like Makueni, God has blessed us with rivers that do not dry. But unless we harvest this water, it does not make sense while people wait for rain and water is passing through the county throughout the year. Therefore, this recommendation is timely and it must be implemented to its logical conclusion as fast as possible.

I have gone into capacity building within the county assemblies and I know for a fact that most of the county assemblies are challenged in terms of legislation. We have not made any progress at all in terms of these legislations. There are no trained draftsmen either from the county or the national level that can assist these good people in drafting legislation that can help the specific areas that are covered under the Fourth Schedule. I have in mind something very serious and it is the forests. In my own county, people are harvesting trees as if Jesus is going to come soon, and it is a troubling issue which is creating a problem in the county. But these people are challenged as they cannot draft legislation or regulations.

Madam Temporary Speaker, the county governments of Machakos and Makueni have stopped sand harvesting whereas there is no legislation or regulation. So, we should build their capacity so that they can then start doing some of these things that are so dear to these counties and which are long overdue and hence my suggestion that instead of waiting for a report after 12 months, we should be doing this quarterly. They should sample the visits in such a manner that, then, we can have statistics that we can rely on as the Senate to say that up to this level, this quarter, we have made progress or otherwise, so that then we can inform ourselves of things that we need to do.

Madam Temporary Speaker, on the issue of media coverage and reporting, it will surprise you that some of these county assemblies cannot prepare reports of even their committees. They sit and when a Senator requests for a report, this report is not available. It is not because they cannot write, but there is a problem with capacity building. It means that even writing of reports is also a service which we must take to these people, including things like budgets, which are much more detailed. Even reporting is itself a problem.

Madam Temporary Speaker, in conclusion, I want to support this Motion and state that in terms of Article 96 of the Constitution of Kenya, we must be seen to be working. We must also work and deliver results to the people of Kenya. This Senate is the ultimate custodian, not only of ideas, but of devolution. Therefore, counties are looking up to us to develop such policies and recommendations. Let us not fill the library of this Senate with reports and nicely typed, bound and done documents, but take action so that at the end of our term, we can then proudly say that we have protected devolution and not that we have a record of developing well written, well typed reports and in good time.

I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Sen. Nanjira.

**The Nominated Senator** (Sen. Godliver Nanjira Omondi): Thank you so much, Madam Temporary Speaker. I take this opportunity to support the Motion and to comment on a few things. My concern within the Report is about the issue of staffing which raises a lot of alarm amongst the staff working for these counties. I want my fellow Senators, when they talk about the issue of staffing, to balance the equation, putting in mind that these are our voters; they contributed towards our being here and we should not be the first ones to cast stones to throw them out of their employment. We should ensure that we have a smooth transition whereby we appreciate what they have fully done for this country because they have been serving this country for so long even in that small capacity. I do not see the reason why we have people who are learned and they have papers but those older people are our brothers, parents and sisters. We need to rethink about it before we say that we need to sieve and throw others out to get the real people that we want, because after five years, they will be waiting for us outside there.

Madam Temporary Speaker, my second concern is about how our county governments are constituted. Within my records, I have four counties that are unconstitutionally constituted. Amongst them is my neighbouring county, Vihiga, where within the county assembly, we do not have a representative of persons with disability and yet they are comfortably running the affairs and business of the assembly, not putting in mind that, that House is unconstitutionally constituted. What are we going to do? If I look at that issue critically, I want to assume or to reach a resolution by myself that these county governments are testing waters to see the reaction of the real beneficiaries, who are people with disabilities. I want to cite an example where one county government just budgeted for wheel chairs, and I asked myself – especially the disability movement was asking – is it true that every person with disability requires a wheel chair?

Why is it that things are just being imposed on people with disabilities without getting to know the real issues that are affecting them? Even up to now, they do not know the budget allocated to them and they have not been involved in budgeting. Up to now, it has not been brought to their attention as to whether what is there within the county government is going to support them. So, I want to bring to the attention of this Senate that even if the county governments are having teething problems, some of the problems are being brought about by the management. Because a good leader must have everybody on board and handle the real issues that affect each category of people for him or her to survive and for her to serve every person or every category of people under their leadership.

With those few remarks, I beg to support and rest my case.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lesan.

