

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 24th September, 2014

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

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

PRAYERS

COMMUNICATIONS FROM THE CHAIR

ATTACHMENT OF OFFICERS OF TURKANA COUNTY ASSEMBLY TO THE SENATE

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make on the attachment to the Senate of officers serving in the County Assembly of Turkana.

As you are aware, Article 96(1) of the Constitution requires the Senate to represent the counties and protect their interests and their governments.

Pursuant to this provision of the Constitution and as part of the mandate of the Senate, the Secretariat has been assisting the county governments in capacity building by way of attachment to the Senate and training of the staff of the county assemblies.

Hon. Senators, as part of this, the Senate is presently hosting three officers of the County Assembly of Turkana who commenced attachment on Tuesday, 23rd September, 2014 and will conclude the attachment on Thursday, 25th September, 2014. The officers are seated at the Speaker's Gallery. They shall stand and hon. Senators will acknowledge them in the usual manner.

*(Officers of the County Assembly of Turkana stood up
in their place as hon. Senators applauded them)*

PRESENCE OF STUDENTS FROM NGINDA GIRLS'
SECONDARY SCHOOL, MURANG'A COUNTY

I also want to announce the presence of students of Nginda Girls' Secondary School from Murang'a County. Let us applaud them too. Of course, you know the Deputy Speaker is the Senator for Murang'a County.

(Applause)

Next Order!

PETITION

PLIGHT OF TEA FARMERS IN KIGUMO, KANDARA
AND GATANGA IN MURANG'A COUNTY

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir, for this opportunity. It is my pleasure also to welcome the students of Nginda Girls' Secondary School, which is in Maragua Constituency, Murang'a County. I wish to let them know that they are very welcome.

The Speaker (Hon. Ethuro): Order, Deputy Speaker! You know that is my job and I had already done it.

Sen. Kembi-Gitura: I thank you, Mr. Speaker, Sir, for doing it so well.

The Speaker (Hon. Ethuro): So, you can only thank me.

(Laughter)

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir, for being so diligent.

I have a petition here signed by 258 tea growers from Murang'a County, specifically for the tea growers of the areas generally known as Kigumo, Kandara and Gatanga sub-counties. These are from the factories of Ngere, Ikumbi, Makomboki and Nduti. This is a long petition, so I will try and summarise it.

Mr. Speaker, Sir, this is also appreciating the ruling that was made by the Speaker yesterday pursuant to the Petition that had been made by Sen. (Prof.) Lesan and also the comments by the Chairperson of the Committee on Agriculture, Livestock and Fisheries, Sen. Murungi to the effect that we shall have a meeting of stakeholders on 10th October, 2014. This petition had come to me earlier and it is important that I put it forward so that it can follow the normal process.

The Petition states as follows:-

"We, the undersigned citizens of the Republic of Kenya, duly registered voters, tax payers, small scale tea growers in Kigumo, Kandara and Gatanga sub-counties of

Murang'a County and who are members of tea factory companies managed by the Kenya Tea Development Agency (KTDA) do hereby authorize the Senator of Murang'a County, hon. (Amb.) Kembi-Gitura to countersign and present this petition to the Senate on our behalf and on behalf of the farmers of the factories/companies that are managed by the KTDA.

The farmers petition this Senate and draw our attention to the fact that KTDA is a private company incorporated in 2000 following the privatization of the Kenya Tea Development Authority (KTDA) and acts as a management agency for small scale tea farmers in Kenya through contractual agreements entered into with various tea factors that it manages. Currently, the KTDA has such contracts with 63 tea factories.

The Petition states:

“We have the following grievances against the KTDA:-

The grievances in their generality are:-

(1) There have been illegal and unlawful processes of nominating and electing directors to the KTDA and to the boards of the factories managed by the KTDA.

(2) Excessive and unjustified management fees levied by the KTDA on the factories managed by the company.

(3) Illegal business dealings by factory directors with the factories they manage.

(4) Improper form of preparation and presentation of accounts managed by the KTDA and the irregular and unlawful issuance of shares in the companies managed by the KTDA.

Mr. Speaker, Sir, the petitioners are aggrieved and, therefore, they are making the same prayers to the Senate. It is important that I go through the prayers. They say:-

“Therefore, your humble petitioners pray that the Senate intervenes and:-

(1) Calls upon the KTDA and all factory companies' management boards to operate within the law, specifically, the Companies Act and the respective memorandum and articles of association.

(2) Prevails upon the factory companies to---

(Sen. Wako and Sen. Sijeny consulted in high tones)

Mr. Speaker, Sir, with your permission, I know that Sen. Wako and Sen. Sijeny are not bound to listen to me. But they are distracting me.

Mr. Speaker, Sir, the second prayer is as follows:-

(2) Prevails upon the factory companies to observe the provisions of Articles 2, 8 and 75 of the respective memorandum and articles of association when nominating and electing directors of the factories until or unless the same are amended through due process.

(3) Calls upon the factory companies and the KTDA to amend Article 96 of the articles of association of factory companies in order to protect the small scale tea farmers who are members of the companies and calls upon the KTDA to refund the monies it has

taken regularly and unlawfully from the farmers coffers contrary to the stipulations to the management agreement of some factories as far back as the year 2000 to date, amounting to hundreds of millions of shillings.

(4) Calls upon the management boards to institute austerity measures to control and manage conflict of interest in business dealings with the directors of the factories they manage.

(5) Calls upon the boards to present to the farmers financial statements which meet the minimum threshold of a financial statement and in a manner and form that can be easily understood by the farmers.

(6) Calls upon the factory farmers and the KTDA to take necessary steps to revoke all shares illegally issued to unknown people contrary to the provisions of the Companies Act and the respective management companies' articles of association and to immediately recover a civil debt from the said persons on dividends paid over time on the basis of such issuance.

(7) Calls upon the County Government of Murang'a to reconsider the proposed Tea Development Bill, 2014, that is currently in the County Assembly of Murang'a.

Mr. Speaker, Sir, that is the humble Petition of the 258 farmers representing three sub-counties and five tea factories. I pray that you find it fit to refer it to the necessary committee for the necessary action and; more, that these specific stakeholders will be invited to the stakeholders meeting that we were promised yesterday by the Chairperson of the Committee, Sen. Murungi on 10th October, 2014. This is so that they are able to present and ventilate their petition for the benefit not just of themselves and the famers of Murang'a County, but from the tea growing areas of the whole Republic.

I thank you, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Ethuro): It is so ordered. The Petition is referred to the Committee on Agriculture, Livestock and Fisheries.

Next Order!

PAPER LAID

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF MIGORI COUNTY GOVERNMENT

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Wednesday, 24th September, 2014:-

The Report of the Auditor-General on the financial operations of the County Government of Migori and its defunct local authorities for the period 1st January to 30th June, 2013.

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

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

The Speaker (Hon. Ethuro): Next Order.
Sen. Amos Wako, you may proceed.

STATEMENTS

COMPLIANCE WITH ARTICLE 231 (4) OF THE CONSTITUTION

Sen. Wako: Mr. Speaker, Sir, I wish to issue a statement. The request for the statement was made on 22nd July, 2014, by Sen. James Orengo. I notice that Sen. Orengo is not in. Should I proceed with issuing the statement or should we wait for him?

The Speaker (Hon. Ethuro): Of course, you cannot proceed. Our tradition at least allows the Member one chance for him to avail himself. As a good Chairman, you can always liaise with your Members. So, you will do it tomorrow.

Sen. Wako: That is okay, Mr. Speaker, Sir.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I rise on behalf of Sen. Orengo, who is not---

The Speaker (Hon. Ethuro): Order! Your microphone is not on.

(Sen. Khaniri switched on the microphone)

Sen. Khaniri: Mr. Speaker, Sir, I rise on behalf of Sen. Orengo. He has not instructed me, but I am aware that he is away on official duty and that he will not be in tomorrow. Would I be in order to request that this statement be delivered next week?

The Speaker (Hon. Ethuro): Are you sure he will be back on Tuesday? Sen. Wako, you will liaise with the Member. Definitely, he is away this week. As soon as he is available, we can have the statement.

Sen. Wako: Mr. Speaker, Sir, I will bring the statement next week, but there are issues that---

The Speaker (Hon. Ethuro): Order, Sen. Wako! Those are details.

Sen. Wako: Mr. Speaker, Sir, I am a detailed person.

(Statement deferred)

Sen. Kembi-Gitura: Mr. Speaker, Sir, I have a statement from the Committee on Defence and Foreign Affairs that was sought by Sen. Mositet who I note, of course, is not here. I will abide by your direction on that.

The Speaker (Hon. Ethuro): Sen. Mositet is indisposed. So, let us have the statement next week.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir.

(Statement deferred)

The Speaker (Hon. Ethuro): Sen. Murkomen, Chairperson of the Sessional Committee on Devolved Government.

DROUGHT AND STARVATION CRISIS
IN ASAL COUNTIES

Sen. Murkomen: Mr. Speaker, Sir, I have a response to a statement sought by Sen. Naisula Lesuuda on the humanitarian crisis looming in arid and semi arid counties. With your permission, if I may now deliver the statement considering that she is here.

The Speaker (Hon. Ethuro): Proceed.

Sen. Murkomen: Mr. Speaker, Sir, we received this response from the Ministry of Devolution and Planning. We, as a Committee, have deliberated and the response is as follows:-

The Government is aware that due to drought people in arid and semi arid counties of Samburu, Turkana, Pokot, Baringo, Isiolo, Garissa, Wajir and Tana River, among others, require urgent food assistance. The ongoing drought situation has affected 1.5 million people in affected areas. This is an increase from 1.3 million people that the Government has been feeding up to the end of the Financial Year 2013/2014.

The Government is not aware that food bought by county governments and stored in the silos has not been distributed to starving citizens. However, all the food stocks that the national Government bought have been distributed to deserving cases on a monthly basis as per the attached schedule.

The Ministry of Agriculture, Livestock and Fisheries has confirmed that the livestock off-take programme was launched on 27th July, 2014 at Loruk Centre, Baringo County. The Ministry concerned is, therefore, in a better position to answer questions on when the Government will start the livestock off-take programme in other affected areas.

The measures put in place by the national Government, in conjunction with the county governments in arid and semi arid areas to avert looming crisis are:-

(1) Joint food assessment based on performance of short and long rains to identify the needy population.

(2) Purchase, transportation and rapid distribution of relief food to the vulnerable population as per the attached annex.

(3) Coordination of all agencies engaged in humanitarian response.

It should be noted, however, that budgetary provision – and this was stressed by the Ministry – for the Financial Year 2014/2015 is grossly underfunded. A paltry Kshs98

million had been availed for purchase of emergency relief food stocks for the entire financial year. This amount is barely enough to feed a single county in a year. Although county governments have been allocated funds for relief food response, they are yet to establish structures to address food needs as first line responders.

For information purposes, budgetary provisions for the purchase of relief food in the previous years is indicated below as follows: 2009/2010 - Kshs3 billion; 2010/2011 - Kshs2.45 billion; 2011/2012 - Kshs5.1 billion; 2012/2013 - Kshs2.484 billion; 2013/2014 - Kshs2.018 billion and 2014/2015 - Kshs98 million.

There is a huge gap from the Kshs2 billion to the current Kshs98 million. Evidently, the Ministry capacity and efforts to reach all the vulnerable population and further respond to major humanitarian crisis such as Marsabit, Mandera, Wajir, Baringo and Mpeketoni with relief food supplies is hampered by the low budgetary provisions.

Mr. Speaker, Sir, regarding long-term planning and investment, there are measures being taken by the national government in collaboration with the county government to ensure that counties in ASAL become food secure. The Ending Drought Emergency Strategy (EDE) is a ten year commitment by the Government to end the emergencies caused by drought by 2022. Its emphasis is on reducing vulnerability to drought by primarily investing in the foundations of development, that is, the things which communities can use to make themselves more food secure, peace, infrastructure, human capital and livelihoods. The EDE is an integral part of Kenya Vision 2030 second medium-term plan (MTP II).

The counties are also mainstreaming it in the County Integrated Development Plans and budgets. In addition, six common frameworks have been developed to operationalize the EDC, MTP II and ensure that investment from the national Government, county governments and development partners is well coordinated.

Three rounds of consultations have been held in the county governments on this between November, 2013 and July, 2014 on improving the quality and timeliness of response to drought. A number of initiatives taken are underway. These include contingency planning and financing. The Government through the National Drought Management Authority (NDMA) has helped the county governments to develop a county drought contingency plan and finalize the system and procedure needed to manage the proposed national drought contingency fund.

Mr. Speaker, Sir, regarding the issue of social protection, the Government through NDMA is also implementing the Hunger Safety Net Programme (HSNP) in four of the most drought-prone counties, including Turkana, Mandera, Marsabit and Wajir. The HSNP provides cash transfer to the most insecure households. The infrastructure put in place to manage these transfers will also be used to reach a larger number of households with cash during the periods of crisis. Cash is often the first and most accountable way of supporting vulnerable household.

That is the end of the statement. Suffice it to add that the Committee met today and thought that however difficult the answer maybe, it may not be sufficient in terms of

dealing with matters of drought going forward. For a long time drought was part of disaster and disaster management is both a county and national government function. We also know that drought is caused by various factors. We, as a Committee, and in the presence of the Member who asked the question that, perhaps, agreed we may require a conference similar to that being organized by the Committee on Agriculture, Livestock and Fisheries that will bring together all the stakeholders, particularly in the county government so that we can discuss, once and for all, how we can end this argument that some people are surviving on cash transfers and relief food. This will enable the counties to be self-sustaining and the national Government can assist to end this matter.

Sen. Lesuuda: Mr. Speaker, Sir, I want to thank the Senator for sharing the statement. I agree that we deliberated on the statement in the Committee. As he has put it, although the statement is detailed, the reality on the ground does not really reflect what is in the statement. That is why we said that we meet with the Ministry of Devolution and the affected counties so that we can deliberate on issues to do with drought and floods. The truth of the matter is that we, as a country, should stop dealing with drought as a disaster. Just as the Chair has said, this is something that the Committee will undertake. Noting the difference in the budgetary allocation, it is something that we want to pick with the Ministry---

The Speaker (Hon. Ethuro): Order, Senator!

Sen. Lesuuda: I was just getting to the clarification.

The Speaker (Hon. Ethuro): It is time for clarifications, what have you been doing all that time?

Sen. Lesuuda: Mr. Speaker, Sire, one of the things I would like the Chair to clarify is on the issue of the livestock off-take programme. There might have been a launch, but the livestock off-take programme has not taken place in some places like Samburu. The Chair can clarify whether he is aware and if it is a true reflection on the ground.

The Speaker (Hon. Ethuro): Hon. Senators, remember it is clarifications.

Sen. Hassan: Mr. Speaker, Sir, since I was young, I have been hearing about ASAL and various Ministries and Ministers in charge. Is there a plan by the Government to stop referring to these areas as ASAL by a deliberate injection of capital and resources there? If so, could the Chairperson of that Committee go back and then come back with a more comprehensive agenda of the Government with respect to that matter?

Mr. Speaker, Sir, if you would allow me, I would like to say that we should rethink our Standing Orders so that we can allow Cabinet Secretaries here because we are moving back and forth. We should interrogate them on the Statements regarding matters affecting the nation. Our colleagues have done it in the National Assembly. There is nothing wrong to borrow from practices that might be useful to the Senate.

