

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd December, 2015

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

[The Temporary Speaker (Sen. (Dr.) Machage) in the Chair]

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM
KILIFI COUNTY ASSEMBLY

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Hansard officers of Kilifi County Assembly who are here on a study tour. I request each member of staff to stand when called out so that they may be acknowledged in the Senate tradition. They are:-

1. Mr. George Kumbatha
2. Ms. Matilda Mwendwa
3. Ms. Peris Kache
4. Mr. Raphael Rimba
5. Mr. Samuel Mwadziwe

On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

Thank you.

(Applause)

(Sen. Karaba spoke off the record)

The Temporary Speaker (Sen. (Dr.) Machage): Yes, you can go ahead but be brief. Please use the microphone.

Sen. Karaba: Mr. Temporary Speaker, Sir, I would like to encourage more delegations to come and see what we do because more often than not we are mistaken for being a sleeping giant yet we do a lot of work particularly in the counties. These could be our ambassadors out there to tell others that the Senate is comprised of very serious people who are all geared towards uplifting the name of this Republic.

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Meanwhile, Mr. Temporary Speaker, Sir, you might not know that behind you we have students---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Karaba. I have no eyes at the back of my head.

Sen. Karaba: Mr. Temporary Speaker, Sir, I am just reminding you. As the Chairperson of the Committee on Education, I can see students behind you.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Speaker, Sir. The Chairperson of the Committee on Education, my friend, Sen. Karaba, has drawn your attention to the presence in the gallery behind you of students from St. Elizabeth Bar Korwa Girls' Primary School in Kisumu County, who are visiting the National Assembly and the Senate today. I had already communicated to the Clerk to the extent that we should give due recognition to these 70 pupils from St. Elizabeth Bar Korwa Girls' Primary School.

The Temporary Speaker (Sen. (Dr.) Machage): Maybe, you are a bit impatient, but I appreciate your enthusiasm.

Sen. Kisasa: Asante Bw. Spika wa Muda kwa nafasi hii. Kama unavyojua, mwamba ngoma huvutia kwake. Naomba pia kukaribisha wageni wa Kaunti ya Kilifi ambao wamekuja hapa kujionea na kusoma zaidi ili wanaporudi nyumbani wawe wata tenda ipasavyo.

Sen. Kittony: Mr. Temporary Speaker, Sir, I also would like to join the rest of my colleagues in welcoming the Kilifi County Assembly delegation. We have been to Kilifi County twice. I am happy that they have come to the Senate to learn and see how we are operating. I wish them a good stay in Nairobi and safe journey when they go back home.

The Temporary Speaker (Sen. (Dr.) Machage): I have appreciated the presence of our visitors on behalf of everybody else.

Let us move on to the next Order. We have a lot of work to do today.

PETITION

PETITION BY THE COUNCIL OF ELDERS OF THE KIRINYAGA *MIHIRIGA* *KENDA* REGARDING THEIR CLAIM TO THE MWEA TRUST LAND

Sen. Karaba: Mr. Temporary Speaker, Sir, yesterday you made a ruling that we must get a response from the Chairperson of the Committee on Legal Affairs and Human Rights concerning the Petition by Kirinyaga residents on the issue of the *Mihiriga Kenda*. I do not know whether this is the appropriate time for me to interject or this can come up later?

The Temporary Speaker (Sen. (Dr.) Machage): Chairperson, Committee on Legal Affairs and Human Rights, Sen. Wako, you must always pay attention. Please look at the HANSARD; there is an issue raised by Sen. Karaba and you will reply later. I want to know whether you are ready over the issue or not.

Sen. Wako: Mr. Temporary Speaker, Sir, if it is the issue that was raised yesterday, I have gone through it. The report is yet to be finalized, but I will ask them to do so quickly because the Committee has finalized that issue.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. We can accommodate that. When the report is ready, it will be tabled.

Next Order!

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

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Karaba. You do not speak before I give you permission. Proceed.

Sen. Karaba: Mr. Temporary Speaker, Sir, if you heard the Chairperson, that is the same story he gave yesterday. I thought the report would be tabled today. That is why I thought he was here this early.

The Temporary Speaker (Sen. (Dr.) Machage): To my knowledge I do not think there was any story being given. I thought they were facts.

Next Order!