**Sen. Lesan:** Thank you, Madam Temporary Speaker. I want to, first of all, congratulate my colleague, my niece, the new Senator for her maiden speech in the House. We appreciate these Senators.

I just want to make a few comments on this Report. The first one is that we congratulate the two committees for the effort they have made in going out to touch base with counties and more particularly with the public.

I value, significantly the comments that have been made by the public in this Report. This is one aspect that the Senate has direct contact with the grassroots which are

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the counties. So, I want to congratulate the two committees for the Report they have brought to the House. This Report gives us an opportunity to have a hands-on feel of what is going on in the counties and have an opportunity to learn from our own mistakes and correct some of them in time.

Madam Temporary Speaker, I wish these committees had visited more counties than the two that they did because apart from the problems being seen, there could be other new problems arising. Perhaps, they are not found in the two counties that the Report is based on. I am thinking and I wish to report about the huge challenges coming not between the national Government and the county governments but between a county government and a neighbouring county government. These issues should be captured early enough so that we do not have strained relationships between county governments like the ones that exist now between my county, Bomet and Kericho over the sharing of resources like water.

There is a big debate and a confrontation that has been growing by the day and could become a difficult problem. This is about sharing of water projects which run across the two counties. Previously, this was not an issue because the two counties were one district but now that they are two counties, one of the counties has put a meter to check the water supply to the next county. Since the water supply is at times electronically generated, payment has become an issue and in some areas, the water supply has been cut off.

Madam Temporary Speaker, these are issues that should not arise. They are issues that we should check very easily. These are problems that most counties may have encountered. These are problems that will arise in counties that neighbour one another particularly in the sharing of natural resources. These are things that committees like these should capture.

The Report we have is excellent, however, it is important that most of these reports delve a bit more on challenges and their possible solutions. It is much better to think in a committee room than on the Floor of the Chamber as we try to find possible ways of solving the problems. I would have wished that this Report carries a lot more issues with regard to problems that have been identified so that they are resolved.

I am glad that we are already starting to address some of the problems. Some of the problems with regard to development agenda or handling of finances in the counties require the mental capacity, experience and expertise of every elected leader in the county. At the moment, there is no forum in which all elected members of a county can put their heads together and address their problems.

I am not anticipating debate but I am glad that there is a Bill that will be coming to this House to create a body where elected members can exercise their know-how so as to maximize and solve problems that have been highlighted by this Committee. There are certain areas that this Committee has not touched which I think are very important. One of those areas is the one on environment.

Madam Temporary Speaker, over the weekend, my Committee on Education, Information and Technology spent time in Rwanda, which is a neighbouring country. We would want to revisit Rwanda again because of the beauty and the cleanliness of the environment. In my thinking, one of the ways that counties can attract investors in the

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county is to have an environment that is conducive and attractive for people to come from outside to invest. A report like this should also highlight on that and perhaps make recommendations on how we can create environments that are key and conducive to investors.

The last point that was not captured by this Committee but which is very significant is that of security. The issue of security is intertwined with the development of counties. As we continue to debate the reports that we have, we will go back and address the issue of security considering that there are grey areas in terms of devolving security functions, what roles the national Government plays in terms of security and what roles the counties should also play. This is one of the areas that the Committee on Legal Affairs and Human Rights should address so that we look at ways to contribute towards issues of security which are a very significant aspect to the success of a devolved government, considering the history of this country.

Madam Temporary Speaker, while I recommend that we should occasionally be getting these reports, the reports are fantastic and we should have them quarterly, and perhaps, not for one or two counties but a quarterly report for each of the counties that we have so that we have a feel of what they are doing, whether in isolation or in totality with regard to all the counties.

I want to once again commend the Committees that have given us this Report. We hope that the other committees will give us reports especially after exhausting visits to the counties. They should bring information to the Senate which we can use to enhance and build capacity and goodwill relationships between counties, officers and elected people; ranging from governors, Senators and other people so that we have a harmonious working relationship with counties and hopefully give a good chance for county governments to succeed and deliver services to the public at large.

I support the Report that has been laid before the House.

**Sen. (Dr.) Zani:** Thank you Madam Temporary Speaker, for this opportunity to support the adoption of the Report of the Sessional Committee on Devolved Governments and the Standing Committee on Legal Affairs and Human Rights after their visits to Mombasa and Kilifi counties; their recommendations and insights.