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is disheartening and, indeed, unacceptable to hear that certain areas of this country may miss food because of the so-called "drought" when certain areas in the country have bumper harvests. Is the

Chairperson aware that in Migori County, all the stores; one in Ntimaru, another one in Kehancha and another one in Awendo and another one in Migori town are full of harvests? There is nowhere for farmers to sell their last seasons' harvest.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I want to ask if the Chairperson is a lawyer. I am concerned with the failure of the Government not to have set aside sufficient funds to mitigate the said problem. This problem has been perpetually around for the last 50 years. We need to understand the pain of the people. This year, we have frequent cattle raids and other violent encounters along the borders of West Pokot and Turkana counties mainly because of lack of food; and yet procurement of relief food has been allocated a paltry Kshs98 million. I came from there yesterday and my people were totally starving. Could the Chairperson really tell us what steps the Government is taking to step in immediately, especially so now?

Sen. Obure: Thank you, Mr. Speaker, Sir. I just want to find out what rationale was applied in reducing the budget from the over Kshs2 billion that is usually allocated for this purpose to a mere Kshs98 million? Further, the Chairperson is aware that citizens in some of these marginalized areas are given food. In fact, they depend on some of this relief food to sustain their livelihoods. Is the action to reduce this budget so drastically, therefore, well thought out?

Sen. Leshore: Thank you, Mr. Speaker, Sir. When the Jubilee Government took over, they promised citizens from those counties which are affected by famine, drought and cattle rustling that cattle rustling and famine will be a thing of the past. It is now the second year for them in power. I would like the Chairperson to tell us why the Ministry of Agriculture, Livestock and Fisheries stocks thousands and thousands of bags of cereals in places like Samburu, but when famine arises, we are told the cereals are unfit for human consumption? Could he go back and tell us why they are stocking food which is unfit for human consumption in our counties?

Sen. G.G. Kariuki: Mr. Speaker, Sir, could the Chairperson explain to this House why this problem of drought is all the time repeatedly discussed in this House for many years? Is there any plan at all to ensure that in the next few years, this matter will be laid to rest? Because as you know the reason people in Laikipia West, Samburu District and, of course, Pokot and Baringo, will continue to suffer? For the last 50 years, they have continued to suffer from drought and we are all aware that a lot of money has been spent on matters which may not be as important as this one. Could he explain to this House when this matter will come to an end? Could he also assure us that enough money will be allocated for creating dams and facilities which should deal with this situation?

Thank you, Mr. Speaker, Sir.

Sen. Karaba: Thank you very much, Mr. Speaker, Sir. It appears like the situation of ASALs, hunger and prolonged drought is a story that has been there for the last so many years; it has been there throughout.

The Speaker (Hon. Ethuro): What is your question, Sen. Karaba?

Sen. Karaba: Could the Chairperson note that---

(Laughter)

In spite of all that, we have some officers who, even when we have to transport food, that food never gets to the victims. It is sold by the wayward officers so that they can make money. That should be stopped and the officers implicated sent to the gallows.

Thank you, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, I will summarize all the answers without really focusing on this or on that. First, with devolution, we should end this debate about drought because, really, there will be more in a county, for example, like Turkana, Marsabit, Mandera or Wajir, which was considered ASAL completely. We will now have a local government which understands the needs of that area with the desire to address the problems of the people of that area. The reason we went for devolution was particularly for that reason.

I suspect the reason the budget was reduced is basically because that problem needs to be dealt with at that local level. Resources in that county are focused on programmes and projects that are meant for ensuring that, first of all, the people of that area are food secure. We all know that there is a combination of factors that makes it food insecure, but it is the consolidated efforts of both county and national Governments. For example, the national Government is planning on massive irrigation projects. Once these projects take off, automatically it will be the county government to continue with it because it will now become an agricultural function. Maybe like the people are saying, the national Government should inject all this money at once from the first instance, but it should be done successfully by the county government, whether in the Tana River project which they are planning or along the Kerio Valley up to Turkana, where also major irrigations are planned. This should actually be the direction. I read the statement which was very clear, that there is a plan that was put in place in 2012 to end this issue of drought by 2022.

Mr. Speaker, Sir, at that time, it was just being said “2022” because these were plans put in place under Vision 2030 before devolution came into place. However, now with county governments, if the county governments shall be serious and if our governors focus their energy on these issues and forget about sideshows and other debates and focus on development in that area, I am very confident as the Chairperson of the Committee on Devolution that 2022 will be far; we can achieve this goal within the next two, four or five years and our people will be food secure.

Mr. Speaker, Sir, the issue of inviting the Cabinet Secretary here, that is a decision of this House, it will go through the issue of procedure. It will not just affect the Ministry, but it will affect all of us.

Mr. Speaker, Sir, somebody asked why has the Government not set aside money? As you know, it is not the responsibility of the Government or the Executive to set aside money if I may put it that way. It is the responsibility of Parliament to set aside money.

This House ensures that the Kshs226 billion goes to the counties. Some of this money will be used for that purpose. It is no wonder that some counties get huge allocations, especially the marginalized areas, based on the formula of marginalization. As the formula is coming for review next year, we want to ask ourselves; if Turkana has been getting Kshs7 billion for three years, how much of that money have they put in the right areas that will deal with the issues they want?

Mr. Speaker, Sir, if you will remember also, my Committee tabled a report here on transfer of functions and this House approved it. We allowed county governments to build their own silos. So, they have a right to come up with stores that can store the food they are generating without it going to waste.

Mr. Speaker, Sir, we have been told about Migori and other places; I think the problem that is in this country is that if these programmes were working well, we would be able to take food from those who are producing, like Trans Nzoia and Migori, like someone said, to the areas that are ASALs as provided for in the Act.

Lastly, I want to share with my colleagues. If money that has been allocated to marginalized areas and people who are suffering is not going to be used for that purpose-- - As I said, I respect the able Chairman of the Senate Public Accounts and Investments Committee, Sen. Khalwale. Some of the reports that we have heard are situations where a Governor of a marginalized area has suddenly acquired unexplainable kind of wealth to buy a litany of houses in Nairobi and other urban areas. When you follow up you are told that some of the monies in those areas are being proliferated.

If we want devolution to have benefits, the Committee led by Sen. Khalwale - where I am an ordinary Member and the Vice-Chair is Sen. Hassan - must lead this House towards robust accountability structures and fighting corruption in the counties. This will ensure that the money given to marginalized areas can count. The message to the courts is: "Please, do not be a stumbling block on saving the lives of poor ordinary Kenyans in marginalized areas."

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I was just wondering whether the last bit is part of the answer or side-shows.

Sen. Kiraitu.

Sen. Murungi: Mr. Speaker, Sir, please allow me to make a comment on this as the Chair of the Committee on Agriculture, Livestock and Fisheries. We have just concluded a study visit to China and India on issues of food security. We tried to understand their history on how they dealt with issues of circles of drought in those two countries. What became very clear is that using the strategies that we have in this country, we will never be able to eliminate droughts or food deficiency in the country. This is because we just give lip service to this very important issue. I was even in the Cabinet in 2004 and we said that we were going to put an end to drought in this country. Ten years later, it has not been done.

Mr. Speaker, Sir, what we learnt from those two countries is that agriculture and livestock have to be taken more seriously by the Government, just like we take education, health and security as a national service that we are giving to our people. This sector is the most important employer of Kenyans. It supports about 80 per cent. It is the major contributor to the Gross Domestic Product (GDP). So, if we are spending so much money on roads---

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

Sen. Murungi: Mr. Speaker, Sir, let me finish. We have looked at the programme and they are talking about one million acres to be irrigated during the life of this Government. This will not happen because what we are now debating is 10,000 acres which have been stopped by the court. Even if it was successful, it would take 100 years to make one million acres. Unless we take this matter seriously and devolve it, so that each Governor is given a number of acres to irrigate within their counties, we will never achieve even the one million acres. So, what I am calling for is massive resource injection, if we are to end the circles of drought and famine in this country.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): This is Statements Hour. Many of you contributed to the statement and the Chairperson responded. I only extended to the Chairperson of the Committee on Agriculture, Livestock and Fisheries by virtue of his position. So, that should really be the end of it. I would imagine that the Chairperson, Sen. Murkomen, has seen the mood and he is already planning to organize a meeting. I guess all of you will be invited to that particular meeting and then you can ventilate. This is not such a forum, Sen. Hassan.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. Whereas it was desirable for me to use Standing Order No.248 to propose that change of our Standing Orders, I want to speak to you as the Chairperson of the Rules and Business Committee, under Standing Order 247. If the Rules and Business Committee which you chair can find it fit to bring that amendment to allow Cabinet Secretaries to come to this Senate to clarify some issues, it would be an easier and faster process than trying to go by way of Standing Order 248. So, I am speaking to you in that capacity and hope that I am in order.

The Speaker (Hon. Ethuro): Of course, you are definitely in order to put a request. However, that request has been made before and the Chair ruled that matter is under active consideration. So, you need to be a bit patient. There is no amount of requests that will speed it up, because there are many other considerations that are being put into place.

Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I had sought a Statement on the Order Paper, but I notice that the Chairman of the Committee on Finance, Commerce and Budget is not here.

The Speaker (Hon. Ethuro): Why do we not exhaust the ones that may be present? Let us move on to "e."

PROPOSED ALLOCATION OF LAND AT KANYANYOONI TO THE
NATIONAL INTELLIGENCE SERVICE IN KITUI COUNTY

Sen. Khaniri: Mr. Speaker, Sir, I rise to seek your indulgence. I know that this statement was sought before we went for recess. We sent it to the relevant Ministry and I want to report that I have just received the response while seated here. We, as a Committee, have a sitting tomorrow and we will go through this response before it can be presented to the House, because I have just received it now.

Sen. Musila: Mr. Speaker, Sir, the Chairperson says that he has just received his response while I received mine two weeks ago. Be that as it may, I am obliged to give the Committee time because this is a very important matter affecting Kitui County. Therefore, I will be patient enough to allow the Chairperson and his Committee to come up with a suitable answer.

Sen. Khaniri: Mr. Speaker, Sir, I do not know through which means the Senator received his response. We, as a Committee, make our communications through the Clerk of the Senate. The statement has just been delivered to me now here from the office of the Clerk. Maybe he went directly to the Cabinet Secretary who happens to come from the same area and same constituency with him. I got my response now from the Clerk and there is nothing I can do about it.

The Speaker (Hon. Ethuro): Sen. Musila, how did you get a copy of the statement?

Sen. Musila: Mr. Speaker, Sir, I would like to correct what my friend has said. I got this from the office of the same Clerk that has delivered the same to him today. I got mine two weeks ago from the same Clerk. I am a complainant to the Cabinet Secretary for Lands. Therefore, there would be no way I would go and collect documents from her.

The Speaker (Hon. Ethuro): Sen. Khaniri, you know this country has issues with ethnicity and by you implying that Sen. Musila got his statement through other means than formal, is a serious assertion. So, I think you at least owe him some small apology.

Secondly, definitely an institutional leader would not want to operate on the basis of ethnicity, relations and or nepotism; he must operate on the basis of formal structures.

Sen. Khaniri: Mr. Speaker, Sir, I oblige and withdraw and apologize to my senior brother, Sen. Musila. I can see the statement was received here sometimes at the end of last month and somehow the Committee has not had a session since we went for recess. I believe that is why we did not get possession of it. Therefore, we will go through it tomorrow. If we are given up to next week, we should be able to deliver the statement.

The Speaker (Sen. Ethuro): We definitely believe that you received the statement now since it is shown on the envelope. That seems to be standard practice for delivering messages to the Chamber. So, I have no doubt. Is Tuesday okay for you?

(Statement deferred)

Sen. Obure: Mr. Speaker, Sir, I am privileged to sit next to the Vice Chairperson of the Committee on Land and Natural Resources. I want to testify that I saw him receive this envelope a few minutes ago.

The Speaker (Hon. Ethuro): Order, Senator! That matter has been disposed of. That leaves us with the issue of Sen. Kembi-Gitura's Statement. The chairperson of the Committee on Finance, Commerce and Budget is not around. Is the Vice Chairperson or any other Member around? There is a statement due from the Standing Committee on Finance, Commerce and Budget on the escalating bank interest rates, sought by Sen. Kembi-Gitura many months ago.

What do the Senate Majority Leader and the Senate Minority Leader have to say?

Sen. Keter: Mr. Speaker, Sir, I undertake to inform the Chairperson of the Committee and since some Members of the Committee are here, maybe, they could also assist me so that we have the statement ready next week because it has been pending for quite some time. So, I request that we be given up to next week.

The Speaker (Hon. Ethuro): No, I am not giving you anything. That statement should be issued tomorrow afternoon. You cannot leave things pending forever and yet we are just from recess. That should have accorded you ample time. Nobody is even here to excuse the Committee. This is unacceptable.

Sen. Keter: Mr. Speaker, Sir, I think this statement had been made; what is pending is just a follow up on clarifications sought. So, tomorrow afternoon will be okay with me.

The Speaker (Hon. Ethuro): So make sure you look for the Chairperson, the Vice Chairperson or any other Member to respond. The Senate Deputy Majority Leader, in the absence of any Committee Member, I take it that you will be personally responsible to issue the statement.

Sen. Keter: Mr. Speaker, Sir, the Whip is also in that Committee and I think we will take responsibility. The Senate Minority Leader is also one of the Committee Members.

The Speaker (Hon. Ethuro): Of all the people you have mentioned, you happen to be higher on the pecking order and the responsibility is with the highest.

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

Sen. Sang: On a point of order, Mr. Speaker, Sir. Are you confirming that actually the Senate Deputy Majority Leader is more senior than the Senate Minority Leader, Sen. Wetangula of Bungoma County?

The Speaker (Hon. Ethuro): Order, Sen. Sang! That is neither here nor there. Let us proceed.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. Would I be in order to tell Sen. Sang that the issue of who is senior between the Senate Minority Leader and the Senate Deputy Majority Leader does not arise because I do not know what that seniority is based on? Would I be in order to ask him to clarify?

The Speaker (Hon. Ethuro): Sen. Muthama, you are completely out of order!

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Nobody is clamouring for seniority or lack of it in this House. However, it came from the Chair that the distinguished Senator for Kericho having mentioned me and his Whip, the Chair says that among the people you have mentioned you are high up in the pecking order. I have no line of pecking with the distinguished Senator for Kericho. So, the comparison is misplaced, it does not apply. You being the Chair, I cannot say it is out of order, but it is an unfortunate statement.

The Speaker (Hon. Ethuro): The Chair has the capacity to listen to things that are not on record. In fact, I was admonishing Sen. Murkomen for asking you to respond as a Member of the Committee on Finance, Commerce and Budget. Your response was that you are not in Government. So, when the Deputy Majority Leader was talking, he was doing so in that capacity.

It is that pecking order that I considered, in the sense that you are nowhere near the Government side. Let us not go that way. That is why I said that it is unhelpful for us to dig into this matter. We should just have allowed it to rest. This depends on the consideration.

I also agree with Sen. Muthama on the position he holds. I also agree with the position of this other side. These are positions based on political parties. Therefore, to some extent, they are equal.

Let us move on to the next order.

SHORTAGE OF DRUGS AT COUNTY HOSPITALS

Sen. Nabwala: Thank you, Mr. Speaker, Sir. I stand to request for a statement from the Chairperson of the Senate Committee on Health.

Pursuant to Standing Order 43(2)(c), I wish to request for a statement from the Chairperson of the Senate Committee on Health concerning the ongoing drugs shortage at county hospitals. The statement should explain;

(i) the technicalities that have led to the shortage of drugs when counties have already received their allocation of funds.

(ii) why the drug shortage is still persistent when devolution is meant to address such problems; even when the Bill of Rights grants each Kenyan the right to good healthcare; and,

(iii) state the specific solutions being implemented by the national and county governments to tackle these challenges.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I notice that my colleague, the Chairperson of the Committee on Health is not in the House this afternoon. However, as a Member of that Committee, I realise the significance of the question that has been posed. We know the challenges that the Ministry of Health is facing in the country,

including that of drugs which has been raised. Therefore, I undertake that we will look into the issue and report, in fact, in two weeks.