PAPERS LAID

REPORT ON THE BASIC EDUCATION REGULATIONS, 2015

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 2nd December, 2015:-

Report on the Basic Education Regulations, 2015.

(Sen. Sang laid the document on the Table)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Wako, I thought you had a report to lay on the Table of the House today. What is going on? This is on the extension of the mandate of the Commission for the Implementation of the Constitution (CIC). You have to lay the paper on the table first.

Sen. Wako: Mr. Temporary Speaker, Sir, I apologise for the confusion.

REPORT ON THE EXTENSION OF THE MANDATE OF THE CIC

I beg to lay the following Paper on the Table of the Senate today, Wednesday, 2nd December, 2015:-

Report on the extension of the mandate of the Commission for the Implementation of the Constitution (CIC) by a term of not less than two years.

(Sen. Wako laid the documents on the Table)

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That is how it is done.

Next Order!

NOTICES OF MOTIONS

RESOLUTION OF THE SENATE TO SIT ON THURSDAY,
3RD DECEMBER, 2015 AT 9.00 A.M.

Sen. Keter: Mr. Temporary Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.30(3)(b), the Senate resolves to sit on Thursday, 3rd December, 2015 from 9.00 a.m. to 1.00 p.m.

ADOPTION OF REPORT ON EXTENSION OF MANDATE OF THE CIC

Sen. Wako: Mr. Temporary Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the report of the Standing Committee on Legal Affairs and Human Rights on the extension of the mandate of the Commission for the Implementation of the Constitution (CIC) laid on the Table of the House on Wednesday, 2nd December, 2015.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to give notice of the following Motions.

ADOPTION OF THE CPAIC REPORT ON THE INQUIRY INTO THE FINANCIAL OPERATIONS OF HOMA BAY COUNTY EXECUTIVE

THAT, this House adopts the report of the Sessional Committee on the County Public Accounts and Investments Committee (CPAIC) into the inquiry of the financial operations of Homa Bay County Executive for the Financial Year 2013/2014 that was laid on the Table of this House on Wednesday, 4th November, 2015.

RESOLUTION OF THE HOUSE TO GRANT LEAVE TO SENATE STAFF TO RECORD STATEMENTS REGARDING THE FAILURE BY THE GOVERNOR FOR KAKAMEGA TO APPEAR BEFORE THE CPAIC

WHEREAS, Article 125 of the Constitution empowers any House of Parliament and any of its committees to summon any person to appear before it for purposes of giving evidence or providing information;

AND FURTHER, whereas the Senate has mandated the Sessional Committee on County Public Accounts and Investments to, among other things;

- a) pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to the county governments;
- b) pursuant to Article 229(7) and (8), to examine the reports of the Auditor-General on the annual accounts of the county governments;
- c) examine special reports, if any, of the Auditor-General on county government funds, and
- d) exercise oversight over county public accounts and investments.

OBSERVING that the Senate Sessional Committee on County Public Accounts and Investments extended an invitation to the Governor of Kakamega County to appear before the Select Committee on 15th September 2015 and respond to audit queries arising from the Auditor-General in the Report on the Financial Operations of Kakamega County Executive for the Financial Year 2013/2014;

FURTHER OBSERVING that the Senate Sessional Committee on County Public Accounts and Investments also extended another invitation to the Governor of Kakamega County to appear before the Select Committee on 2nd October 2015 and respond to audit queries arising from the Auditor-General in the Report on the Financial Operations of Kakamega County Executive for the Financial Year 2013/2014;

AWARE that the Governor of Kakamega County has failed to appear before the Select Committee on 15th September 2015 and on 2nd October 2015;

NOTING that the Select Committee issued witness summons dated 10th November 2015 pursuant to Article 125 of the Constitution and Sections 14 and 15 of the National Assembly (Powers and Privileges) Act as read together with Section 7 of the Sixth Schedule to the Constitution for the Governor of Kakamega County to appear before the Select Committee on 13th November 2015;

FURTHER NOTING that the Governor of Kakamega County has failed to honour the witness summons;

OBSERVING that the Select Committee has written to the Director of Public Prosecution seeking that the Director of Public Prosecution takes up this matter and take necessary action;

FURTHER OBSERVING that the Director of Public Prosecution has directed that the Director of Criminal Investigations record a statement on this matter from the Clerk of the Senate and from the person who served the summons on the Governor of Kakamega County;

NOW THEREFORE, the Senate resolves to grant special leave, pursuant to Section 19 of the National Assembly (Powers and Privileges) Act as read together with Section 7 of the Sixth Schedule to the

Constitution, to the Clerk of the Senate and the officer who served the summons and any other officer as may be required, to record statements on this matter with the Directorate of Criminal Investigations and to provide such information or evidence as may be required for the purposes of this matter.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): The Secretariat should treat that matter as urgent.