It would be a good idea if we had more counties being visited, if possible, so as to find out how they are moving on with devolution. We should know what issues are coming up and make recommendations to address them. That way, we will address problems facing devolution at various counties long before they become bottlenecks that cannot be handled at the county level. This is really commendable. The solutions are also part and parcel of the process. They should be put forward but most importantly, acted upon.

Madam Temporary Speaker, this Report has, at least, given us an eye view of some of the issues we have been discussing generally in the Senate and specifically for some counties. Some of the issues may cut across certain counties. However, some issues may be unique to specific counties. Mombasa County, for example, has a deficit of Kshs3.6 billion which is very high. That influences the development agenda for that county. Mombasa County has also set up ways that partners can come up to make up for the deficit. That is one of the initiatives that Mombasa is using to make sure that

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resources accrued to the county make it possible for the development agenda to take place. That notwithstanding, this is an issue that the Senate will have to look into.

As much as revenue allocation is done, the level of deficit per county does influence development for the county and, more so, the lack of information from the citizens about how much is used. This creates very high expectations for those counties. I believe that the money has now been allocated and everything should be done. But sometimes, that is not the case. Some counties have done audits of their human resources, whether they exist or not. Some time back, there was acrimony in Mombasa County because of the audit that was going on. Workers felt threatened that they would not remain on the payroll. Such audits help to remove ghost workers who are in the counties. Mombasa County is one of those that have applied for the transfer of national functions. We plead with the Transition Authority (TA) and all relevant bodies to accommodate and transfer all functions to specific counties.

Madam Temporary Speaker, a certain proportion of funds has been allocated to development and a lot of progress has been made. This is very important for Mombasa County being a tourist county. Beautification is key not only in making the place beautiful for the sake of it but also for tourism. People want to visit areas which are clean and environments where they will be happy.

Revenue collection is one of the projects that Mombasa County is engaged in. There is now software that enables revenue collection to be done almost accurately. It shows where the revenue is coming from and from a particular sector. There is also software that can track where revenue is coming from and how it is being spent. It would be good for counties to use this software. In one county that the revenue collection software is being used, they expected that their highest revenue would come from mortuary charges whereas that is not the case. That was one thing that they did not expect and they are now raising questions as to what could be going on.

About Kshs4.5 billion has been used for the payroll which is about 45 per cent of the overall budget which is a little bit of a situation for the county. This wage bill is very high. There is a big complaint at Mombasa because of the port and its utilization. Apart from the Lamu Port that is coming up, Mombasa is the main gateway into the hinterland and Mombasa County is feeling strongly that the revenue from that port has not been directly ploughed back into the county. I think this is a very valid case that needs to be looked into. This can apply to a larger project in terms of looking at the natural resources or any resources that are within specific counties and how those counties can actually begin to gain.

Madam Temporary Speaker, in the *ad hoc* Committee on natural resources, we have managed to visit about five counties and the communities feel that the natural resources should be used to their advantage. Counties feel that a particular proportion should be actually left within those specific counties. That will spur development and create healthy competition. People will begin to look at what resources they have and how best to utilise them.

Regarding good working relationships between county executives and county assemblies, it is very critical and I think we have spoken about this even up to yesterday. That acrimony can lead to under-development in those particular counties. For the case of

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Mombasa, Governor Joho has made a big effort in trying to bring all the players together. The county executive consists of young, vibrant and energetic people who want to spur the county. MCAs are also very enthusiastic. It is the intercession between the various arms from the county executives to the MCAs that I would like to commend Mombasa County in terms of the dynamics that it has put in place. I also want to urge other counties to bring everybody together.

I have been saying this at various forums and I want again to ask from the Floor of the Senate; how many counties have tried to bring all their players together just to have a discussion about the roadmap for that particular county? The leadership should put together the governor, the executives the MCAs and members of public service boards so that they can have a conversation and share a vision for the counties. This will enable them to have a more participatory and consultative process which they can again share with other members of the public.

Madam Temporary Speaker, from the reports, the mechanisms for enhancing that participation have not been put in place. So, a lot of information that is coming from county assemblies is not known. If you go to most of the county assembly galleries, when a session is going on, you will hardly find members of the public and yet they are very important for ensuring that the development of the county is upheld.