The Speaker (Hon. Ethuro): Sen. Mukite that is a directive that you do not need to respond to.

Let us move on to the next order.

MOTION

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

THAT, this House adopts the Report of the Ad hoc Committee on legislation on royalties accruing from exploitation of natural resources in the counties laid on the Table of the Senate on Wednesday, 16th April, 2014.

(Sen. (Dr.) Zani on 3.7.2014)

(Resumption of Debate interrupted on 6.8.2014)

The Speaker (Hon. Ethuro): Who the last person to contribute? Sen. Hassan, you have a balance of nine minutes.

Please, proceed.

Sen. Hassan: Thank you, Mr. Speaker, Sir. I contributed to the debate on the Committee on Legislation on Royalties Accruing from Exploitation of Natural Resources in the Counties, but did not complete what I was saying at that point in time. I stopped at a point when I was saying that the idea of devolution in Kenya has been, by and large, about issues regarding resources. I have said this time and again; that; devolution was not intended to be about flags by our county governors. It was not intended to be about escorts for our county governors. It was intended to be a matter of resources and particularly resources that are either exploited from those counties or those that are shared in form of national resources.

It beats logic that every county or any group of human beings or societies would be next to natural resources and not reap the benefits. Therefore, it is important that this Senate asserts itself to ensure that those natural resources that are close to a county benefit the locals.

(Loud consultations)

I want to repeat what Sen. Kembi-Gitura said that when Senators are consulting, you get very distracted. Therefore, I request Senators who are consulting to do so in low tones.

Mr. Speaker, Sir, this legislative proposal framework intends to capacitate all counties that have proximity to natural resources. We have realised lately that we have made many discoveries that we never imagined in this country. We have made discoveries in the field of oil and other minerals like in Kwale County. We have also made discoveries in water. There are enormous discoveries going on with respect to gas.

Other counties that have been disenfranchised for many years since Independence have just been found to be enjoying enormous wealth in terms of natural resources. Therefore, this regime of law will help us to create a framework where these resources benefit the affected communities. Very often, we find communities that are disenfranchised feeling dispossessed and become quite turbulent in terms of creating social instability because people become dissatisfied in terms of equitability in the distribution of natural resources.

This Committee is visionary. The person who proposed this Motion, Sen. Agnes Zani was visionary in terms of ensuring that we institutionalise a framework so that counties benefit from exploitation of resources that are closest to them.

Attached to this very benefit, the companies exploiting natural resources must also benefit the human resource of the areas. Time and again, we have had companies that are engaged in the exploration or exploitation facing hostile publics.

In one County of Turkana, we have heard that fortunes will be turned around so that it becomes one of the richest counties based on oil discoveries and water. We hear massive allegations that the Turkana people are not the principal beneficiaries. As we try to provide a framework in terms of Division of Revenue or sharing of royalties, it is incumbent upon these companies to exercise some level of equity. They should ensure that those communities and the societies that live closest to these natural resources become their first line of employment. This is absurd and it is the question that critically informed the devolution and the resources debate. It is also the reason why this country is polarised ethnically. Whoever sits in power appears to either benefit a certain group of people who are closest to power. When the resources are exploited, this becomes a direct manifestation of the wealth of a particular county. The county must be the principal beneficiary when it comes to employment.

I make this particular assertion on the basis of my own experience in Mombasa County. Mombasa County may not explore gas and oil, but the offshore explorations will make Mombasa County a resource rich county. The natural resources that have existed in Mombasa, for instance, the Port of Mombasa and other areas of wealth have not necessarily benefited the people of that county.

Mr. Speaker, Sir, you have heard the people of Mombasa making hue and cry around the fact that they have not benefited from employment opportunities. This is not just about royalties. The human resource must also be the first avenue to benefit. We

should, in our subsequent legislative proposal, put a caveat on any organization or institution that is exploring natural resources or certain wealth in certain counties. Some are employing people beyond the given quota, particularly in formal employment.

Mr. Speaker, Sir, you do not need much experience to be a tea girl, driver or to do many of these jobs. It beats logic for you to ship a driver miles away to a come and become a driver in another county when we know for a fact that there could be other people who are unemployed and other unskilled force that can serve in these positions. We need to rest the debate in this country and to build national cohesion and unity in this great nation called Kenya. It is, therefore, important that we have equity and fairness in the sharing of natural resources. We should not fail in that. Our unity is not just about hugging and cuddling. I repeat that again.

Mr. Speaker, Sir, you know that as a country, we cannot just be cohesive when you tell us to love one another on account of inequities. Lack of national cohesion today is principally based on the fact that many of us feel disfranchised from the national grid. So, it is not sufficient to tell us to love one another as a country. It is important that as a country, we exercise equity in the distribution of resources and that is why the devolution debate is the debate of our time. There was that generation of the independence era that talked about freedom which never was but there is this generation that must talk about devolution and the Constitution. We are the devolution and constitution generation. Therefore, we want to ensure that those inequities that have been experienced over the last 50 years are now bridged. Equity means two things; those who used to have more, now get less so that others can be pushed up and those who had less now get more so that they can catch up with the lost time based on political disfranchisement. That is equity and it is affirmative action and not discrimination. When we speak about it in Kenya, people think we want to disenfranchise anybody. If you have disfranchised people for many years, it is incumbent that people are given that opportunity to catch up. These paradigms and principles are embodied in our Constitution. As a Member of this Committee, I want to say that we listen to the views of Kenyan people who need equity and this is the right forum.

I beg to support.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

PRESENCE OF ICT STUDENTS FROM THIKA
TRAINING INSTITUTE, KIAMBU COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, before I call the next contributor, let me also acknowledge the presence of students of Information and Technology of Thika Training Institute, Kiambu County. They are 40 in number led by four lecturers. Lets us

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

welcome them to the Senate. The Senator from Kiambu, Sen. Wamatangi, is present in the House.

(Applause)

(Resumption of debate on Motion)

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I rise to make a contribution to this Motion. From the outset, I support this Motion which is a very important report laid in the House. I want to congratulate and thank the Committee by looking at the depth and breadth of the report. It is clear that a lot of work has been put in this Report thus making it a report worth noting in the House. It expands what we understand about natural resources. This country is blessed with solids, liquids, flora and fauna, things in the space and on the surface. Therefore, it is important that we adopt this Report which stipulates how we should handle these natural resources.

Mr. Speaker, Sir, I am in agreement with the recommendation that says that we are expected to pass a lot of legislation and regulations to maximize the exploitation of natural resources. I am aware that exploitation of natural resources is a new phenomenon. Therefore, we will have to look at all aspects in trying to maximize it. One of the areas is that of audit. We are aware that this country has not made maximum profits out of some of the products we have in the country. One of the reasons is that we do not have adequate and sufficient legislation to enable us get maximum results from natural resources.

It is important that we develop the process of auditing especially in minerals like oil. This is a very cumbersome and difficult process which requires expert personnel. Auditing of oil does not only involve auditing the number of barrels but the quantities of crude oil that come from the ground and their grades. It is important that we know how to do it because it is here where we lose the value of products.

It is important that this Report is adopted so that we can maximize and get full benefits from the natural resources in the country. As mentioned by my colleagues who have spoken before, it is important to be careful on how we handle these resources because from history in other countries, they have been causes of strife rather than unity. Therefore, we must be careful in this country. We should make these resources as unifying factors rather than factors that are going to divide the country. I support this Motion to adopt this Report because it has useful factors that can be used for the maximum utilization of natural resources in this country.

With those few remarks, I support.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I rise to support this Motion and congratulate our very able chairperson, Sen. (Dr.) Zani, who is a very indefatigable worker. I think we enjoyed her "chairwomanship" during this particular job and the outcome has been satisfactory.

I would like to refer to the Fourth Schedule of the Constitution. This Schedule is extremely important to this Senate because it is what is laid out there that provides us with a lot of work. I must say that we have not done justice to that Schedule. This Schedule deals with the distribution of functions between the national Government and the county governments. Although we know for certain that the functions in that Schedule assigned to the county governments should be performed, there was something that was said when we were implementing the Fifth Schedule. We were advised that the Fourth Schedule should be given a lot of attention. As I said yesterday, the Constitution lays down the general principles and we have to translate them into law. One of the reasons why the counties are fumbling is because they do not know how to implement the Fourth Schedule. In many ways, if we took an audit today to find out how many counties are implementing the Schedule, you will find that they are not paying a lot of attention to some of the most obvious functions like health, land adjudication, liquor licensing and street lighting.

I want to draw the attention of the House to the function that relates to the Bill that we will debate after this report. This is on the tenth article in the Fourth Schedule which gives the county governments the following functions:-

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

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

Mr. Speaker, Sir, let me deal with natural resources and environmental conservation. We know that mining is one of the ways of destroying the environment. If there are no specific laws compelling those who mine to make sure that they address environmental problems that they create, we will have a lot of problems

I will give you an example; in Kakamega, the county where my dear friend, Sen. (Dr.) Khalwale is the Senator, there was a constituency called Ikolomani. Now, the history of Ikolomani is really a history of mining. The word “Ikolomani” came from the Luhya way of corrupting the word “gold mine” and they called it “Ikolomani.” If you go there, you will find that even up to today, people are still prospecting for gold.

They are doing so in my own former constituency, Kisumu Rural, and my county now, Kisumu, at a place called Korwenje, where gold has been mined for many years. It used to be mined commercially and the *Wazungus* left; but the natives are still continuing to do it. The danger in these areas is that there is no effective policy for environmental control. When these tunnels are dug, they are then covered and the people who come to plant crops do not know where these tunnels are. When it rains, the earth collapses, and it collapses with people, housing and so on, and so forth. It kills a lot of people. This is very dangerous. So, we need a national law that is to be implemented by county governments as specified in this schedule. That means that specific national Government policies on natural resources since both soil and water conservation as well as land and agriculture – all these things related to land – are now county government responsibilities. This law

that we shall be passing will effectively be implemented by county governments under this schedule. We in the Senate must pay specific attention to it; not simply as a matter of paying royalties – which I think the Bill is going to deal with effectively – but in who is responsible for the implementation of the policies that the national Government develops with regard to mining.

Mr. Speaker, Sir, mining is going to form an extremely important part of the Gross Domestic Product (GDP) in this country because prospecting for minerals is taking place all over the Republic. The areas which were previously so-called “marginalized” are going to emerge as major contributors to the GDP mainly because of the contribution to the mining industry. As I speak now, Tullow Oil, which is already very active in Turkana, has been doing exploration in my own county. They have done so for two weeks and we had a meeting with them a couple of months ago under my chairmanship. The prospects for the discovery of oil in my county are pretty high. We shall soon be joining Turkana in the not too distant future in this area. So, you better befriend me before it is too late; I may easily provide you with important possibilities of joining the mining industry. Nonetheless, I am concerned about this because I know the consequences of mining to the environment and to national Government policies affecting counties.

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

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

Madam Temporary Speaker, mining is also related to water resources because not only is water important in the mining exercise itself, but once you dig mines, then you create room for water collection, which if not controlled properly, it can be extremely dangerous to the environment. But it can also be a resource for development.

I hope that when we will come to discuss the Bill itself, if we have not included it already in the Bill, that we shall look carefully at the Fourth Schedule, especially part 10 of the Schedule and see to what extent the Bill that will come after this policy paper or report is debated is going to relate to that.

Let me also deal with another issue; that is the issue of policy implementation. One of the most important aspects of this Constitution is not just devolution, but the importance of popular public participation. We, as a Senate, need to further develop a law that domesticates in the counties the policy of public participation. When the framers of the Constitution – which was ourselves in the 10th Parliament – were in agreement with the Committee of Experts (CoE) and in consultation with them, included public participation in policy implementation, it was not for a show; it was because participation is in the heart of democracy. You will remember the original idea that democracy in these times was that everybody collected in a field and discussed, and what was discussed among the people was what was carried out as law or what was then implemented as a

policy. But for a society that is bigger and more sophisticated, we came to the conclusion that we better participate through representatives. But there was a rider to that. In every democratic constitution, there is a rider to it. The rider to it is that in the final analysis, citizens are sovereign and can participate through a referendum.

Madam Temporary Speaker, those of us who are aware of current international affairs, there is one nation on the face of this earth called Switzerland. Switzerland is a nation where best practices are participation and best uses referenda for participation. In Switzerland, they have cantons; and these cantons are represented more or less by something like a council of states at the centre of about seven or eight persons who represent all the cantons. They are in charge of various departments or what we might call Ministries in Switzerland. Now, the Swiss do not elect a President as we do, but from among these eight, the presidency rotates every year. So, every year, you have a president in that council state. The idea that one man is ruling you for too long a period of time does not arise and, therefore, it minimizes competition, rivalry, agony and pain in terms of choice of this one man, control of this one person and an anxiety to get to that seat.

Now, I think that for an ethnically divided society like ours or for a culturally heterogeneous society like ours, this is something that we need to learn from so that we do not begin making the mistake over and over again to the detriment of our development and national cohesion, therefore delaying the solution of the problem. I am saying this because as we discover more minerals, the old assumption that the colonialists left with us; that there are only certain areas which are high potential, and this area or areas which have a lot of agriculture are the only productive areas. The whole thing might be reversed in about five or 10 years and then we shall be wondering where control of power should be located. I think we better address this issue much earlier and come up with a much more civilized, accepted and participatory process of governing ourselves; allowing the people to have more say. I am saying this because when it comes to minerals, if we go the Middle East way where the control of mineral resources is left to the hands of a few people or a few companies, injustices will arise in this nation of untold proportions. This is because the amount of wealth that arises from the exploration of minerals is enormous.

Now, in the Middle East, there is what they call “Sheikhs” and “Sheikhdoms” and a kind of a feudal system. The rest of the society depends on the benevolence of these Sheikhs and Sheikhdoms. At the material level, it may look as if there is prosperity which is generally shared by the whole society, but when you look at the political and emotional level, a lot of people exist without having a say on the wealth of their nation.

Madam Temporary Speaker, Allan Smith once said that although the wealth of nations belonged to the nations, it is not usually the wealth of everybody. That in democratic governance that whole idea of participation is not for the aesthetics of it but participation to ensure that in the control and use of natural resources and wealth, every voice has a say and has somehow a participatory distribution or share of this national wealth. So, whereas we are celebrating the advent of tremendous mineral wealth in our nation, if we do not do it with some amount of good governance and paying fair attention

to popular participation on how wealth is produced, shared and distributed, we may be in for a lot of problems in the future. I do not want us to have the option of relying on the benevolence of a few individuals be they President or just Parliament and so on. But we should rely really on the goodwill and the ability of the ordinary person to have a say in not only how his or her country is governed, but how wealth is generated, distributed and shared. That is very important when we come to the mineral wealth.

Madam Temporary Speaker, all this wealth and essential minerals lie beneath the earth. On top of the earth is what we call land. We know for certain that our land laws are very clear in the Constitution. In the final analysis, land is owned by one entity or the other. The individual land ownership is there and trust land is there in the name of the public. There is also Government land and so on. But more often than not, when there is prospecting for minerals, you will find that the land that has been in the public domain or trust land is surreptitiously acquired by individuals. It would be very interesting to find out the extent to which land---

The Temporary Speaker (Sen. Ongoro): Professor, your time is up!

Sen. Leshore.

Sen. Leshore: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this very important Motion. First, I would like to congratulate Sen. (Dr.) Zani and her Committee for coming up with a very important Motion that affects most of our counties.