Next order!

STATEMENT

STRIKE BY BUSIA COUNTY HEALTH WORKERS

Sen. Wako: Mr. Temporary Speaker, Sir, I rise under the Standing Order No.45(2)(a) to bring to the attention of this august Senate a matter of serious concern with immense consequences to the health sector in Busia County.

Health services is a devolved function and this Senate, as a guarantor of Devolution representing and protecting---

The Temporary Speaker (Sen. (Dr.) Machage): I hope that you know you have not more than 10 minutes.

Sen. Wako: Mr. Temporary Speaker, Sir, as I stand here before you, 63 health facilities in Busia County comprising of one county referral hospital, seven sub county hospitals and 55 health centres and dispensaries have been closed. Whereas we have witnessed in many counties health workers going on strike, these strikes have been settled within a week or at most 10 days. Busia County health workers' strike has been on for the last three weeks with no sign of being settled soon. On that note, I have some good news to report.

Mr. Temporary Speaker, Sir, the strike has caused immense loss of lives and meant that the people of Busia County can die if there get snake bites, Malaria, Typhoid, Dysentery, food poisoning or complicated birth. The matter is, therefore, urgent. In any civilized society, no life should be lost or a right to life violated on account of lack of access to health care services or medical treatment. This matter deserves immediate and urgent attention.

I must say that I have been in discussions at the local level. I have just received information on my iPad gadget that common sense has now prevailed and an agreement on return to work formula reached for the health workers to end the strike at 4 p.m today. I, therefore, wish to congratulate the health workers led by their two unions; the Kenya National Union of Nurses and the Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU). I congratulate the county government's officials who were involved in the actual negotiation; the county secretary, acting chief officer of health and the acting chief officer of public service and also the Ministry of Labour who were involved in this exercise as well as some Members of the county assembly.

While congratulating them, I wish to state that they should not have taken this long to come to this agreement since it is a substantive agreement on the issues which this return to work formula affirms had agreed on 10 out of 11 issues. It has taken a month of consultations to be wasted for them to now have the common sense to reach this particular agreement.

I, therefore, wish to appeal to both sides of that they implement this return to work formula and the agreements that have been reached properly to the letter and the spirit of every word said. I appeal to the county executive and assembly to ensure that the matter surrounding the county executive for health and the chief officer are resolved immediately. Some of the issues that have surrounded the grievances of health workers throughout the country should be resolved. The national Government is also requested to be part of the solutions to the problems facing the county governments across the country. This is because some of these issues affect health works throughout the country.

Mr. Temporary Speaker, Sir, I request that the Senate Committee on health visits Busia County as soon as possible to carry out investigations and engage in constructive dialogue with all the stakeholders to create an environment where in future, it will not be necessary for health workers to go on strike again.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): I have one correction, Sen. Wako. I advised you to make that Statement under Standing Order No 45(2)(a), but you quoted a different section. For purposes of the HANSARD, can you make that clarification?

Sen. Wako: Mr. Temporary Speaker, Sir, that is true. In fact, in my remarks, I mentioned that the correct the Standing Order No.45(2)(a).

The Temporary Speaker (Sen. (Dr.) Machage): You all know the regulations on that the Standing Order number, I, therefore, do not expect any further comments on the issue of Sen. Wako.

What is it, Sen. Khaniri.

Sen. Khaniri: Mr. Temporary Speaker, Sir, I am not challenging your ruling, but I would just like to bring to your attention that Sen. Wako made this Statement under the Standing Order No.45(2)(a). If it was Standing Order No.46, you would not have allowed us to make comments.

The Temporary Speaker (Sen. (Dr.) Machage): Please, proceed, you are right. However, you should be brief because he says that the problem has already been resolved.