Madam Temporary Speaker, it is imperative that the MCAs should be capacitated so that they can draft proper legislation. It would be very futile to have county assemblies which cannot function because they lack capacity. This capacity can be achieved through training. We should strengthen and put in a little bit more effort to ensure that they are able to understand their key legislative functions. For the ward representatives who were previously councilors, there is an enormous direct feeling that they need to be looking at the interest of the people directly. Unfortunately, they have been hijacked into that role leaving the legislative role hanging and yet it is so critical in terms of legislation and ensuring that this country can move in the right direction.

Madam Temporary Speaker, regarding the issue of remuneration, we talked about it even yesterday and we said that it is important for the issue to be evaluated as quickly as possible. There has been an issue about representation especially for the nominated Members. There have been complaints from Kilifi, Vihiga and Tana River that the representation of the disabled was not proportional. It is very important that we put all the key sectors into consideration, including disability or ability and gender.

There are other issues running across our counties including drug menace, youth education and unskilled labourers. How we handle these issues will determine whether devolution will be successful or not. If the players in development do not have the necessary capacity, then devolution will not move forward. If we do not have the right personnel, then nobody will play these specific roles and this will create a gap. Counties have so much resources and that is why the issue of devolution is creating so much excitement. I hope that the excitement can translate into counties understanding the need that if development is to take place, then they must be able to train their personnel. In some counties, universities are making initiatives to enhance skills. For example, in Mombasa County, focus is on marine science and tourism and for Turkana, the focus is on oil extraction.

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Madam Temporary Speaker, for Kilifi County, there is the issue of delayed transfer of functions and this is an issue that is affecting all counties. There is also need for civic education and that is an issue that we have talked about over and over. For people to effectively participate, they must understand what the Constitution and devolution is all about. Therefore, measures need to be put in place as quickly as possible.

The inter-connectivity between the Senate and the county assemblies is key, and this has been explicitly stated by Members of the Kilifi County Assembly. They need the support of the Senate. We need to create clear mechanisms so that we can quickly get messages from the Senate to the County Assembly and *vice versa*. When this is effected, issues can be quickly addressed and we can know what is affecting the counties.

Madam Temporary Speaker, the understanding of the bicameral system has also been brought out. They need to be trained and also go out to other counties. The Committee on Education, Information and Technology has just come back from Rwanda, which is one of the countries that have successful bicameral systems where both Houses are able to interact and discuss how Bills move from one House to another with a lot of cordiality. Those are places that we should take members of the county assembly. Sometimes I think Kenya has come from a background which is a little bit rife in terms of violence and we think about violence and fighting as a way to get out of so many problems and this cannot get us anywhere.

Therefore, people need to be educated about the bicameral system in order to understand what it is all about, and also understand the mandate of the different players. They also need to understand the different organs and their respective roles. We should also come up with minimum standards of how people can be protected. We can actually enhance security in the process and make things possible.

Madam Temporary Speaker, let me again commend the two committees that came up with these key recommendations. The issue of assets and liabilities again came up. We need to ensure that the distribution of assets within the country is not biased in such a way that the assets end up with the national Government leaving the counties with nothing. In fact, an audit of assets and liabilities is long overdue in all the counties so that what accrues to the national Government should be taken there and what accrues to the county government is also taken there.

In the same vein, the issue of employment and deployment of staff from the national Government to the county governments should be done in manner that ensures that it is not only the best people who are retained by the national Government but expertise should actually be devolved downwards. This should be done in a calculated way to ensure that all counties end up with appropriate personnel who can spur those counties to the next level of development. Even when deployment is done, there should be an audit of skills so that the exercise is done in a very fair way.

Madam Temporary Speaker, the counties also need to consider the public-private partnership models so that they can utilise them and come up with models for raising revenue in those counties. They should come up with county integrated development plans which will work in those specific counties. They should look at what is envisaged in Vision 2030 in those particular counties comparing with what the National Treasury

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has allocated as important. More importantly, they should come up with a way to gauge whether what they have advocated for and the milestones they have set for those counties have been achieved. That is one of the areas where we would want the County Development Board that we are proposing as Senate to play a role in trying to ensure that development has taken place. We should ensure that implementation has been done appropriately to spur development for those particular counties.