If this Motion had been brought 20 or 30 years ago, some of our counties like Turkana, Samburu, Marsabit, Isiolo, Wajir, Kwale, Kakamega and Migori would be at par with the rest of the counties like Kiambu, where my good friend who is next to me comes from. They would not be described as arid or semi-arid, if such legislation had been developed some 20 or 30 years ago.

Madam Temporary Speaker, in my county, we have a lot of natural resources. Some were exploited during the 1970s and the community received barely anything. I remember in the early 1990s when I queried a company from Japan which was exploring in my constituency then, Samburu East. I remember very well that I was told that they had developed a 35 kilometre earth road which was only costing about Kshs175,000 by then. I asked them about the other things that the community had benefited from and I was shocked to learn that the community received nothing. The county council received about Kshs105,000 for more than 20 years. The national Government, apart from the licence fees, had received nothing.

Madam Temporary Speaker, I congratulate the Committee for coming up with this new legislation. The revenue should be governed by the national Natural Resources Council, then by the county natural resources committee and the ward natural resources committee. When we were fighting for devolution way back during the Bomas days, we wanted each and every community to benefit from the natural resources that we have in this country. I thank God that I am still alive and here in this Senate when this Motion is coming up. This is because when we were fighting for devolution, and Sen. (Dr.)

Machage is my witness, there were only four counties – then districts – which wanted to be given special status. Now every county has its own right to develop its natural resources for the benefit of our people.

Madam Temporary Speaker, the Bill which will come should also put a lot of emphasis on educating communities about royalties. Right now, between Samburu and Marsabit, we are going to have wind power and nobody has thought about royalties to the people of those areas where wind is being tapped and power transmitted to the national grid to improve our energy supply. The national Government has also been denied corporate tax and Value Added Tax (VAT) by these miners due to lack of comprehensive legislation on these activities. The worst exploited counties are those in arid and semi-arid areas. The communities should be sensitized on royalties that they should receive from any miner in their respective areas. In Samburu, we have got many resources including gemstones and most probably even oil, gas and coal. Therefore, the faster this legislation is enacted, the better for our people in those counties. Mining is a very crucial aspect in the development of this nation, especially our counties.

Madam Temporary Speaker, with those few remarks, I would like to thank the Committee and urge it to fast-track this legislation, so that we can benefit very soon.

Thank you.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I want to join my colleagues in registering my compliments to the Chair of the Committee, Sen. (Dr.) Zani, and her entire team for this great Report. I want to assure her that if she manages to push this Motion through and do further consultations, this might very well be the biggest contribution that she might ever make to the economy of this country in her entire life, because this is very important.

I am glad to note that in this Report, in the executive summary, the Committee tells us that during their visits, they observed that most communities living in counties with natural resources were not in any way benefiting from the exploitation of those resources. In fact, they found that members were living in abject poverty, despite the counties being endowed with those natural resources, this, being the state of affairs of what successive governments have been doing by way of imagination in terms of unlocking the mineral resource potential of this country.

I also notice that the Committee was able to sample nine counties where they paid visits. I want to disagree with them. They should have found time to visit all the 47 counties because there is no single county in this country that has no resource that we cannot wish to develop using legislation of this House. I can tell them, for example, that when you look at all these counties, you left out all the counties of the former Nyanza Province and the former Western Province. In fact, we know for a fact that in certain counties in Western Kenya, for example, Kakamega and Migori, these are serious mineral resource counties. The case of Migori is straight forward because in Migori up to now, we still have locals prospecting for gold. It is just that these people do not have the

proper support from the Government to have adequate and sufficient access to the gold that they have in Migori.

It goes without saying that there is gold in Ikolomani. It is on record and people must understand that the Roosterman that started this exercise in 1935 stopped in 1952 not because there was no gold but because of the emergence of the *Mau Mau*. The “white” man was not comfortable to continue prospecting gold which was a high value mineral and so they thought they would be killed by the freedom fighters. Members would want to know that we had a serious group of *Mau Mau* fighters in Bungoma at a place called Chitambe and therefore the “whites” took off. If the Government moves in, it will be able to revive this exercise and people will realize their potential.

Madam Temporary Speaker, in Kakamega, we also have the only remaining huge tropical forest in Africa called the Kakamega Forest which has serious tourist potential. There are other natural tourist sites like the famous crying stone; *Ikhonga Murwi* of Kakamega, we have natural cultural activities that are very conducive to tourism and these are serious sources of wealth. Not forgetting the scenic Nabongo Kingdom of Mumias where if properly harnessed by the Government, it would attract millions of dollars on an annual basis.

Having said that, allow me to congratulate the Committee for moving on and coming up with a draft Bill. I have gone through the draft Bill and I have every reason to congratulate the Committee because this is serious business. I want to make a small critique of the draft Bill if the Chairperson does not mind because the purpose of debate is to enrich. When I look at the draft Bill, I notice that when you go to Clause 4 which is classifying what you call “natural resources”, you have named petroleum, natural gas, minerals forests, water resources, wildlife and fishery resources. In my mind, I felt that one of the greatest resources that any county has everywhere in the world is tourist attraction sites and we must include them. In fact, the tourism that we see in places like Great Britain is because of the attraction sites. This is why I would like this to be considered when we are doing the final Bill and add tourist attraction sites and cultural centres.

Madam Temporary Speaker, if you move on and go to Part II on Natural Resources, Royalties and Fees Fund, I have no problem with that, but Part III which speaks to the collection of royalties and fees. I want to agree with what you have said about imposition of royalties and fees. However, I want to highlight the fact that it is the failure to impose legalized royalties that has failed to develop many African countries especially in the oil producing and export countries of Africa, mainly West Africa. I would urge the Committee to find time and money to go and visit one of the OPEC countries of West Africa and then move on and visit Qatar. They both produce and export oil, but when you see what is in Qatar, you can cry because it is a super country for no other reason other than they produce and export oil. West African countries produce and export the same resources, but the levels of poverty there are not acceptable. This is because in African countries, the so-called collection of fees is left at the whims of the

political elites to the extent that the multinationals invite the President, they corrupt that President and tell him, for example: We want to give you royalties of five per cent and we will pay in your foreign bank account so much money. Then you find the country is not moving. This happened in the Democratic Republic of Congo (DRC) whereby by the time Mobutu Sese Seko was dying, he was a dollar billionaire when his country is what it is. Had there been a strong institution of Parliament in the DRC, then Zaire, with serious legislation like the one being advanced by Sen. (Dr.) Zani, one would have seen a situation like the one we see in Qatar. I was shocked early this year when I visited Qatar and I found that they had even air conditioned their stadia to the extent that they have been able to beat the adverse weather conditions, allowing athletes to express their talents freely to the extent that they have even won recognition from the Federation of International Football (FIFA) for purposes of hosting the world cup in 2022. This is because of nothing else but the country is organized, it has a strong institution of Parliament and the leadership does not live in corruption.

Madam Temporary Speaker, I want to move to Clause 7 which speaks to the Revenue Sharing Ratio. In Clause 7 (1) (b), the sharing of collective revenue shall be as follows: Amongst others, the Committee has said that we have the Sovereign Wealth Fund which shall be distributed between a future fund and a natural resources fund in the percentage of 60 per cent to the future fund and 40 per cent to the natural resources fund. This is okay, but this Bill is not clear what the future fund and what the natural resources fund will be used for and how different the two funds are. I will tell you the risk of leaving it ambiguous. Upon growing into trillions of dollars in the foreseeable future, we run the risk of it being abused in exactly the same way the National Social Security Services Fund (NSSF) has been abused by politicians over the years in this country. It is, therefore, important that we are clear and as the Senate, we define exactly how this fund is going to be used and how it will be applied. We should lock out the big hand of the African President from this fund. Otherwise this fund will in future be used by people to do presidential or gubernatorial campaigns in the counties.

I would also like to comment on part (V) of Clause 8 which establishes the Sharing Authority. This is a very important clause.

Madam Temporary Speaker, this is a very important clause. The Benefits Sharing Authority amongst the issues stated there will preempt the ethnic curse that mineral rich countries in Africa have suffered. It will preempt the mineral resource and poor governance curse. If Senators have time to look at the literature we have in our bookshop, they will see that there is a book by Paul Colley called; *The Bottom One Billion Members of this World*.

Paul Colley argues that owing to the ethnicity curse, the mineral resource curse and the poor governance curse, it does not matter amongst us – who are among the bottom one billion – whether we have these things or not. We will have the minerals in Turkana and because of poor governance, we will start fighting over them. We have minerals in Turkana but instead of the minerals helping in developing the area, we will

kill one another over them. This is mainly because of the curse of ethnicity. All of a sudden, the people of Turkana will wake up and say that the oil there belongs to the people of Turkana. Therefore, a legislation that shows how these resources can be shared out preempts this and I want to congratulate the Committee.

My last point is on Clause No.23 on the County Benefits Sharing Committee. In sub clause 4, the Committee has advised us to support this Bill where it says; Members of this Committee – you have listed them and I have no problem with that – shall be paid a sitting allowance as it shall be determined by the Salaries and Remunerations Commission (SRC).

In conclusion, this must be with the approval of the Senate otherwise these people will pay themselves astronomical allowances that will defeat the process.

I strongly support.

The Temporary Speaker (Sen. Ongoro): I just want to remind all of you that while you have made very good references to the draft Bill, bear in mind that this is a draft. It will still go through the publication scrutiny stage. It will have to go through the three stages of First Reading, Second Reading and the Committee Stage during which we can make extensive comments. Therefore, while you make references, do not exhaust or preempt in detail what you may want to contribute during those stages.

Sen. Wamatangi.

Sen. Wamatangi: Thank you, Madam Temporary Speaker. I want to begin by congratulating my Chairperson, Sen. (Dr.) Agnes Zani, first for having a good mind and thoughts of caring for the people of this country and for coming up with this draft Bill.

Secondly, I congratulate her for ably steering the process of research and guiding the Committee in its entirety until it came up with this draft Bill.

This Bill can be described in three short words; first, in terms of a level playing field, equalisation or fair play. As it has been said by most speakers who spoke before me, the scenario in this country as far as natural resources are concerned has been one of deprivation. The owners, hosts or caretakers of natural resources since time immemorial have been most deprived.

As the Vice Chairperson and a Member of the Committee, I want to enumerate a few incidences that we came across. We paid several visits to several areas in this country and what we saw told a story that required, indeed, this kind of legislation. The story requires this legislation to ensure that now we have a new Constitution, we have buoyancy in the spirit of our people who are the owners of natural resources in this country.

We paid a visit to counties like Machakos where sand harvesting has been going for a long time. This Committee paid visits to the counties in the Rift Valley and the story is the same. The agents who have helped to grow this country have benefited the least. For example, when we paid a visit to Machakos County, we saw families that have a legacy of sand harvesting; right from their grandfather, sons, grandsons and generations to come.

We paid a visit to one family which has been harvesting and selling sand for a long time. The entire family lives in an equivalent of a sand pit. I imagined the contribution that those kinds of families have played in the development of cities like Nairobi where we have skyscrapers and five estates. Those resources are got from these people. It is heart wrenching to find that indeed, those who have contributed to that kind of growth live in squalor.

This story is replicated all over the country. I want to disabuse the notion that there are particular sections of this country that are either hosts of natural resources and have benefited. The first important point to note, as of today, is that this country has been relying on a law – which addresses these matters – that was passed in 1963. Since that time, up to today, this country has relied on what was passed on by a post-colonial mentored Government to address current day matters. One of the proposals in the Bill is that what is paid out to hosts of these natural resources should be 25 per cent of three per cent. This means, for example, that if a natural resource generates Kshs10, the benefit that goes to the host of that resource is Kshs3 out of the Kshs10 and 25 per cent of the Kshs3 is what goes down. That mathematics is horrifying. You can imagine what is expected out of that community. That is why this Bill is timely. There is no section of this country that can claim, cry or allege that some people in an area have benefited while others have not.

We also had an opportunity to visit Kiambu County which I represent. Kiambu County has hosted, nurtured and protected an important natural resource which is forest. Almost an eighth of Kiambu County is covered by forests which are nurtured and protected. In the forest of Kiambu we have, besides the role of nourishing this country and the capital with water, companies that have invested there. The Committee paid a visit to one of the companies in Kiambu which has been exploiting a natural resource in that forest. The company has a revenue base of more than Kshs500 million per annum. Upon investigations by our Committee, we realized that the amount that benefits the people of Kiambu is less than Kshs500,000 per annum for a whole community. A company with those kinds of benefits covering such a big area can only put up one classroom here or maintain and that is it. It is important to note that as we look at the bigger picture of what the natural resources are, we need to own the truth that the battle for natural resources is fierce. If what happened yesterday in Makueni is an example to go by, things are bad. It is important for this Bill, which has come up to put figures on pen and paper, to ensure that those who expect to benefit should benefit based on the law which will be passed by this House of Parliament. It is also important for us as a country that there are shared resources in this country. One of the biggest challenges we found as a Committee is to define the term community. The heart of the Bill was to ensure the benefits that accrue from these natural resources benefit the core counties and the core communities. The definition of the word “community” became an uphill task for this Committee because we recognized that there are shared resources. That is why I would

want to urge that as we debate this Bill, we should tell our people that we need to manage expectations. Why should we manage expectations?

In Turkana County where oil has been discovered and there is a lot of exploration going on, if the expectations of such a community are not managed, then the whole process can end up being another replication of what we have seen happening in other countries in Africa like Nigeria and Algeria which have fallen victim of a blessing in the form of natural resources.

Madam Temporary Speaker, I would want to conclude my remarks by saying that the need and necessity as addressed in that Bill should ensure that catering or caring for our people does not become a scare to investors. We should talk to our people and tell them not to expect too much. There has been a temperament in-between. We have to tell our people that although investors come to the community to exploit natural resources, there has been an act of balancing. In a conference that we attended, we interacted with some investors and they had a story to tell about the difficulties they encounter. There is a company called Woodside which prospects for coal and other minerals in Australia. They told of a story of how they prospected for oil in Kenya and after digging one well, they had to close shop, count their losses and go. The reason is that the demands they were getting from the local leaders and the expectations from the community were unmanageable. Fortunately, and we thank God for that, another company came and discovered oil. Supposing that story was in another area where a community was expected to benefit, they could sit on that prospect due to over-expectations.

Recently, I paid a visit to the County of Kitui, Mui Basin, where a lot of coal has been discovered. When you listen to the locals, there is no story of joy and jubilation. There are complaints because of over-expectation. This is something that needs to be addressed.

Madam Temporary Speaker, there are countries in this world, for example, Norway which has harnessed and managed natural resources through sound legislation including putting to pen and paper the rates and ratios of compensation. Norway has the largest sovereign fund in the world. I had the good luck and opportunity of sitting with the Prime Minister of Norway when she passed through this country. She told me that the sovereign fund in Norway is in excess of US\$500 billion. Norway also owns states and states of investments including in the heart of London. This money pays itself back and the country only benefits from the interest or from the spoils of those investments. As a country, we can follow such a path to prosperity. As we are sitting in this first Senate of this country, we can chat away forward for our people, for our country and ensure that natural resources in this country are going to be a blessing to the people of Kenya.

With those few remarks, I beg to support.

Sen. Boy Juma Boy: Asante sana, Bi. Spika wa Muda, kwa kunipa nafasi hii ili nizungumzie Hoja hii. Kwanza, ningependa kuchukua nafasi hii kumsifu Mwenyekiti wa Kamati hii, Sen. (Dr.) Zani, na Maseneta wenzangu ambao ni wanachama wa Kamati hii.