Sen. Khaniri: Mr. Temporary Speaker, Sir, allow me to hail my elder brother, the Senator for Busia County for coming up with this Statement. I would like to state that health service is one of the most important functions or roles that have been bestowed on the county governments. It is important that county governments carry out this role diligently because the success of devolution will be judged according to the way they perform this particular role. I encourage governors to embrace dialogue with the health staff. The strikes that we are hearing about from various counties like the recent one in Vihiga County are not very encouraging. I encourage them to embrace staff so that we

can avoid further strikes by the health service providers because it is a very important sector.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I would also like to appreciate Sen. Wako's comments on the Busia County case. I would like to point out that this is not only a problem in Busia County, but a national problem. Many counties are facing a similar problem. They have either solved them temporarily or not at all. I will appreciate if the Committee on Health can do a nationwide visit to counties to establish the status of health worker, especially the nurses.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I laud the statement by the Senator for Busia County. It reminds me that in my other life, when I was in charge of the Association for Family Planning of Kenya, as the medical in charge, I used to operate in Busia District Hospital.

The Temporary Speaker (Sen. (Dr.) Machage): How many lives have you lived?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I have lived several lives, including the one of bull fighting.

It saddens me that just a few years ago, when I was working at that hospital, it was the preferred hospital not only to the people of Busia but to even Ugandans.

Mr. Temporary Speaker, Sir, today when the health docket is being managed by the governor together with Dr. Maurice Simiyu, a highly qualified doctor, it is sad that this county government of Busia is unable to work with medical personnel. It reminds us of how in this same county, 20 children were paralyzed because of questionable vaccines used at the health facility. This House should take this matter seriously so that we send two clear messages to all governors of Kenya that if health fails in any or all counties, devolution will have failed because health is one of the basic things that devolution was expected to fix.

Mr. Temporary Speaker, Sir, secondly, I want to differ with my colleagues who are appealing to the county governor to work with medical personnel. I want to differ with them to this extent that county governors should not think that they can be bossy around doctors of medicine. It is their privilege that such highly talented and qualified people are working under their tutelage. They should, therefore, cultivate a working relationship that recognizes that doctors are not subservient to governors - some of them whose qualifications we are not too sure.

Thank you.

Sen. (Prof.) Anyang' Nyong'o: On a point of order, Mr. Temporary Speaker, Sir. I would like to caution the House about the advice that it is giving to the Committee on Health on this issue. I think it will be foolhardy to expect the Health Committee to go around every county and find out what the health problems are. They will spend the rest of their time in this Senate just doing that. My advice, having been Minister for Medical Services is that these doctors, nurses and pharmacists have their associations and unions who are based in Nairobi who really know the problems.

Mr. Temporary Speaker, Sir, to begin with, the Committee should meet with the Ministry, the Chairperson of the health docket among the governors and these unions and associations; some of which are the Kenya Medical Association, Kenya Association of

Medical Practitioners and Dentists and also the Kenya Medical Practitioners and Dentists Board who are the regulators. These are the people that the Committee should talk to and find out what the problems are. Although health was devolved, a lot of policy and money matters still rest with Afya House. Actually, the governors are being held to ransom by a national Government not willing to fully devolve health and finance it effectively.

This is a very big problem that should not be wished away by simply blaming other governors or nurses. We should handle it comprehensively so that it can be properly concluded.

Sen. Kittony: Thank you Mr. Temporary Speaker, Sir. I would like to hail the people of Busia who are very patriotic and have made a resolve to sort out their problems. Our Committee – I must say that we are the majority in the Chamber this afternoon – had planned to have a meeting with the four stakeholders; the Council of Governors, the Ministry of Health and the Dentists and Medical Practitioners Board and it is in the pipeline. Very soon, we are going to meet and look at health problems in the whole country. Our Committee has been very active and we are concerned with what is happening.

Mr. Temporary Speaker, Sir, what the Senator and the people of Busia have done this afternoon is commendable and the others should emulate them. This is because health is a necessity for every Kenyan to have the right to good health and good facilities. We thank you and appreciate the people of Busia. We as the four stakeholders are going to have a meeting very soon to look at the health problems in the country.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): I do not want to gag anybody but be brief. I have only two more on this issue.

Sen. Hassan: Mr. Temporary Speaker, Sir, thank you for the opportunity. In my assessment on where governors are going wrong, this is undeniably the biggest function that has been devolved. If this is the biggest function that has been devolved, it only follows that this should constitute the highest bulk of their budgets. Most of them are not able to draw that correlation. You look into many of the county budgets and hardly do you see that health reflects the highest expenditure. I think they are setting themselves up for a crisis when they do not give commensurate allocations of their county budgets to health. Generally, we cannot deny that there is a problem and we need to fix it and the only institution that can fix it is this Senate.