Regarding the issue of legislative training and capacity building, there is a proposal to have an institute like the Kenya School of Government to be devolved to the counties. This is a credible proposal because the needs of the county will be addressed.

Madam Temporary Speaker, last but not least, there is need for the counties to find mechanisms to move participation to a higher level rather than waiting for the people to come forward. The county assemblies should be proactive in reaching out to people through newsletters and other forums as suggested in the Report. This will enable people to know what is happening. The counties should have credible leadership with a vision and passion to drive their counties to where they want to go and to achieve their goals despite all the hurdles that they come across.

I suggest that we should have a quarterly report so that we can continuously keep in touch with the counties and know what they are doing. I think it will be very nice one day in this Senate to share the state of devolution for the 47 counties of this country. We can look through their achievements, praise each other and find ways of doing things in a better way. With devolution, we should assess whether we have moved from one point to another but we can improve on the point where we have moved to and make it better so that we can achieve the dream of devolution.

Thank you.

**Sen. Abdirahman:** Madam Temporary Speaker, I rise to contribute to the Report of the Joint Committees of Devolved Government and Legal Affairs and Human Rights.

Madam Temporary Speaker, having gone through the Report in a very short time, it was a good indication of actually what our counties can be like. But I would also like to call it a snapshot, because it does not exactly give the very fine details. Of course, we did not expect, in such a short time, to actually hear a very lengthy or detailed report on actual status with regard to devolution in the counties, which the two committees visited. But, at least, I feel that it can be the starting point for us to understand the progress made in each of our counties.

Madam Temporary Speaker, I would also have thought that it may have been very wise to develop some little instruments or what I would call tools of assessment which the committees have undertaken so that we can use that to gauge the progress in all our 47 counties. We should develop some benchmark. We are, of course, not saying that these committees replace the Transition Authority or Ministry of Devolution and Planning in terms of monitoring the progress of devolution. But it is important that the House Committees such as these two consider developing some basis within which we can benchmark all others with regard to performance.

Nonetheless, I would say that this is a good start. We realize that the findings are broad-based and the committees have actually captured wide ranging issues and not necessarily those that have to do with the functions of county governments. The one on

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Mombasa County, particularly talks about the drug menace and issues of land that have bedeviled that particular county for a long time.

Madam Temporary Speaker, I was encouraged to see the public hearing forum presenting issues that relate to even the Constituencies Development Fund (CDF). It clearly tells you the gap in terms of coordination. I am sure that the Bill that has been brought to the House by Sen. Sang will now come in handy, so that the expectations of the communities are actually addressed through such avenues or legislation.

Madam Temporary Speaker, I realize that the committees had an opportunity to talk to the county executives, Members of the County Assemblies and the public. But I feel that all is not complete without speaking to the other arms that have got elements that deal with devolution, including the national Government and the constitutional commissions that have in one way or the other got some relationship with regard to the implementation of devolution at our lower levels and from the national level. So, I feel that probably the committee should go ahead.

I am sure that they have an opportunity to actually relate with the other institutions so that we can get the correct perspective because the gaps that are emerging in this Report cannot be wholly addressed without actually relating with the other Government institutions and institutional mechanisms put in place.

Madam Temporary Speaker, I also realize that the role of the Senate has actually come up in this Report, particularly from the communities. They feel that the defender number one of their rights and interests is the Senate. I think that the communities are getting to understand. It is about time that other institutions, including the National Assembly that runs at par with the Senate and the governors who get threatened by the mere fact that the Senate is trying to say that we need better coordination, come to terms with the fact that the Senate has a very pivotal role to play in terms of bringing out the interests of communities at the grassroots. That is not something which can be underestimated.

Madam Temporary Speaker, I also note with great respect the bit that talks about the County Integrated Development Plan. I happened to participate in the one that was held in my county and realized that it was rushed. Communities were getting worried of beating the deadline. I think that the recommendation of the Committee and even the community that these things should have been extended was very important. I contributed on this same Floor by saying that good plans have to precede funding. Unless you have good plans, you will duplicate or you may not implement projects that will last for many years to come.

I also took note of the costing of functions, which was recommended by the Committee. This is something which when the Commission on Revenue Allocation (CRA) shared out monies from the onset, by talking about costing, it did not actually take into account the various disparities in terms of development and various inequalities that have happened in this country. So, it is important – and the Committee has recommended – that they take this into consideration seriously.