Mimi pia ni mmoja wa Wanakamati wa Kamati hii nzuri ambayo imeleta Ripoti hii iliyoko mbele yetu leo na tunayojadili kama Hoja.

Bi. Spika wa Muda, ukweli wa mambo ni kwamba tulizunguka kaunti nyingi katika nchi hii; na katika mzunguko ambao Kamati ilizunguka, tuliona kwamba Kenya ina rasilimali nyingi sana. Katika kila kaunti tuliopata fursa kuitembelea, tuliona kwamba rasilimali ziko na zimekuweko, na zitaendelea kuweko. Kwa hivyo, mjadala wa kwamba Kenya iko na rasilimali au la, jambo hili halina tashwishi wala shaka. Shida, mtihani *bin examination* ilikuwa je, kutokana na rasilimali zile, je, yule mwananchi wa kawaida anafaidika vipi? Huu ndio uliokuwa mjadala mkubwa. Mambo ambayo tuliyakuta na kuyaona ni kwamba wale ambao waliokuwa na matumbo makubwa walizidi kunona; mashavu yalizidi kuwa makubwa na meupe; ilhali watu wa kule walikuwa wanazidi kukonda na kuwa wembamba. Huu umekuwa ni mtihani na tulikuwa na mshangao mkubwa!

Bi. Spika wa Muda, tulipokwenda Kaunti ya Machakos, tuliona watu wamezidi kuwa wembamba ilhali wauzaji michanga wanazidi kunona, huku wakizunguka na magari makubwa – Fuso ambazo zinauza mchanga hapa Nairobi. Lakini watu wa Machakos hali yao ilikuwa taabani kwa njaa; imekuwa hatari *bin danger!* Isitoshe, tulienda Kajiado na tulipofika huko, kulikuwa na mradi ambao ulikuwa unatengeza kokoto. Kampuni kubwa ya China ilikuwa imepewa mradi huu ambapo rasilimali ya kokoto iliyokuwa inatumiwa kujenga barabara za *bypass* ilikuwa inatengezwa. Lakini ukiwaangalia watu wenyewe wa Kajiado, shuka zao ni zile zile nyekundu; hawana dalili ya kuwa na manufaa yoyote. Tulipowauliza “Je, kaunti ya huko inapata chochote?” Ilikuwa ni masikitiko; tulitokwa na machozi. Mwenyekiti wetu alikuwa karibu kutokwa machozi lakini nikampa kitambaa cha kuvuta machozi; Naibu Mwenyekiti, Sen. Wamatangi, alikuwa yualia kwa huzuni iliyotupata kule. Huo ndio ukweli wa maneno.

Bi. Spika wa Muda, kutoka hapo, tulienenda hadi Kaunti ya Baringo ambapo tulikuta *geothermal energy*. Tumesifiwa kwamba umeme wa megawati nyingi zitakazosambazwa katika nchi; lakini tukitizama hali ya watu wa Baringo, hali zao zilikuwa taabani! Huu ndio mjadala mkuu. Tulipofika Murang’a, tuliambiwa jinsi gani watu wa Nairobi wanaoga kwa maji ambayo yanatoka Bwawa la Ndakaini – sisi pia tukiwa katika kati ya hao wenye kuoga na maji yanayotoka kule. Swali ni: Je, watu wa kule wanapata nini kutoka kwa maji yale? Hamna kitu wanachopata! Lakini sisi watu wa Nairobi, sote twaoga kwa maji yanayotoka huko; tena sasa ndio twang’ara zaidi kwa sababu ya maji ya kutoka huko. Tulipofika katika mradi huo, tulipouliza kaunti ya huko yapata nini, tuliambiwa kuwa hii ni rasilimali ya kitaifa.

Bi. Spika wa Muda, kutoka huko, tuliabiri hadi Kaunti ya Kwale – sikujui huko ni wapi – huko ndio mtihani *bin danger!* Huko Kwale, tulikuta rasilimali nyingi; kulikuwa na mradi wa *base titanium*; kulikuwa na mradi sijui wa *Cotec*; kulikuwa pia na mradi wa *gas*. Kulikuwa na miradi chungu nzima lakini watu wa Kwale wako katika hali mbaya mpaka sasa. Hali ni mbovu! Haya ndiyo mambo ambayo yaliyofanya Kamati kupendekeza kwamba watu wa huko lazima wafaidike na rasilimali zinazotoka kwao.

Kwa mfano, Kwale kwatoka maji yanayotoka Marere, lakini wenyeji wa Kwale hawanywi maji ya Marere. Lakini wanayaona yale maji yakipita yakienda Mombasa ili watu wa Mombasa wayanywe, kwa sababu watu wa Mombasa ni watu zaidi; wa Kwale sio watu! Hii ni hatari! Watu wa Mombasa wanywe maji na watu wa Kwale wayatizame tu kwa sababu watu wa Mombasa ni watu zaidi; wale watu wa kule Kwale sio watu! Hawa basi wanywe haya maji ndio watu wa Kwale angalau wapate chochote; lakini hakuna wanachopata! Sasa huu ni mtihani *bin examination*! Maji yanatoka Tiwi yakienda Mombasa, ingekuwa bora angalau kupatikane japo hata sumni – hizi sio pesa nyingi tunazosema sisi – kusudi kaunti nayo iweze kupata chochote. Lakini kaunti bado zaja hapa tukizozania katika mfuko wa Serikali kuu. Ingelikuwa rasilmali hizi zinaweza kupatikana kusudi kaunti zile ambazo rasilmali hizo ziko, wananchi wa pale wafaidike.

Hayo ni mambo tuliyoyaona, Bi. Spika wa Muda. Tulikwenda Nakuru karibu na Ziwa la Nakuru. Jambo tuliloona kule ni wenyeji wakilalamika nyani walioko kule. Je, ni faida gani wenyeji wa Kaunti ya Nakuru wanapata? Hakuna! Hata hawandikwi kazi katika shirika la *Kenya Wildlife Service* (KWS). Je, wanaoandikwa kazi wametoka wapi? Sijui! Haya maneno sikuyasema mimi; waliosema ni wananchi tuliokwenda kuzungumza nao. Sisemi mimi haya maneno. Naibu Mwenyekiti alikuweko, Bi Mwenyekiti alikuweko na Wanakamati wenzangu pia walikuweko.

Kando ya hayo, malalamishi mengine tuliyoyasikia ni kwamba hata zile kazi ndogo ndogo pia watu wa kule hawapati. Hayo ndio maneno wananchi walikuwa wakilalamikia. Sasa, pamoja na kwamba hawa watu twawataka – wawekezaji – ambao ndio wajasiliamali, lakini kuna mambo muhimu ambayo lazima wakija huku wayafahamu. Kuna watu hohe hahe wa kule na lazima wapate kazi. Sasa wewe, kila kitu kinachozungumzwa watafuta watu walio na shahada, basi pia kufagia barabara wataka mtu aliye na shahada? Asalaalaa! Kupika chai kwataka shahada? Kuweka maji moto ndani ya kikombe kwataka shahada?

(Laughter)

Bi. Spika wa Muda, mambo mengine ni hatari *bin danger*. Hayo ndio mambo tuliyoyakuta yakiendelea kila mahali. Hili ni jambo linaloweza kuleta taswira mbaya, na ndio maana twasema kuwa Hoja iliyoko mbele ya Seneti hii na ule Mswada utakaokuja kujadiliwa na Maseneta kusudi tuhakikishe kwamba mambo yale yamezingatiwa huko mashinani kwa sababu ni muhimu. Sisi sio wa kwanza kuwa na rasilmali. Nakubaliana na wenzangu wengi waliosema kwamba kuna nchi ambazo zimeendelea kama Norway na nchi nyingine nyingi. Kuna nchi kama Tanzania ambayo imekuwa na mambo kama haya; wamekuwa na rasilmali lakini kila siku utaona ya kwamba vita vikubwa vinasababishwa na rasilmali. Hata sisi wenyewe tulipigana mpaka tukaleta mabadiliko ya Katiba na hii ni kwa sababu ya ung'ang'anizi huu. Na bado twasema ya kwamba tuna haja, sisi kama viongozi, kuhakikisha kwamba rasilmali zinawafikia wananchi wa kawaida, kwa sababu mwananchi yule wa kawaida ndio mtu muhimu. Ndio maana mimi naisifu Kamati hii

kwa kazi nzuri iliyoifanya katika ugavi, katika maono na kando ya kuja na Hoja hii, pia kuja na Mswada ambao utakuwa wa kisheria kueleza namna gani rasilimali zitagawanywa, namna gani kila kaunti itaweza kupata mgao wao pamoja na wale watu wanaokaa karibu na hapo kusudi faida ya rasilimali hizi iweze kumfikia yule ambaye yuko karibu na rasilimali zile. Kutokana na fikra zilizoko kwa wengi ni kwamba huko Afrika ni watu wa kunyanyaswa kila siku tu; tuwe *exploited*. Kama alivyosema Sen. (Dr.) Khalwale, wengine watafikiria matumbo yao tu; wengine watafikiria namna gani watawanyanya watu wao. Lakini la msingi ni kuona vipi watu wetu wa kawaida – kina Wanjiku, Fatuma, Wairimu, Kipkemboi na wengine – waliopo kule mashinani watakvayofaidika na swala hili.

Kwa hayo mengi na machache, Bi. Spika wa Muda, naunga mkono Hoja hii.

Asante, Spika wa Muda.

Sen. Karaba: Thank you, Madam Temporary Speaker, for allowing me to contribute to this Report, which is voluminous and detailed. Such a report should not end up in a dustbin. It should not only be scrutinized by the Committee and the Senate, but also taken to the relevant department in the Ministry, so that we can make use of it. It is very important and useful and has long lasting benefits.

What we are discussing here is about natural resources and their benefits. We cannot get the benefits until we compare ourselves with those other countries which already have minerals or natural resources exploited, the benefits accrued from the same and what is possible to be accrued from Kenya in areas where such natural resources exist. We have areas where exploitation has taken place through proper prospecting of minerals and natural resources. Here in Kenya, we have some areas which have been geo-mapped and identified as potential areas where minerals may exist. We have the necessary aquifers and wells, but the problem has been uncertainty from the same areas, in the sense that some of these minerals are located in very dry areas. Some of the areas are prone to continuous clashes and the would-be prospectus may fear to engage in perpetual warfare in the pursuit of minerals which later on would benefit the Republic. If peace were to be maintained, I am sure that minerals in some unknown areas would be discovered.

Madam Temporary Speaker, examples have been drawn by those who have spoken. For example, we have had problems in Katanga in the Republic of Congo because some people would like to control the minerals. Some high-ranking Government officials would also like to control the export of the minerals at the expense of the areas where these minerals are located. The same thing has happened in Zambia. As a result, exploitation of minerals in Africa has been so much detrimental to the communities where these minerals are found, compared to what happens in Europe and America.

If you compare Africa with Europe, Australia and America, you will find that there is a very great contrast between where the minerals are found and the benefits accruing to the same community. In Germany, we have the Ruhr Industrial Region. It is the most industrialized region in the world because of the prevalent exploitation and

processing of coal and iron ore deposits which are found in Lorraine Province in France. Here in Africa, we have such minerals but nothing much has happened, just because of exploitation and also a lot of collusion by those who like corrupting the systems, hence denying the communities the benefits. So, we need a lot of sobriety when it comes to who is going to own what.

Madam Temporary Speaker, in Kenya, we have regions which are known to have minerals. Teachers used to teach about the goldmines in Macalder. I have not seen it captured here, but I believe that the Committee will go back again and see why it was not visited. If Macalder Goldmines were present to date, I would imagine that with proper technology, it is possible to exploit them to the benefit of the people living in Kakamega and Nyanza. But there are a number of issues which may prevent such exploitation. If we could solve the problems and concentrate in the exploitation and processing, I am sure that we could forge ahead and develop the country, just like what has happened in those countries which have and process minerals like Germany, Russia, Australia, America and so on.

In Kenya, we have soda ash in Lake Magadi. The International Chemicals Limited had to construct a railway line from Konza all the way to Magadi, because they knew of the existence of soda deposits in Magadi. That railway line did not only benefit the residents living in Magadi, but also the people living along the railway line. It has also stimulated the coming up of what is now known as Konza City in Makueni and Machakos. We can, therefore, salute the presence of soda ash in Magadi which has prompted the growth of a magnificent city known as Konza. The same thing can happen if the oil discovered in Turkana and Isiolo and the geothermal in Olkaria can be properly exploited to the maximum. The same thing can also be used to stimulate economic development, infrastructure and create more employment opportunities. Communication can also be improved and as a result, the *per capita* income of the said area can go up. Using the multiplier effect, the *per capita* income of the country can go up. That is the reason why we need not shun this Report. It is important and the team has done very well.

The Report has captured the local cases which we need to know and those which were not even known before. That kind of exposure has made even the Senate and the rest of the country know that there are some minerals and natural resources in the country that not many people knew about. Therefore, we need to move on and come up with proper legislation, so that people living in areas with those minerals can benefit. That is why we are discussing this Report. It is my hope that we will come up with proper legislation, so that people living in those areas and the country at large can enjoy.

Kenya will be a rich producer of oil, for example. It will be like one of the OPEC countries and the benefits will be enormous. Therefore, we need to encourage exploitation and international companies to come and continue with prospecting for minerals.

Madam Temporary Speaker, coming to what potential Kenya has, we need to pay a lot of attention to our tourism. We have many tourist attraction sites. Those are the areas which we need to protect and continue generating more income from. Without that, we are going to lack what is important for the stimulation of our economy. Along the coast, if we could have more exploration in the ocean, we could get more oil from our continental shores which are said to be very rich in such minerals. It is, therefore, important to think of moving offshore so that we can have more oil exploration for the benefit of this country. It is very good and we can also generate power from the tides in the ocean. Why are we shunning from that? Let us have more studies aimed at bigger harvests as the waves generate more energy against the cliff walls that are known to be based on the East African coast. It is also a very important source that the team should have visited, but the absence of that might have led us not to have that kind of knowledge which we are now directing the Committee to go further afield and have more information.

I support the Report.

Sen. Muthama: Asante sana, Bi. Spika wa Muda, kwa nafasi hii ili niweze kuchangia Hoja hii ambayo nakumbuka ililetwa kwenye Seneti tukiwa na vikao vyetu kule KICC na niliweza kuichangia vilivyo. Ninashukuru kwamba Ripoti hii imeletwa hapa ili niweze kuichangia kikamilifu.

Ni dhahiri shahiri kwamba tuliponyakua Uhuru wetu walioongoza taifa letu wakati huo na wale viongozi wa hivi sasa, wamesahau kwamba hatukupigania Uhuru ili tupate viti ama uongozi wa kisiasa na nafasi katika vitengo vingine vya Serikali huku tukisahau kwamba urithi wa taifa letu upo ndani ya rasilimali zetu. Ninasema hayo kwa sababu katika taifa letu, wale walioko katika uongozi wanapiga siasa kuanzia asubuhi hadi jioni. Vile vile, wale ambao hawako uongozini wanapiga siasa kutoka asubuhi hadi jioni hasa wale ambao hawana kazi. Tumekosa mwongozo wa kuzungumzia watu wetu kama viongozi na kuwaambia kwamba matumaini ya maisha mema hayako katika ulingo wa siasa peke yake, ila katika rasilimali zetu.