Sen. Karaba: Mr. Temporary speaker, Sir, as we talk about health, we should note that staff at most of the counties' facilities had downed their tools. We have heard quite a lot of strikes in various counties including Kirinyaga where doctors and nurses were even threatened with the sack. That looks like it is the only language these people hear before they get to work. I think there should be a better formula of addressing this problem because, to me, it is a national problem.

Mr. Temporary speaker, Sir, we are having quite a number of counties taking up the issue on medical services. Since this is a devolved function, and it is one of the largest functions yet to be devolved to the county level, and they still want other functions to be transferred, we need to find out whether there is a problem between the national Government which should have also devolved funds accompanying the function before

we transfer other functions to the counties. Education is threatened that it might be devolved to the counties but before the education department is devolved, we need to be assured that whatever is devolved to the counties is well taken care of, and more so, medical services.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Karaba, you know what the Constitution says about devolving functions. There is a timeline for each and you cannot interfere unless the concerned county goes into negotiation with the national Government. So, just read your Constitution properly. Now, I take the sentiments of Sen. (Prof.) Anyang' Nyong'o quite seriously on this issue. It will not be possible for the Committee on Health to begin making trips to all the 47 counties but I advice the Committee to be on the lookout and take action as early as possible whenever such a situation threatens to arise.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS AND TEACHERS FROM MOI GIRLS BOARDING SCHOOL, BAR KORWA, KISUMU COUNTY

Hon. Members, as I was reminded to appreciate the presence of a school with us today, I wish to recognize the presence of the students and teachers of Moi Girls boarding school, Bar Korwa in Kisumu County who are seated in the public gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, I wish them a fruitful visit.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Prof.) Anyang'- Nyong'o, could you make your remark again?

Sen.(Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I want to thank you for officially welcoming St. Elizabeth Bar Korwa Girls Primary School from my county, which is prosperous and does well. They have been in the National Assembly for three days and we expect to be with them for the whole week. I welcome and thank them.

(Resumption of Statements)

The Temporary Speaker (Sen. (Dr.) Machage): Let us continue with Statements. Statement (a) was sought by Sen. Wetangula, but I do not see him here. Let us to go to Statement (b).

Committee on Education, are you ready?

NON-PAYMENT OF SEPTEMBER SALARIES TO TEACHERS

Sen. Karaba: Mr. Temporary Speaker, Sir, as you might be aware, there was a reshuffle involving the Cabinet Secretary for Education. The answer which was signed earlier had to be vetted again by the new Cabinet Secretary. It has not been possible to

access the new Cabinet Secretary. I have the Statement with me, but the fear is that it does not contain what is most current.

Sen. Khaniri: On a point of order, Mr. Temporary Speaker, Sir. This is a very sad day. I want to inform the Chairperson that the Ministry is not about individuals but structures. I requested for this Statement on 19th October, 2015, which is about two months ago. Payment of teachers is a matter of national interest. It is very clear that this Government has no plan or intention to settle this matter or dispute with the teachers. Is he in order to tell us that there have been changes in the Ministry and that is why the Statement is not ready, when I requested for this Statement on 19th of October; an issue that should have been taken as a matter of national importance and given priority?

The Temporary Speaker (Sen. (Dr.) Machage): He is completely out of order. But the Chairperson has said that he has the Statement with him now.

Sen. Karaba: Mr. Temporary Speaker, Sir, I have it but it is not signed by the present Cabinet Secretary.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Are you ready to present it now or not?

Sen. Obure: On a point of order, Mr. Temporary Speaker, Sir. This issue relates to policy and not individuals and changes which take place within Government. He has the information which we need. Could you allow him to give us the information?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Karaba, you are completely out of order. I now order you to give the Statement.

Sen. Karaba: Here is the Statement of the non-payment of teacher's September salaries ---

Sen. Khaniri: On a point of order, Mr. Temporary Speaker, Sir. This is the Senate of the Republic of Kenya. The Statement has not been supplied to me or the clerks, as it is our tradition, to ascertain its authenticity. We cannot just take any statement. Since we have many other Statements, could the Chairperson take this opportunity to share the Statement with the Clerk-at-the-Table and I, so as to ascertain the authenticity and for me to acquaint myself with the Statement for further interrogation?