Madam Temporary Speaker, finally, I am impressed by what the Committee has done, but it is never complete without examining the roles of other players in the devolution process. Unless we do that, we will keep on bickering and saying that there

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are gaps here and there. So, it is important that committees delve much more and reach out to these other people and share in the plenary. I think that this is a better job than the one that I saw last time.

Thank you.

**Sen. Chelule:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Motion. I must congratulate the Committee that prepared this Report after the county visits. County visits are very important because they will give us a chance, as Senators, to really know the problems facing the public and find ways of assisting them.

Madam Temporary Speaker, I would not like to repeat what my fellow Senators have talked about, but there is one issue that speaks about our main role of legislation. We know that there are so many problems facing people at the grassroots level, but I want to speak about agriculture. In Nakuru County where I come from, there is a problem with the size and cost of a bag of potatoes. It is my feeling that this problem should be addressed through legislation. It is surprising that the Members of the County Assemblies (MCAs) do not have the structures to assist them to do legislation based on the problems facing them on the ground. We are here as Senators to represent counties and county governments. When I talk about counties, I am referring to the public itself. There is no way we will assist the public if we do not know their problems. So, I am even requesting those other committees which have not made any effort to visit counties to do so and table their reports. Each and every time we have these reports, we shall be able to come up with modalities of addressing problems.

Madam Temporary Speaker, I want to speak about staffing in the county governments. As much as we would want to employ experienced people, we also know that we have our young people who are growing. They should also be given space in the county governments or any other place. We cannot be talking about experienced people alone. Somebody somewhere should be given time to also begin working. Someone cannot have experience unless that person is given time to show whether he or she can deliver.

Madam Temporary Speaker, county visits will also enable us, as Senators, to know the priorities of each and every county. It is good that we are going through the Report about Mombasa County. I would take this opportunity to request my fellow Senators that we should make an effort of visiting all the counties and coming up with such reports. That way, we will be able to know what problems actually face which county. This will help us to come up with solutions as representatives of counties.

Madam Temporary Speaker, very many people do not know issues about the Constitution and devolved funds. Today, we were talking about the *Uwezo* Fund, the Youth Development Fund and all that is supposed to be done by the youth and women of this country. By visiting various counties, we will have an opportunity to educate the public. It is very important that, as Senators, we do not just sit but do something about sensitization. We need to sensitize the community about the devolved funds and be there for them. There are so many youths who are getting lost because of engaging in illicit brews. To me, this should be addressed by legislation in the county assemblies. So, the MCAs should actually be assisted to develop legislation, because this is our key role.

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Madam Temporary Speaker, I congratulate the Committee and encourage other committees to do county visits and present reports, like this one that we are dealing with today.

With those few remarks, I beg to support.

**Sen. Obure:** Thank you very much, Madam Temporary Speaker, for this opportunity. First of all, I want to thank the Members of the two committees for the Report that has been submitted to this House. I think that they have done a wonderful job. The visit to the two counties in the Coast has provided the Members of the Committee a wonderful and useful opportunity to engage members of the county executive, county assemblies and the citizens themselves who reside there in discussions on matters that affect their own welfare and management of their counties. Those discussions have also highlighted the various challenges facing devolution.

Madam Temporary Speaker, I just wanted to highlight a few of the challenges which have been identified and are contained in the Report that we are now debating. From the Report, it has been confirmed that many people around the country do not understand what devolution is about. They do not understand the roles and functions of the various players involved in the process of devolution. Since there is no adequate understanding of the various functions and roles, this has created conflicts based on sometimes very wild perceptions about the roles of each of those players.

Madam Temporary Speaker, this Report has also clearly stated that many of our citizens in our various counties have not really felt the impact of devolution; they have not benefitted from the activities of their county governments. They have not seen any improvement in service delivery. In short, they have not felt the fruits of devolution. This is true because I think we have taken far too long to settle down; far too long to put systems in place; far too long for people to understand the process and, far too long in establishing and preparing ourselves to start delivering services to the people. These factors come out very clearly from these reports.