Bi. Spika wa Muda, mimi nimekuwa mchimba madini kwa miaka mingi sana na nimeweza kutembelea nchi mbali mbali. Nimetembelea nchi kadhaa za Amerika Kusini, Bara la Afrika na Asia, na nimeona vile rasilimali zinatumika. Ni jambo la kusitikitisha sana ukiangalia Kaunti ya Machakos. Nimefurahi sana kwamba Kamati hii iliweza kufika Machakos na kukutana na viongozi wake. Yale yote ambayo yamesemekana hapa ni mengi. Lakini ningependa kusema kwamba changarawe asili mia 70 iliojenga Mji wa Nairobi ilitoka Kaunti ya Machakos. Mapato ya watu wa Machakos ni mito yao. Hilo ndilo tegemeo lao la maisha. Mapato yanayopatikana kule Machakos ni duni mno. Wale wanaouza changarawe kule Machakos ni maskini wa kupindukia. Watoto wao wanaishi katika hali ya upweke ilhali kasheshe ilioko kule nia yake ni kuharibu tegemeo la watu wa Machakos. Wanaotoa changarawe na kuuza hapa Nairobi wanapata mamilioni ya pesa lakini ajabu ni kwamba Serikali ambayo ingelinda maslahi ya wananchi inawatoza pesa za kupata leseni kwa miezi mitatu. Kwa hiyo miezi tatu ni zaidi ya magari 180 ambayo

yatachukua changarawe na wanapouza hapa Nairobi, unatambua kwamba wale watu wanaibiwa. Hata Serikali ya Kaunti ya Machakos ilitoa leseni ili mito hiyo iendelee kuharibiwa bila kuangalia kwamba pesa zinazolipwa zinaweza kuwafaa wananchi.

Bi. Spika wa Muda, changarawe inachanganywa na posalana na madini mengine kutengeneza simiti. Kilo 50 za simiti zinauzwa kwa Ksh750 kwa kilo huku kilo 1,000 za mchanga wa changarawe inauzwa kwa bei duni. Kwa hivyo, tunapongea mambo haya, haimanishi tunamlenga mtu fulani. Katika kila pembe ya taifa letu kuna rasilmali aina tofauti. Kwa hivyo, ni juu yetu kuzingatia na kuunga mkono Hoja hii ili watu wetu wasaidike.

Kaunti ya Machakos ina mabwawa matatu ya kutoa maji; Masinga, Kiambere na Kindaruma. Ninajua kila mtu kwenye Bunge hili analipia stima. Tunajua zile pesa tunatoa ili tulipe stima, lakini tunasikitika kwa sababu ukienda Kaunti ya Machakos ambako tuna mabwawa haya halafu utembelee--- Kuna kampuni inayoitwa KenGen ambayo ilitoka mashirika ambayo yalikuwa ya Serikali bila kutoa hela hata kidogo na imekuwa mali yao. KenGen wanachukua ile stima bila kufanya chochote halafu wanaungana na Kenya Power Company na kutuuzia stima ilhali yule mwananchi wa Machakos Kaunti, isipokuwa kufukuzwa ili asikaribie lile bwawa, hapati chochote. Ukiangalia idadi ya magari ya KenGen, inaonyesha kwamba ni Shirika la Taifa la Kenya, lakini kwa undani, Serikali ya Kenya ina hisa duni mno katika hiyo kampuni. Hiyo ni kampuni ya kibinafsi ilhali imepakwa sura ya kuonyesha kwamba taifa la Kenya ni mshiriki katika ile kampuni.

Kwa hivyo, wale wananchi hawagusi yale maji wala kuyanywa. Ningependa kuiambia Seneti hii kwamba ukienda katika Bwawa la Masinga, utakuta wananchi ambao wanaishi mita 300 ambao hawayanywi maji hayo. Mwananchi yeyote akiyanywa maji hayo, atajipata jela. Tuna Serikali ambayo inafaa kuwasaidia wananchi wa Kenya.

Mswada huu utakapokuja hapa, nitapendekeza mabadiliko katika vipengele fulani. Ni juu tu ambapo nilizungumza kuhusu mito yetu katika nchi hii. Niliileta Hoja na ikapitishwa.

Bi. Spika wa Muda, huko Mavoko, Athi River, makampuni yanayotengeza vitu katika viwanda humwaga uchafu wao katika mito Tana na Athi. Mito hiyo ni rasilmali. Sisi huenda kukopa pesa ulaya ili tuchimbe maji tukiwa na maji ambayo yanaharibiwa. Leo nimejua kwamba kokoto ambayo inatumika kujenga nyumba hapa Nairobi hutoka Machakos. Huo ni ukweli lakini sio wote. Kabla kokoto kupatikana, mawe ya kujenga huwa kwanza lazima yapatikane. Mawe hayo huchongwa huko Machakos na kuletwa jijini Nairobi ili kutumika kujenga. Wenye mashamba na sehemu ambazo hutoka mawe hawapati kitu. Kokoto na mawe huchimbwa na kutolewa. Tunazungumuza mambo ya rasilmali.

Nina ujuzi katika sekta ya madini. Tumewasomesha watoto wa watu ambao wamesomea *Geology*. *Geologists* wanapiga viatu rangi hapa Nairobi ingawa wanaujuzi wa utafiti wa kuyatafuta mawe. Ukienda katika uchimbaji wa madini, utashangaa sana. Utapata kwamba wanaoitwa wachimbaji wadogo wa mawe ni wale ambao wanalipa

leseni ya Kshs2,000 ambayo inajulikana kama *prospecting licence*. Akishazilipa pesa hizo, yeye huwa haruhusiwi kuenda kiwango fulani. Silaha yake ya kufanya kazi ni jembe, sururu na kijiko.

Mwananchi huyo ana nia, nguvu na uwezo lakini hana ujuzi wa kujua mahali anaweza kukipata kitu anachokitafuta. Ningeomba Serikali iamuke. Tunafaa kuwacha kukaa ofisini, kuendesha magari, kunywa chai, kuweka maua ofisini na kuangalia maslahi ya wananchi ambao wanaumia.

Naomba watu wenye ujuzi wa kiutafiti wa kutafuta madini ambao hawana kazi waajiriwe na Serikali na kutumwa katika kaunti zote. Wanafaa kuwa wakizunguka na kuwasaidia watu ambao wanayatafuta madini ili wayapate kwa urahisi.

Kwa hayo mengi, naunga mkono.

The Temporary Speaker (Sen. Ongoro): Asante sana Seneta. I am not seeing further requests unless something is not reflecting here.

Sen. Chelule, my records show that you are the one who seconded this Motion. Therefore, unfortunately, you cannot contribute. Are there any other interests?

There being no further requests, I will call upon the Mover to respond.

Senator, you have 30 minutes.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I stand to reply. I would like to start by thanking all Senators for their contributions, insights and the information that they have shared so willingly with this Committee. They have debated on this report; indeed, right from the time it was a Motion in this House up to this time when we have a report of the Committee. We hope and project that we will be debating this as a Bill in this House.

Let me start by thanking all the Senators. On behalf of the Committee, I would like to say that we value the input that has been given to us, the insights and suggestions that have come forward.

Indeed, we also tried to ensure that we had participation at various stages and involved various stakeholders. It is in the light of this participation that we hope to come up with a Bill and, indeed, later an Act of Parliament that will be effective in managing natural resources in this country.

This has been an area with a large gap. As much as that gap has been recognized, efforts to fill it have been put in place but in a fragmented manner. Therefore, the efforts we are putting forward, as a Senate, in trying to come up with a law that will ensure that the management and control of natural resources can be carried out effectively by the whole country is very critical for us.

I would like to thank the Members of this Committee; 17 Senators in total, for their commitment, right from the beginning. I think it was very easy for me as the Chairperson to chair the Committee. The Committee had Members who were very dedicated and quick in responding. They accompanied me in the various trips that we made.

We managed to visit nine counties. In most of the county visits, we nearly had the full Committee Members' attending. I would like to thank the 17 Members of this Committee for their efforts, time and energy. Indeed, it is because of their efforts that we have managed to table a comprehensive report to this House.

I would like to pay special tribute and thanks to the Vice Chairperson of this Committee for his exemplary leadership and commitment to the work of this Committee. I want to thank him because he was available any time he was called upon and for his leadership skills in steering this Committee to higher heights.

I would like to thank the Members of the Committee including the members of staff for the work that they did for us. They made sure that we had the reports on time and enough research initiatives put in place. In this field, we learnt a lot as we continued working. Since we realized the sensitivity of this area of legislation, we made sure that we engaged as much as possible in great research initiative to ensure that we collected enough information. We looked at other legislation in detail and made sure that we looked through all the literature that was possible so that we do not leave anything out.

The result of this Committee's output is a policy paper. That is very important. We made a decision as a Committee, right from the beginning that it would be very difficult to come up with legislation that is not hinged upon policy. Therefore, the policy framework was the beginning point and the overall macroscopic approach in the work that the Committee had. It gives us a lot of pleasure to share with this House that policy paper. It is that policy paper that guided the provisions, articles, insights and articulation of the issues that were very critical. It is these same issues that keep on coming up in various Articles of the Bill. In that report, there is an extensive elaboration of what the Committee did, including discussions, minutes and so on.

Last and very important is the Draft Bill in that report. As a Committee, we wanted to have a deliverable that will take us to the next level in the form of the Draft Bill that Members have read. As you stated earlier, we will have a chance to debate the Bill, which I have signed and I believe will soon be coming to the House. That will give us an opportunity to discuss the Bill itself in greater detail. We appreciate everybody for that. I would like to take this opportunity to thank the Governors, Members of the County Assemblies and the communities we visited. There was co-operation, enthusiasm, collaboration and interest in sharing information. We got co-operation from county governments, county assemblies and the relevant committees. What has been said about the communities is very true. We had communities in Machakos that waited for us up to about 8.00 p.m. to get a chance to articulate their feelings. The idea that was generated across the board is that communities said that they needed to have a way of relating the natural resources and benefits.

Madam Temporary Speaker, Sen. (Dr.) Khalwale mentioned that it should have been nice for us to have gone to all the 47 counties. That is what we would have wanted to do as a Committee. Unfortunately, this was an *ad hoc* Committee. We decided to cover much geographical spread from Kwale to Elgeyo-Marakwet. We also tried to make sure

that we had a diversity of the various natural resources. This enabled us to get a feel of what we were doing.

As a Committee, we felt that our engagement with county governments, county assemblies and communities was very critical. Therefore, the information we got was very important. Another group that was key was the investors. We wanted this to be a participatory process from the beginning. Where we met investors, we actually articulated to them what we were getting to. We also clarified that we were not trying to make their investments and their profits dwindle. We felt that if communities have to continue to co-exist and continue feeling that they can reap from their natural resources because there is no other way to go. We put into place a programme and a system that was long overdue. If we put it out there in a cohesive manner, it will stop us from having a situation where we have communities who are complaining and they do not know how to do it. We should have regulations put in place to ensure that those communities know what is coming to them in a very systematic manner. That is why we are proposing a detailed benefit sharing scheme that will trickle down to the counties and to the communities. This is very critical for us because at the end of the day, we felt that if we have a regime that is very clear and everybody knows how that money is to trickle down, it becomes very important. That is what the communities and their representatives told us.

Madam Temporary Speaker, one of the things that this Committee was meant to do was to come up with percentages of royalties that accrue from the natural resources that should be remitted to the county and to the communities. As we continued with work in this Committee, we realized that it was going to be very difficult due to the following reasons: There is such a diversity of the natural resources and the various laws that control the administration of those resources. For example, we have the Wildlife Conservation Management Act, 2013; the Natural Resources Forestry Conservation and Management Act, 2013; the Water Act, 2012; the Energy Act, 2012, among others. All these have a way of thinking through the revenue stream which is not similar across all the natural resources. For some revenue streams, it is in terms of fees and for some, it is in terms of royalties. Therefore, we decided that if communities and counties will reap from these natural resources, we need to come up with a process that touches on whatever it is that is coming up, whether it is a charge or a levy, it has to trickle down to the community and to the county. That is why we broadly called it the Natural Resources Benefit Sharing Bill.

Initially, we hoped to come up with specific royalty percentages that need to be given out. We realized that it was going to be very difficult for us due to the diversity of the natural resources. As a Committee, we agreed that it is going to be almost impossible to revoke and change all the laws already in place. We decided to work with what is already there but give the Benefit Sharing Authority the responsibility to review upwards those levies and fees at any specific time so that at any one particular time, the

community and the county reap commensurate with what they are giving out in terms of natural resources.

Madam Temporary Speaker, in the Draft Bill, Article 4, we not only just mentioned a few of the natural resources, but also gave a provision in Article 2 for that Benefit Sharing Authority to add other natural resources. This is to address the concern that is coming. If we leave it as an exhaustive set of natural resources, we will run into problems later on if we discover new natural resources. Therefore, we have broadened it to cover dynamism. This Committee was trying to put into place a fiscal policy that will enable that sharing to take place at the various levels of the communities and in the specific counties.

There is agreement among Senators who spoke in terms of the importance of the natural resources putting into consideration that we are endowed with natural resources in all the 47 counties. Therefore, we are talking from a consensus point of view even as we decide on the actual process of management. We agreed that there is need for distribution of these natural resources. We have given a proposal which will be debated so that it is agreeable. We also have a definite criterion that I will discuss in a few minutes. The importance of benchmarking was also mentioned by Sen. Wetangula when the report was being discussed here. We took it seriously and we have managed to bench-mark across one of the countries that is renowned in terms of mining. They have been able to surmount their problems. As a Committee, we managed to share with Australia when we visited them. One of the outcomes is the need for a way of restoring the specific environment and finding ways and means of ensuring that the communities are brought back to the level where they are in whichever way including if possible, changing those tourist sites so that they can continue to bring income. We also managed to share the Draft Bill with them and have a consultative forum with many of the experts to get an insight of what is expected. As a Committee, we presented a paper on how communities and counties should reap from natural resources. That time was the most appropriate time, to put proper legislation into place considering that now there is exploration for oil and gas in East Africa. This is the time to put into place legislation that should enable us to address the issues of counties and the communities. We are happy that it came up at this particular conference. So, that means that it is an issue of concern that many people are thinking through and grappling with.

Madam Temporary Speaker, the issue of policy implementation and, indeed, the issue of popular participation that Sen. (Prof.) Anyang'-Nyong'o brought up is also very critical and I think we, as a Committee will also look at that in detail, especially public participation. As far as revenue and the dissemination and distribution of that revenue to counties and communities is concerned, one of the biggest stakeholders who will actually enable us to push it to the next level will be the people themselves. At least from what we saw from the Committee visits that we made in the nine counties, we found that communities are ready, they are proactive, they are actually waiting to participate and say exactly what they need to do. In fact, we talked to the various members of these

communities and asked them what their priorities were and we realized that they had different priorities. One of the key things of emphasis that was very critical for us was that they identified specific projects that they will tie that revenue to, so that, that is not revenue that has gone into a kitty and it is being utilized without the communities having a direct identification but as a result of the monies that have been accrued or the revenues that have been accrued from these particular natural resources, then we are able to actually reap in this specific way. That was very important for us.

Madam Temporary Speaker, I alluded to the rehabilitation of sites, especially in the trip that we made to Machakos sand rivers. It was really sad to find river beds that are completely depleted and communities there living in a very impoverished state because of them having a natural resource from which they should reap from. This was the story that kept replicating itself across all the various counties. So, we have taken note of that and many Senators have also spoken about that. That is something that we need to do so that, at least, we give back so that the communities know that they are able to get something.

Madam Temporary Speaker, the implication of revenue collecting authorities and tightening of revenue authorities and implementation of the same will be very critical. Even as we discuss the Bill, we will have to make sure that there are no loopholes that will not allow the situation that Sen. (Dr.) Khalwale spoke about; that somebody ends up really becoming very enriched as a result of a kitty that should be used at the county and community level. So, we have to make sure that the money is collected in a very transparent manner, it goes into a particular kitty and we can actually follow up and find out what exactly has happened.