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Speaker, Sir. In the Bible it is said that you should not remove a speck from your neighbour's eye if you have one in your eyes. Even workers in our offices have not been paid for three months. Why are we more concerned about salaries of other people, when workers in our offices are suffering? We are about to go on Christmas and they have had no salaries for three months.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Prof.) Anyang'-Nyong'o! Whereas you have raised a very legitimate issue, it completely negates the demand of Sen. Khaniri, which is legitimate on the Floor of this House. I order that---

(Sen. Khaniri consulted loudly)

Order Sen. Khaniri. Can you listen?

Sen. Karaba, do the necessary arrangements for Sen. Khaniri and my office to look at that Statement. I want you to present that Statement tomorrow.

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

The Temporary Speaker (Sen. (Dr.) Machage): If it is on the same issue I have already ordered.

What is it, Sen. Hassan?

Sen. Hassan: Mr. Temporary Speaker, Sir, since you acknowledged that what Sen.(Prof.) Anyang'-Nyong'o has raised is a legitimate point and it is a matter that concerns all of us and our morality today is challenged because our staff have not been paid for two to five months, is there a way that, through our Standing Orders, he can prosecute that matter, so that we can compel the authorities to pay our people? It is unfair, wrong and immoral.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Prof.) Anyang'-Nyong'o is a seasoned politician and he understands our Standing Orders very well. He knows that there are opportunities to do that using our Standing Orders. I believe he will do it since he has raised it.

Sen. (Prof.) Anyang'-Nyong'o, could you raise that Motion in a proper way and I will set time for that?

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. We all know that the newly appointed Cabinet Secretaries have not taken office and the old ones are still in office. Is it in order for Sen. Karaba to say that there is no Cabinet Secretary in that Ministry?

The Temporary Speaker (Sen. (Dr.) Machage): Actually, it is you who is out of order because you are raising the issue when I have already ruled on it.

(Laughter)

Sen. Ndiema: Mr. Temporary Speaker, Sir, not on this particular one.

The Temporary Speaker (Sen. (Dr.) Machage): Order. Have a seat, please.

The next Statement is from the Senate Majority Leader on the issue raised by Sen. Khaniri.

CIRCUMSTANCES SURROUNDING THE DEATH OF MR. ALEX MADAGA

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, it was agreed yesterday that the Vice Chairperson of Committee on Health will issue the Statement. She is ready.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Zipporah, I hope you have a summary of the Statement.

Sen. Kittony: Mr. Temporary Speaker, Sir, I am Sen. Kittony and not Zipporah.

The Temporary Speaker (Sen. (Dr.) Machage): My apologies, Sen. Zipporah Kittony.

Sen. Kittony: I have the Statement as requested by Sen. Khaniri on the Circumstances surrounding the death of Mr. Alex Madaga. The questions were:-

(1) Explain the exact circumstances surrounding the death of Mr. Madaga and whether he could confirm that the deceased spent 18 hours in an ambulance, while waiting for the Intensive Care Unit (ICU) services at the Kenyatta National Hospital (KNH).

(2) Confirm that prior to his death, the deceased was denied admission into several private hospitals for emergency treatment and if so, reveal the identity of the hospitals involved.

(3) Confirm that the act of withholding an emergency treatment amounts to violation or denial of the constitutional right to the health care services and emergency medical treatment under Article 43 (2) of the Constitution of Kenya and enumerate the steps the Government has taken against the health institutions which withheld medical treatment to the disease and to ensure that the person responsible for the negligent act are prosecuted and the deceased's next of kin are compensated.

(4) Clarify what other measures the national Government has taken to ensure that the state provides appropriate social security for all Kenyans, in compliance with Article 43 (3) of the Constitution of Kenya, given that the responsibility of developing national health policy is constitutionally vested in the national Government; other than the Health Bill which is currently in the National Assembly.

(5) In view of the recently gazetted National Hospital Insurance Fund (NHIF) rates, what steps the Government has taken to offer universal insurance cover for accident and emergency treatment.