It also comes out very clearly that many of our counties are facing budget deficits. Of course, we have been aware of this fact for a very long time, even from the time we were debating the question of division of revenue. It was pointed out and this point was made clearly and loudly that many of our countries will run into difficulties. Some of them have very huge deficits and part of this problem is because of the huge payroll and the huge amounts reflected in the Recurrent Expenditure. So, we must clearly do something about it so that more and more funds can be made available for development activities. I think it is very important so that we can use this to really bargain with the national Government.

Madam Temporary Speaker, I think there is need for the national Government to understand that it is at the county level that a majority of our citizens live. Therefore, it is at the county level where we should channel most of our resources because that is where poverty is biting and that is where services are needed. There is no point of retaining this money at the national level. This money should go down so that it is used for the benefit of the people to improve the welfare and living conditions of the people at the counties. We have said this many times before.

For example, today, if you look at this budget which is functional or which is being operated, if you take the largest 15 counties in this country put together – and we are talking about Nairobi, Kiambu, Kakamega, Bungoma, Mombasa, Nakuru, Kisii – if you add up the amount of revenue allocated to them this financial year, that will be just about equivalent to what we give to the Ministry of Interior and Co-ordination of National Government and the National Intelligence Service (NIS). So, you will appreciate that our priorities are totally wrong. This is not a police country. This is not such a highly insecure country and, therefore, we should not be spending a lot of resources on that. We should not be spending a lot of resources on the Ministry of Devolution and Planning. Most of these resources should be made available to the counties to improve the conditions out there.

Madam Temporary Speaker, from this Report, you have also seen that because land, as a resource, is managed by the national Government, counties cannot plan effectively because they really do not have the land. They cannot plan any activities on the land because the land is managed from the national Government. Therefore, counties cannot initiate any meaningful development programmes. That is clearly coming out from this Report.

Madam Temporary Speaker, from these reports, we have also seen that even the people out there – the citizens themselves – feel that county governments should take over the function of county roads. They should take over management, maintenance, rehabilitation and development of the county network of roads. This is important because that is what the Constitution says. The Constitution says that there will be two classes of roads; roads that we call national trunk roads, which will be managed by the national Government and there will also be another class of roads called county roads. Now, today those county roads are still being managed by the national Government and citizens out there have told our committees and the committees have said it in this Report that this function should be handed over and it should be taken over immediately by the county governments.

It is only sensible to allow the county governments to understand the road networks in their areas. Let them take over these functions. However, they should also be given resources to do so. That is why we are recommending that the Kenya Rural Roads Authority (KeRRA) and the Kenya Urban Roads Authority (KURA) should be answerable to the county governments. This is what is coming out from *wananchi* in the Report.

It is also coming out that if county governments want to borrow money from external sources, for instance, they are restricted to a maximum of 5 per cent based on the their last audited accounts. This is extremely restrictive and it is not a lot of money. If you will only go out there to borrow 5 per cent of the last audited accounts – which is very restrictive – that will hinder progress of county governments and reduce their capacity to undertake some of the development initiatives in their plans.

It has also been highlighted, in this report, that counties should be allowed to benefit from national assets found and located within their counties. The Port of Mombasa, for example, is a massive asset that we benefit from as a country. However, it is also logical that Mombasa County, where the asset is located, gets slightly more than

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what others get out of the activities of this port. This is an activity that should be considered. It makes sense because this is an asset that makes money for the country. The fact that it is in Mombasa, the people there should be allowed to have more direct benefits and feel the impact of the presence of that port in their daily activities within Mombasa County.

Madam Temporary Speaker, people have also come out to say that Members of the County Assemblies (MCAs) cannot generate legislation or make laws because they do not have the capacity to do so. They face limitations. The issues of remuneration should also be addressed. All these are huge challenges facing our counties and we must find a solution. This Senate must take a lead in finding a solution and in seeking resolutions to some of these challenges.

I am glad because after reading this Report, it becomes very clear that *wananchi* out there are appreciating that they have a Senate that can resolve these problems. Therefore, I want to say that we have a challenge and an opportunity to address some of these issues. It is our role as protectors of the interests of counties to ensure that these challenges, hurdles and roadblocks along the way which are supposed to actualise devolution are removed altogether. We must take that initiative and be in the forefront in ensuring that these issues are resolved.

Madam Temporary Speaker, you will appreciate that even in this Senate, we have debated a number of Motions, some of which are issues contained in this Report. We have recommendations here which have been debated and passed for action, but as far as I know, they have not been implemented. I am not aware of any Motion which has been implemented up to this day.