Madam Temporary Speaker, last but not least, I would like to thank the investors who were very forthcoming and we learned a lot. They gave us proposals and we have taken those proposals into account even as we finally ended up with a final model. There are two key deliverables in the Bill that we propose to present to this House; one is the setting up of the Benefits Sharing Authority (BSA) at the national level, which is very critical. So, we have cascaded it at three different levels; the BSA at the national level; a County Benefit Sharing Committee at the county level and, lastly, a Community Benefit Sharing Committee at the lowest level and that is the level of the community itself. We have tried as much as possible to ensure that at the various levels, we have people who are going to contribute appropriately because we realized, for example, that at the community level, we have tried to make it not very bureaucratic by having a Government of bureaucrats that is top-heavy. So, we have tried as much as possible to bring in local community leadership – the people who know the problems; the people who the communities have confidence in – so that they can actually share and indicate what the real issues are. At the county level as well, we have tried to empower the community to ensure that they are able to distribute, share, articulate and put together the package that is clearly for them.

Madam Temporary Speaker, the Natural Resources Royalty Fund is going to be the key thing; it is the magnet in the whole thing. We agreed among the Committee Members that it was going to be difficult for us to go into each of the natural resources in terms of industry. We agreed that whichever format is already in the process in terms of revenue collection. Let it remain as it is but let us create this fund that is very important – the Natural Resources Royalty Fund. It is in that fund that the money will go in. We also decided as a Committee that we will concentrate more on our redistributive approach rather than an accumulation approach because that was going to be impossible for us.

So, in the redistributive approach, we made a bold proposal that from the 100 per cent that is collected as the Royalty Fund at the national level, that initially 80 per cent be put aside for redistribution and 20 per cent be put into what we are calling a Sovereign Fund. Now, this is a new way to go in terms of thinking about a Sovereign Fund that will, one, cater for a Futures Fund. The reasoning is that the resources that are now there in place are not only for the present generation but also for the generations that come to prosperity. Therefore, they also have a share in those natural resources as do the present generation who are exposed to those specific natural resources. As a Committee, we thought that the Futures Fund should take 60 per cent and the 40 per cent should go to a Natural Resource Fund.

Madam Temporary Speaker, it is true that the Natural Resource Fund, as Sen. (Dr.) Khalwale has said, needs to be very specific about exactly what that money will be used for. One of the suggestions that we may put forward as a way to use that money for that fund is for rehabilitation, especially of natural resources environment to ensure that even that resource can continue to be generated. If we exploit and finish everything that comes from the ground, we will actually deplete the resource altogether and find that we do not have a way of enjoying the resources that accrue.

So, we need to make other suggestions, but we need to be very specific about how that is going to be used. Then for the 80 per cent, 40 per cent will go to the source county and 60 per cent will go to the national Government. Of the 40 per cent that goes to the source county, 40 per cent will go to the community and 60 per cent will go to the county government. We have to be very careful that what goes into the county government in terms of the project and utilization of that fund is very clear that, that money does not go into the county kitty for the county government that comes from the taxpayers and from the revenue resource allocation that we do generally from Article 203; the distribution that is made from what comes into the kitty. There has to be a clear separation that this is the money that is going into the county government, but specifically to help with county projects that target the county and the community. We also wanted to make sure that the communities do not find themselves lost somewhere and 40 per cent goes to those specific communities to ensure that at the end of the day they have a way to ensure that they have means, process and the power to actually come up with projects – be it roads or schools – where they can actually say to the people that here we are because of this particular resource. This is how far we have gone.

Madam Temporary Speaker, the whole idea is to create impetus and interest in natural resources. One, starting with the truth that the financial resources are not enough for the sort of development that we want to have in this country. Secondly and more importantly, that we have reached a point where we can actually become very innovative about how we look at our natural resources, discover them, explore them, be excited about them, compete across the counties about how we are actually exploiting these resources but in a very responsible, well managed way, so as to make this country proud about the natural resources that it has.

Madam Temporary Speaker, as I said earlier, I hope that this Bill will be coming to the House and at that point, we will continue to discuss it in more detail and exhaust all the specific details that we need to discuss in terms of ensuring that we manage our natural resources well.

With those comments, I beg to reply.

(Applause)

The Temporary Speaker (Sen. Ongoro): We have had this Committee Report for some time and really need to dispose of it. I have looked at the recommendations contained on pages 36 and 37. In my opinion, all the seven recommendations point to the introduction of the proposed Bill and they do not affect counties. The Bill will be a matter affecting counties, but the recommendations contained here do not affect counties. Therefore, I will move to put the Question.

(Question put and agreed to)

ADOPTION OF REPORT OF STANDING COMMITTEE ON EDUCATION,
INFORMATION AND TECHNOLOGY ON RETREATS WITH COUNTY
EXECUTIVE MEMBERS IN CHARGE OF EDUCATION
AND INFORMATION TECHNOLOGY

THAT, the Senate adopts the Reports of the Standing Committee on Education, Information and Technology on Retreats with County Executive Members in Charge of Education and Information Technology (ICT) held at the Great Rift Valley Lodge, Naivasha on 11th - 14th September, 2013, Serena Hotel, Mombasa on 17th –20th October, 2013 and at Continental Resort, Mombasa on 19th – 22nd December, 2013 laid on the Table of the Senate on Thursday, 3rd April, 2014.

(By Sen. Kagwe on 16.7.2014)

(Resumption of Debate interrupted)

on Wednesday, 16.7. 2014)

The Temporary Speaker (Sen. Ongoro): Hon. Senators, the last time we debated this Motion, the last speaker was the Senate Minority Leader, Sen. Wetangula. As the Senate Minority Leader, he has one hour for Committee reports. He exhausted three minutes and had 57 minutes left. From the look of it, the Chair, Vice-Chair or any Member of this Committee are not in the House. I think we will do them justice by deferring this Motion and not disposing of it without giving them the benefit of replying.

(Motion deferred)

Next Order!

ESTABLISHMENT OF COMPREHENSIVE CAPACITY
BUILDING PROGRAMME FOR TEENAGE PARENTS

THAT, aware that the number of the teenage and pre-teen parents is increasing by the day; noting with concern that majority in this category are girls from poor households and that this problem compounds the vicious cycle of poverty in Kenya; recognizing the socio-economic challenges facing this special category of parents including lack of income and entrepreneurial capacity, inadequate parenting skills, low educational levels and lack of health care; appreciating that Article 45 (1) of the Constitution of Kenya recognizes the family as a fundamental unit of society that enjoys protection of the State; cognizant of the fact that the Government has a duty to cater for the youth and children of Kenya; the Senate urges the National Government and the county governments to:-

(a) put in place mechanisms that will help establish a comprehensive capacity building programme for teenage parents to ensure they practice responsible family life;

(b) come up with non-discriminatory back to school or training programmes and initiate necessary legal and policy framework that will identify persons within this group to benefit from the programmes; and,

(c) guarantee funding and sustainability of the initiative and other child welfare programmes aimed at benefiting teenage parents.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, again, as you can see, this is my Motion and I am in the Chair. Since I cannot move it, I will, therefore, direct that it be on the Order Paper tomorrow. It should be given priority tomorrow.

Let us move to the next Motion.

(Motion deferred)

AVERTING LOOMING BREAKDOWN OF HEALTH SERVICES
IN COUNTIES OVER MEDICAL PRACTITIONERS' CONCERNS

THAT, aware that health services have been devolved in accordance with the Fourth Schedule to the Constitution and that medical doctors and other health practitioners in the public sector have been transferred or are being transferred to the counties; concerned that there is an acute shortage of medical professionals, especially consultants, in the counties, and particularly in rural counties; further concerned that public health personnel, particularly doctors, are apprehensive that their terms of service, including training, pension, remuneration, professional advancement and welfare are not assured and as a result are seeking for employment in private medical institutions in urban centres; cognizant of the grave danger their departure poses to the health sector; the Senate calls upon the National and County Governments to urgently address the concerns of medical practitioners to avert the looming breakdown of health services in counties.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. Earlier in the afternoon, Sen. Henry ole Ndiema, the Senator for Trans Nzoia had indicated to me that he was not convinced that we would reach this business. So, he left on the assumption that there was too much business ahead of him. He had indicated that he would want to move the Motion next week. I do not know how you will decide. I beg that you defer the Motion, because he had actually talked to me and I had come here to second it. I have an interest in this Motion.

The Temporary Speaker (Sen. Ongoro): Well, he talked to the wrong person. He should have approached the Chair. We will therefore leave it to the Chair and the Clerk's office to make a decision.

We will now move on to the next Order.

(Motion deferred)

ESTABLISHMENT OF INSTITUTIONS FOR CHILDREN WITH
SPECIAL NEEDS AND DISABILITIES IN EVERY COUNTY

Sen. Karaba: Madam Temporary Speaker, I beg to move the following Motion which is very close to my heart.

THAT, aware that learners with special needs and disabilities in Kenya are faced with serious challenges including inadequate educational institutions, facilities and specialized teachers to cover all levels of

learning; noting that the UN Convention on Rights of Persons with Disabilities became part of Kenyan law in 2008; appreciating that Article 54 (1) (b) of the Constitution gives persons with disabilities the right to access educational institutions and facilities that are integrated into society to the extent compatible with interests of such persons; further appreciating that Article 53 (1) (b) of the Constitution provides for free and compulsory basic education to every child; noting that the Basic Education Act, 2013 emphasizes the need to provide equal opportunities for education to all children including those with special needs and disabilities; the Senate urges the National and County Governments to take immediate measures to mainstream education and training for learners with special needs and disabilities by establishing and equipping at least one institution for children with special needs and disabilities in every county.

Madam Temporary Speaker, it is unfortunate that this Motion is coming now. It should have come at Independence where every district or province would have an institution of this kind. But going by the present census, you will find that there are some counties or regions which do not even have learning institutions of this kind. Going by what we see in the countryside, you will find children who are handicapped and disabled. Some of them cannot even think. Since these are our children, as the Senate and country, we should therefore, pay a lot of attention to them so that they can also access education. I have been to some institutions where some of these children are accommodated. When you get there you pity the situation. There are not enough teachers while others are not even trained on how to handle these children. Some of the facilities are wanting. When these children become sick, there are no medical facilities in the neighbourhood. They have to walk long distances to reach the medical facilities. Some of the institutions are not even fenced yet they are supposed to accommodate children who board in the same institutions. This poses danger to these children because they can jump over. They can sneak out of the compound and get lost. As the Government and people who have been independent for the last 50 years, this is an area which we must all be concerned about.

Madam Temporary Speaker, I have come up with this Motion because many times when you get to some of these institutions, you will be shocked. You will be told very sad stories of how a person as old as 20 years cannot write or even comprehend where he is, yet they are supposed to be cultured and tutored. That is what this Motion is trying to capture. Whenever you visit some of the institutions, you will find children laughing uncontrollably for no reason. Some of the teachers who teach in those institutions have not been trained in any specialized institution. We have only one such institution in Kenya. So, the Motion is asking the county governments to tell us the number of children who are suffering. Some parents do not even like exposing some of these children. Some do not want people to know that they have such children. As a result, these children continue undergoing untold suffering and yet they are born by

parents who are normal. Sometimes they are disowned and neglected like orphans. They have to be taken care of by the social workers. In the end, they are taken to children's homes. Later on, they are catered for by some volunteers and towards the end, they grow up to be mature people. This is the kind of group I am addressing now; not the normal child who goes to school in the morning and in the evening goes home. This is not a child who will go through the normal primary system to Class Eight and then join Form One. I am talking about a child who does not even know whether he is in school and who cannot even be taught because he has not got to that level, psychologically, mentally and even physically. You find somebody just there. These are the ones that this Motion intends to capture.

Madam Temporary Speaker, some of the reasons these children are found in the ASAL areas where parents keep on moving from one place to another looking for water and pasture for their animals. These children are left to die. They are left in homes without anybody to care for them because they have been condemned by the parents and the community. Some communities think that it is a curse to have children of this kind. This is very serious. We should pass this Motion and see what the Government can do to for these children. The Government should move them from their homes and take them to orphanages or to children's homes that are well catered for by the Government.

The Government should educate them and give them the necessary materials that they can use for learning purposes. The Government should put up the necessary infrastructure, provide transport and adequate supervision. The compounds where the institutions are based should be well fenced, supplied with water and they also have a right to entertainment. These are issues which many counties cannot address.

Madam Temporary Speaker, Sir, if this Motion is passed, I am sure we are going to convince the 47 counties to come up with at least one institution which can cater for such children. It is only that people do not like talking about them, but they exist. The moment we invoke the Chief's Act, we would be able to dictate who is keeping a child who should be going to school at home.

Madam Temporary Speaker, I have been to some of these institutions and I have even donated to them various items. Kivirigwa School for the Handicapped in Kirinyaga County is one of them. When you go there, you will notice the teachers in the institution behaving like those children. A child is always attended to by one teacher because that child can jump over the fence, go to the road and get involved in an accident. This is the kind of institution we are thinking about. Do we have enough teachers who can handle these kind of students? This is one area which has not been explored. If it is not addressed properly, we will breed children who will become robots. We shall have a nation of robots. It will be very sad to have such a community in our country. I would like to call upon all Senators to support this Motion in the light of trying to see how we can improve the living standards of these children.

I move the Motion and request Sen. (Dr.) Khalwale to second.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I would like to thank Sen. Karaba for coming up with this very important Motion. This is a Motion which is at the bottom of my heart because of some of the experiences I have had with this particular problem.

Whereas in the body of the Motion the distinguished Senator for Kirinyaga would like that we have a minimum of 47 such schools in this country, my humble submission is that in the fullness of the debate we should actually move an amendment so that we increase them to a minimum of 290 schools so that each sub-county and constituency can have one such school.

Madam Temporary Speaker, Sir, I say this because this problem is real. I am a doctor of medicine and I see children who are going to be potential users of these schools having had difficulty at birth. We have cases of prolonged labour whereby a child then ends up having a destroyed brain. The child will automatically end up alive, but with mental retardation. We are talking about children who are born with special conditions like the down syndrome which we call mongolism in normal English. These children actually need these schools. It is a fact that many parents hide these kind of children. Therefore, if they hear on national radio or through any other media a policy from the Senate that every sub-county is going to build such a school, that shame is reduced. In fact, they will know that somebody is listening to their plight and willing to support them.

Madam Temporary Speaker, I have a real life experience with this kind of problem. I have a kid brother of mine who was born in 1971 with mongolism. Since Luhya parents keep so much out of experience, they knew that this kind of child will not live to get into adulthood. However, when I qualified as a doctor, and this was my father's last born, I decided to take a special interest in the boy. Born in 1971, his name is Anthony Khalwale. We have nicknamed him Kalulu because he used to entertain the family the way Juha Kalulu of *Taifa Leo* newspaper used to entertain us, for those of you who were reading those stories. The boy ended up just having two talents in life. The first one was that he could entertain us. He could dance and every other time, he danced *Sukuti* dances. He also presented music on radio and did it very well. That was one talent. He went to Malinya Primary School. However, the headmaster said he was unteachable and chased him away.

He came home and we took care of him as doctors. Surprisingly, this guy, under medical prescription is supposed to have died at the age of 30. However, he is still alive today maybe because God wanted to give us his second reason for giving my father this child. Before my father died, he was blind for five years. In the five years that he was blind, from the age of 83 to 85 years, his eyes were Anthony Kalulu. It is Kalulu who used to show him his food, toilet and other things. I, as a doctor and the Engineers we have in my family, could not do this for my father. So, Kalulu ended up doing more work for my father than all of us who were normal.