The additional information sought by the House included the following:-

- (1) The list of the names of doctors in charge during the 18 hours that this gentleman was lying in the ambulance and other persons who have been responsible at the time.
- (2) Specific legal provisions that exist for the Government to enforce the citizens' fundamental rights and healthcare.
- (3) If there are any ways of honouring and celebrating paramedics like Mr. Odhiambo, who stayed with the deceased person for 18 hours.

Mr. Temporary Speaker, Sir, I wish to respond as follows: The exact circumstances surrounding the death of Mr. Madaga are indicated in the annex to this response. The deceased did not spend 18 hours in an ambulance while waiting for intensive care unit services at the Kenyatta National Hospital (KNH). The 18 hours was the total duration between the time he left the PCEA, Kikuyu Hospital in an ambulance, at 2330 Hours on Monday, 5th October, 2015, and the time he was admitted at the Intensive Care Unit (ICU) at the KNH, at 1730 Hours on Tuesday 6th October, 2015.

The preliminary inquiry committee of the Medical Practitioners and Dentists Board that investigated this case did not find evidence that any hospital – private or public – expressly denied the patient admission due to lack of funds. However, the committee cited various lapses in the referral mechanism between the various hospitals involved. The lapses are as follows:

(1) The PCEA Kikuyu Hospital did not ensure the availability of a qualified clinician to accompany the patient who was critically ill at the material time. The purpose

of this is to ensure that sound medical decisions are made in relation to the patient throughout the transfer and referral period.

(2) The KNH did not take all prerequisite steps to refer the patient to another facility that could have helped under the circumstances of the case. Moreover, the hospital allowed a critically ill patient to be returned to the referring hospital for oxygen, instead of taking appropriate steps to intervene. As a national referral hospital they should have exercised the highest possible standard of care to the patient, regardless of whether or not they had an ICU bed available.

(3) Staff working at the Coptic hospital at the material time failed to follow the hospital's ICU admission policy, as explained by the facility's medical director.

We confirm that the act of withholding of emergency treatment amounts to violation or denial of the constitutional right to health care services and emergency treatment, under Article 43 of the Constitution of Kenya. Article 43 (1) of the Constitution provides that every person has the right to the highest attainable standards of health, which includes the right to health care services. Article 43 (2) further provides that a person shall not be denied emergency medical treatment. In an emergency situation a patient has the right to treatment, regardless of ability to pay. An emergency is defined as a situation which is likely to cause death, serious injury or disability, if not attended to promptly.

Public and private hospitals have a duty to administer medical care to a person experiencing an emergency. Where a hospital has an emergency facility, it is legally required to provide emergency medical care. Where the hospital is unable to provide emergency medical care, it must provide a referral for appropriate treatment. However, there is no statutory provision guiding how health care providers, private/public, will be compensated in the event that a patient who has been taken in for emergency care cannot clear the medical bill accrued.

Based on the findings of the preliminary inquiry committee of the Medical Practitioners and Dentists Board, the following orders were made against the implicated health facilities:-

(a) the committee found that the complaint against the KNH had merit. An appropriate charge sheet will be drawn within 21 days of the committee meeting on the matter. The matter will be referred to the professional conduct committee, to be constituted by the Medical Practitioners and Dentists Board for further inquiry of the complaint; and,

(b) the committee found that the complaint against Coptic Hospital had merit. An appropriate charge sheet will be drawn within 21 days of the committee meeting on the matter. The matter will be referred to the professional conduct committee, to be constituted by the Medical Practitioners and Dentists Board for further inquiry of the complaint.

It is correct that the responsibility of developing and communicating the national health policy rests with the national Government. The Ministry in partnership with sector stakeholders has developed the Kenya Health Policy 2014/2013 which upholds the right of citizens to emergency medical care, as enshrined in Article 43 (2) of the Constitution of Kenya, 2010. However, a policy document can only be enforced through an Act of

Parliament. The Kenya Medical Practitioners and Dentists Board has additional powers of registering private health facilities and can suspend and deny registration to health facilities proven to have engaged in unethical practices or negligence.

The board has already completed preliminary investigations on the health of Alex Madaga and has escalated disciplinary proceedings in respect to the two hospitals, namely, Kenyatta National Hospital and Coptic Hospital, under the professional conduct committee on grounds of misconduct. The board is continuing with investigations and a full report will be shared with the National Assembly when the exercise is completed.