Therefore, I want, through you, to raise this issue as a matter of concern for me as an individual and I am sure for a number of Senators here. We cannot afford a situation where we debate and pass Motions in this House but they are taken for granted. We want to see them implemented because there is no point in passing resolutions which are not implemented. Had they been implemented, the people out there in Kilifi and Mombasa would not be repeating the same complaints.

Madam Temporary Speaker, I want to point out that in this House, we discussed a Motion relating to the establishment of training centres in each county so that those centres can train employees and Members of the County Assembly to improve their quality and performance. We did this but I am sure nothing has been done about that Motion. I also remember that we passed a very important Motion and it was moved by the Chief Whip, Sen. Elachi; which had to do with establishing training institutions in each county along the model of the National Youth Service (NYS) so that we can provide opportunities for the large number of young people to acquire skills and be trained on the various aspects and, in so doing, prepare and equip them to earn a living. As important as it was, nothing has been done about it.

Madam Temporary Speaker, we also discussed in this House about the urgent need to hand over the role of county roads to the county governments. Again, nothing has been done and it was a subject of discussion when the two committees visited Kilifi and Mombasa counties. There is need to address and implement Motions passed in this House in the spirit in which they are recommended.

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We have discussed a number of other Motions including security issues and the need to involve the people and *wazee wa mitaa* in enhancing security in their own localities. We have also discussed the need to involve community policing units in the various counties and get everybody involved and mobilize the entire population in order to reduce the level of insecurity. I do not know if anybody is doing anything about that. Of course, even as late as yesterday, we sat in this House and debated about the need to look at the remuneration of the Members of the County Assemblies (MCAs) and so on.

Madam Temporary Speaker, there is urgent need to establish a mechanism which ensures that Motions, Bills, recommendations and resolutions passed in this House are implemented. Of course, we have discussed in this House the drug abuse and menace, especially in the coastal region. We need to take emergency measures to address this problem because it is ruining our people, especially our youth. Again, nothing has been done and it is an issue of concern to the public, especially in the coast region.

Madam Temporary Speaker, finally, I want to express my satisfaction with the quality of the Report made by the two committees. I also echo the sentiments that were expressed by my friend, the Senator for Nakuru; that there is need for us to engage ourselves in visiting the counties. That will give us a better understanding of the difficulties that the counties are facing. It will also give us an appreciation of the challenges facing our people. Once we do appreciate and understand them, we will be better placed to deal with them in this House.

I beg to support.

**The Temporary Speaker** (Sen. Ongoro): At this point, I now call upon the Mover to reply.

Is Sen. Sang not in the House? Senate Majority Whip, are you going to respond?

**Sen. Elachi:** Madam Temporary Speaker, first of all, I want to thank the Senators and even the clerks who helped us to compile the Report. This is a journey where all of us should not look at our parties, but how better we are going to serve Kenyans. In the spirit of devolution, even within Article 174, I believe that this House stands with that principle.

Madam Temporary Speaker, there are seven committees that need to present their reports to this House so that we can debate them and give feedback to those whom we visited. I think they will be very happy to receive some recommendations from the Senate.

I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Majority Whip, you are aware that this Motion affects counties and we do not have a quorum to vote on it. I did not hear your request for a deferment.

**Sen. Elachi:** Madam Temporary Speaker, I was waiting for you to give me an opportunity to do that.

Madam Temporary Speaker, having given me that opportunity, I rise under Standing Order No.51 (3) which reads:-

“Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

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Madam Temporary Speaker, I, therefore, request that we defer the putting of the Question to Wednesday next week.

**The Temporary Speaker** (Sen. Ongoro): You are not giving a ruling on it, but just requesting for a deferment. The Chair will give a ruling on that.

You are in order, according to Standing Order No.51 (3) which states:-

“Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

The Speaker was not also leading debate. It is because I have a request here which was already duly signed for that request, and that is why I was reminding you to undertake that duty.

I give a ruling that we can put this question on Wednesday next week at 3.00 p.m.

*(Putting of the question on the Motion was deferred)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no further business, the Senate stands adjourned until Thursday, 17<sup>th</sup> October, 2013, at 2.30 p.m.

The Senate rose at 6.20 p.m.