That forced me, when I became the Member of Parliament for Ikolomani, to pay special attention to this child. I am proud to inform Members of the National Assembly

today who control millions of shillings in CDF that out of what I had in Ikolomani, I developed two such schools to honour this boy. There is Mwikhomo Special School, a very robust school that attracts children from across the county. The other one is Eregi Mixed Special School. I want to thank the teachers of these two institutions. I also want to thank the Catholics of Mumias Vocational School for the Deaf because they take care of very many children from the region I come from.

I support this and want to end with a special appeal to Members of the National Assembly. Today, Members of the National Assembly have a minimum of Kshs100 million which they can put to any use. I want to make an appeal to each one of them. Through this Senate, we will have special legislation in the budget to compel Governors to direct funds to as many schools as they are constituencies in the counties. I want to request Members of the National Assembly to ensure that, at least, Kshs20 million in a period of three years is set aside so that we put up such a school in every constituency. It will then be easier for us – since education is not devolved – to allow the national Government to train teachers who are supposed to teach these children. That is an appeal I want to make because those are the realities of life.

You will never know, but a child who was born normal, playing around up to the age of five years, can fall on the stairs and end up with the need for a special school. This is a problem that you can either be born with or which you can catch at any time. I support you and salute you because of my kid brother.

I second.

(Question Proposed)

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I just want to start by saying that nobody asks or requests to be born with special needs or disabilities. I think we, as a country, need to be very sensitive to this. I think it is about time we discussed it in a very sober, very compassionate and also very serious manner, in terms of coming up with a policy and something very concrete that can be put on the table to change the situation. Therefore, I thank Sen. Karaba for timely bringing this Motion.

Madam Temporary Speaker, we can start by looking at the statistics that were given by the Kenya National Survey for Persons with Disabilities, (KNSPW) in a report of 2007. The report says that 4.6 per cent of Kenyans experienced some form of disability; some visible and some not. As Sen. (Dr.) Khalwale said, we have to be very conscious of all forms of disabilities, visible and non- visible. We also have to be conscious that there is need to categorize, to have specific provisions given for different sources of disabilities and the fact that the environment is what makes it very difficult for people with these disabilities to survive. Disability, in and of itself, is not a problem if it is given the support that is necessary. Most of these people reside in the rural areas rather than in the urban areas. Therefore, in terms of the implication putting policy direction, it

is very important that we do not forget the rural areas; that we really focus on them because more of the disabled people live there.

Madam Temporary Speaker, 15 per cent of persons with disabilities are likely to be affected by environmental factors on a daily basis and 3 per cent on a weekly basis. This is where we do not put enough emphasis. We need to take into consideration environmental factors like distances that can be curbed, the hostility of the environment which makes it very difficult for people with disabilities to move from one place to another, to go to their classes and to use the facilities that are there. There is lack of consciousness that is never put into place to ensure that, for example, in a specific environment, and by making sometimes very small changes, it is possible for somebody with disability to reach out to press a particular key that they would not reach if they had not been taken into consideration.

Madam Temporary Speaker, for 65 per cent of people living with disabilities, the environment is a daily problem. Therefore, that must be changed. A quarter of people living with disabilities work in family businesses, but a third do not work at all. That means that in terms of integration and acceptance, unless a family is able to really have the facilities for them to give an enabling environment or a chance to a person living with disability to work, it becomes impossible.

Madam Temporary Speaker, the right to education is provided for in a number of international treaties. Right from 1948 in the Universal Declaration of Human Rights Treaty, the 1966 International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Rights of the Child, the African Charter on Human Rights and People's Rights Article 18, the African Charter on Rights and Welfare of the Child Article 11 and the Convention on Rights of People With Disabilities Article 24.

Madam Temporary Speaker, all these instruments are applicable to the Kenyan case. This is because Kenya is a signatory to all these instruments and also via the Constitution which says categorically that every single person has a right to an education. Right from that Article, there is no exclusivity that is being given to say that children with special interest or children who have disability cannot be party to that education. Therefore, it is important and necessary to ensure that the climate, environment, classrooms and more thought is given to ensure that this particular thing happens. This applies especially to the children who have special needs and disability because they need more care. They need more consideration. There is a silent group of people with disabilities who are not even able to articulate what those disabilities are. Remember or try to imagine a child with disability, for example, moving towards schizophrenia, or a mental type of disability, that they are not able to explain the problem. However, the teacher is able to realize that they cannot catch up with the education, the speed and the learning that is taking place. Therefore, a provision has to be made.

Madam Temporary Speaker, in this country we have examinations where we test everybody; whether they are special or have disability in exactly the same format without looking at the background. For example, a child with visual impairment cannot catch up

with the issues and understand them as quickly as normal children. Some schools are very insensitive where you will find even such children are put in a laboratory and are expected to mix chemicals and nobody cares. Again it comes to the same problem of the environment. It is the environment that we need to be able to think through and change. Therefore, this Motion calls upon each of these specific county governments to come up with a training centre and an education centre to cater for children with special needs. This centre will take care of the nitty gritty and the specific provisions that are very critical for the various children with special needs. They will then be given easy access to education. They can be given the right material for their education. For example, those who are blind can be given Braille which will enable them to learn.

Madam Temporary Speaker, apart from such centres, the other thing that is also very critical is mainstreaming of people living with disabilities and with special needs. I know there are a number of schools that have mainstreamed this into the education system. The outcome has been enormous. I think in this life, everybody wants to feel that they belong, they have a place within the universe and they have a role to play. It is very important that they are given such a chance to really put that into place.

Madam Temporary Speaker, then we should ask ourselves; what has been the problem? Why have such initiatives, as much as they are talked about, not been put into place for a very long time? Why is it that there are certain households that have somebody with special needs or disability and are not able to propel that child's life to the maximum? One of the reasons that have been given is poverty. That is why you find in some families, these children have been tied up to a pole and they stay there the whole day. Those parents do not have an alternative; they do not know what to do with them. Therefore, right from the onset, there is need to put aside financial impetus to start those programmes. We must ensure that certain equipment and facilities are put into place for these programmes to succeed.

Madam Temporary Speaker, another problem is looking at the issue of special needs as a disability from a medical perspective only rather than from a social model perspective. A social model perspective will require that you look at this person as an individual with a role to play, explore ways and means within a particular context to make sure that the impediments should not hinder them from contributing positively to the society.

Madam Temporary Speaker, once there is that sense of inclusion, then you are looking at that person as a social being finding where the problem is so that that problem is sorted out. There is the medical aspect and that can be fixed. However, that is different and sometimes it cannot be fixed because of poverty in our society. Therefore, you find that in certain areas even where research has been made or doctors have come to repair eye sight, that has not been the case. However, that does not mean they cannot live as social beings among others and still be able to work and put for themselves bread on the table and feel part and parcel of society.

Madam Temporary Speaker, this social approach model which looks at special needs and disability is also referred to as the human rights model. That is critical because even as a person you have your human rights and for the people with special needs and disabilities, they are people too. It is not a favour that they are requesting for it, indeed, it is a right. It is, in our case, a right that has been enshrined within the specific laws that Kenya has signed and, indeed, within the specific provisions of the Constitution, which then becomes very critical for us.

Therefore, the barriers have to be looked at and approached in a way that will help such changes to be made. The obligation to respect the right to education is not a favour. It is a right and must be seen as so. The obligation to protect and ensure that the actors and those with disabilities and with special needs are taken into consideration is not a favour, but a right. The obligation, for example, to provide and ensure that the realization to a right to education is taken into consideration is not a favour, but indeed, a right.

Madam Temporary Speaker, apart from looking at the challenges, because we say here in the Motion that the learners are faced with various and serious challenges, we need to break down these specific challenges. We do not have a legislative or a policy gap that has been sorted. What we have is an operational gap, moving from the legal to the reality through an operational system that will ensure that legislatively those who were meant to have a right to this education can actually have a right to it. The county governments need to take immediate measures to mainstream education. It is actually what is more favourable because then the learners in such institutions feel that they are integrated. Indeed, they learn and also give back. In the process even those who do not have the disabilities also begin to know what they are. They are able to interact, realize, enhance and help and it does a lot to them.

Madam Temporary Speaker, I have visited a school where they have a specific stream for pupils with disabilities and special needs. You can see the sort of learning that is taking place, in fact, from those without the disabilities. It sometimes tends to be more because they realize that even what they take for granted is something that they need to be cognisant of. They learn how to treat and interact with each other. Therefore, it is very important that equipping of those particular institutions is done like yesterday. We need to do research to know what sort of instruments, equipment and facilities we need in those particular institutions. The moment we have ascertained what they are, then the next thing is to ensure that the money comes in specifically for that.

Madam Temporary Speaker, a suggestion has already been given by Sen. Boni Khalwale that we could actually turn to the CDF. This is not going to be impossible for people to do so in those constituencies. They can actually set aside funds that can be used specifically for this purpose. They can be put aside and put into the institutions. In that way, we can have one institution that is the focus in a particular county or constituency. From that, it is possible then for people to know and actually use that as a model to move

forward. They can equip those educational institutions to cater for people with special needs and disabilities.

With those comments, I beg to support.

Sen. Kisasa: Thank you, Madam Temporary Speaker. I would like to thank Sen. Karaba who is my chairperson and Dr. Boni Khalwale who is my doctor. This is a very valid Motion.

I would like to go the medical way and urge the Government to continue supporting our health institutions. When we think about the causes of disability we find that most of the cases occur during pregnancy period when a mother does not get the right food or may be the mother is given the wrong drugs and undergoes other stressful conditions. So we must stop doing postmortem in this country. We must go head on and find why we are having those characters. Why are we having increased numbers of disabled children? During pregnancy the mother undergoes a lot of stress and the baby can also be stressed.

Madam Temporary Speaker, during pregnancy, you find that most of the time instrumental deliveries can be done or forceps deliveries and even sometimes ignorance from the medical personnel.

I would really urge our Government to take care of our human resource, because the nurses or the medical personnel are never satisfied in this country. That is why we normally have brain drain. Most of our very able doctors and nurses are leaving our country. We end up not having the right personnel to take care of our pregnant mothers in our country.

Madam Temporary Speaker, after delivery, the women undergo a lot of stress because our men are also not taking care of us. They keep on denying what we are carrying for them. I would really urge that we do proper prenatal care, proper pregnancy care and proper post natal care.

Apart from the human resource, I would urge we supply the right drugs and equipment to our hospitals. We must have the right personnel. It is sad that we have untrained nurses who are conducting deliveries in our hospitals. Even the traditional birth attendants must go through certain training. We must ensure our mothers are safe so that we get healthy babies. It takes long to raise a normal baby. It also takes a long struggle for a mother to deliver a baby. Women should feed well during pregnancy because they lose a lot of blood during delivery. This can even cause a lot of mental retardation to these children.

The mothers prenatally are also not taken care of because they do not even know what to expect. We should even urge more male nurses to enroll because they are more caring and friendly to women during delivery. We should enroll more male nurses because normally as you know unlike poles normally attract, not in the bad way, but they listen and they really take care of us. I remember when I carried my first baby I did that before my training. It was very bad experience because I was asked how much water dripped, but I did not know which water they were talking about.

Madam Temporary Speaker, it is very good to have nurses who are also mature and have gone through the training before they go and conduct the deliveries. We have very young nurses who do not even know what to expect. They are normally in the labour ward and they think going through labour is part of fun. They do not even know what to expect. They should also go through that labour pain, the labour period, and also the delivery so that we have mature nursing personnel.

Finally, I would like to say that we should confine all these babies. We should, in fact, categorise them because you find that not all are so much disabled and when they are mixed with the other children they tend to learn from them. I have a friend by the name Grace. I met her when she could not do anything, but the parents took her to a school where it is integrated and now she can even learn the basics. She can dress herself, copy the others and there is less saliva dripping from her mouth. When we integrate them, majority of them come out of that condition and tend to be better. There are those with worse cases. Our normal children will copy them hence making them feel as if they are babies and they may never come out of it.

I beg to support this Motion and thank Sen. Karaba for moving it. Thank you for your time.

Sen. Omondi: Thank you very much, Madam Temporary Speaker, for giving me an opportunity to contribute towards this important Motion. I would like to also thank Sen. Karaba for wearing the shoe of persons with disabilities. This is the direction we should take as Kenyans because the problem of disability, as it is, is left to the affected families; the parents who have a person or a child with a disability.

I want to thank the speakers who have contributed to this Motion because they have given me moral support. They, indeed, understand what disability is and the challenges faced by children and learners with disabilities. It is saddening that most service providers do not accommodate persons with disabilities, especially in making sure that we have enough institutions. They always give it a last chance or priority.

Without forgetting, I want to thank Sen. (Dr.) Khalwale for reminding me of the war I had with other Members of Parliament when I was requesting for the CDF to construct special schools within their constituencies. I can report that until now, nothing has been done. The unit that was located within the primary school was closed down and the visually-impaired children were sent home. Parents were called to take away their children. Put yourself in a situation where you are called to pick your child from school. Where do you take that child?

I want to mention three things that we need to address as a Government for us to ensure that we give opportunity to learners with disabilities. Sen. Karaba, who is the sponsor of this Motion, if I am not wrong, has said that it is targeting the severely disabled learners. We have learners with disabilities who can cope up with the situations in ordinary schools.

I personally went through an ordinary school where I used to crawl on the road. However, I managed that for eight years. But what about a person with a severe disability

who cannot cope up with the situation of going to and from school? That child is denied that opportunity to attain or to access education. The three things we need to address, as a country, to ensure that learners with severe disabilities are retained in institution are: One, the facilities. Are these facilities disability friendly? Can they ensure that this learner gets the quality education that is deserved according to the type of disability?

Another area that we need to address as a country is the assistive devices. If this learner is given a kind of assistive device according to the type of disability, then that would be a boost for that learner to be in class.

The third area that we need to address is that of aid; personal assistance to persons with disabilities. If you give out an assistive device to a learner who has no personal assistant to assist them, it may not be useful to them. I am speaking out of experience. You may be given a wheelchair, but have no one to push that wheelchair for you which is a manual chair. I remember one day when I was schooling in St. Mary's Mumias Girls' High School when I could not push myself on a wheelchair from the boarding section to class. I had to leave the wheelchair along the way and crawl because I could not get somebody to help me cross the barrier. I could not wheel myself to the classroom.

Another issue is that of the behaviour of the personnel. I remember one teacher stepping out of a class when I was moving around to tell me that I was making noise for other learners because the wheelchair was making a lot of noise as I moved because they had poured gravel along the pavements. So, once a learner receives such an abusive interference, even if they go to class, their morale of being attentive in class go down.

Madam Temporary Speaker, when you talk about the personnel, you should look at how teachers treat learners with disabilities. This is wanting and sends away learners. They take disability as a problem that cannot be handled. Elsewhere, most teachers who have gone for special education training lack motivation. Since they lack motivation, they go out of the country to look for greener pastures. When they go away, a gap is left. We want to use an example of the deaf and blind learners in an institution, who require one teacher to one learner. You will find a school where we have ten deaf or blind learners with only two or one teacher. That means that for one week the teacher will be handling one learner. How many weeks or months will it take to teach each and every learner? What duration would these learners need to compete with other learners?

When we talk about learners with severe disabilities we need to categorise them as my fellow Senators have said. We need to categorise the severity and the type of school so that proper placement is done and each learner with a different type of disability is placed in a special school according to their type of disability.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, this is a timed Motion. We have two hours and 12 minutes remaining. Sen. Nanjira, you will have eight minutes to conclude your very emotional contribution.

It is now time to adjourn the Senate. The Senate stands adjourned until tomorrow, Thursday, 25th September, 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m.