The National Hospital Insurance Fund (NHIF) (1998) mandates the board to cover both outpatient and inpatient medical care in accredited health facilities, for registered members and their eligible dependants. Health providers are at liberty to seek or not seek accreditation with the NHIF to serve the Fund's beneficiaries. The recently revised contributions provide enhanced benefits for members and their eligible dependants.

Regarding the list and names of the doctors in charge during the 18 Hours, the gentleman was lying in an ambulance and other persons would have been responsible at the time. As clarified in the answer to the first question, 18 hours was the total time spent from departure from PCEA, Kikuyu Hospital to admission at the KNH. The ambulance was not parked in one facility waiting for ICU admission.

With regard to specific legal provisions that exist for the Government to enforce the citizens' fundamental right to health care, the Bill of Rights can only be operationalized through formulation of policy and enactment of a health law. The Ministry has completed the formulation of Health Policy 2014/2030. The proposed health care law is currently under review.

With regard to whether there are any ways of honouring paramedics like Mr. Odhiambo, the Ministry of Health has no reward or honour programme through which it can celebrate paramedics like Mr. Odhiambo. However, His Excellency the President has the power to confer State commendation to individuals, in recognition of outstanding or distinguished services rendered to the nation in various capacities and responsibilities. Awards are made by His Excellency the President, upon the advice of the advisory committees in various sectors, as set out in the National Honours Act, 2013. One of the committees is actually in Parliament, which includes the Senate. Individuals are nominated for awards by various organizations, including the county governments, Ministries, religious organizations, Non-Governmental Organization (NGOs), individuals and others. Mr. Odhiambo could be recommended for a State commendation through this mechanism.

The Statement is signed by Mr. James Macharia, the Cabinet Secretary, on 10th November, 2015.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I hope the intervention will be brief and to the point.

Sen. Kittony, please, listen keenly because questions are being directed to you.

Sen. Kittony: Mr. Temporary Speaker, Sir, could I even be allowed to take water?

The Temporary Speaker (Sen. (Dr.) Machage): Take water, sen. Kittony.

Sen. Khaniri: Mr. Temporary Speaker, Sir, listening to this answer, you even totally get discouraged asking any supplementary questions because it looks like nothing good can come from this particular Government.

The story of Alex Madaga is a very sad story; a story of a young man with a promising future and a sole bread winner who lost his life through some negligence of some hospitals that she has named here.

It is even more sad that after the incident happened the Government showed no remorse. There was no Government support, no representative at the burial, not even a message of condolences from the official of the Government. It is as if nothing has happened. I guess it is because of where Alex Madaga comes from in this country. To this Government, some people are more important than others. It is very sad, indeed. It is a big shame to this Government. However, let me just ask two supplementary.

Now that the Chairperson has admitted that the preliminary inquiry Committee found the hospitals involved culpable, or blameworthy and she says the matter has been referred to the Professional Conduct Committee for action to be taken, we want her to give an undertaking to this House that she will come and report back to us what action was taken against the two hospitals that she has named that were culpable. They clearly contravened Article 43(2) of the Constitution, denying a person emergency medical treatment. We, as a Senate, want to know what action will be taken because you have told us that action will be taken.

Secondly, I was very specific; we wanted to know what kind of support the Government will give to this family. This is a very poor family. The young man was a sole breadwinner and he left a young son in high school. We wanted the Government to give some assurance that they will even give support as we await the outcome, for the young man to go to school in January. What support will this Government give to the young family of the late Alex Madaga who lost his life through negligence?

The Temporary Speaker (Sen. (Dr.) Machage): Take more questions.

Sen. Abdirahman: Thank you, Mr. Temporary Speaker, Sir. I want to ask a specific question. The late Alex Madaga, lost his life several months ago. Listening to the Chairperson of the Committee she says a charge sheet was being prepared against the two hospitals which were found culpable. When does the 21 days commence and when does she expect them to end?

Sen. Hassan: Mr. Temporary Speaker, Sir, whereas, I have no issues on the fact that the Constitution says Bills concerning counties can originate from the Senate, and any Bill can originate from the National Assembly, I listened with dismay. I want the Chair to advise the Cabinet secretary (CS) in charge of Health, that where substances of functions are devolved, it is only prudent that those Bills are brought for the determination of this House first. When I hear her say that the proposed Health law is currently under review in the National Assembly whereas we know the bulk of the function of Health is devolved, it is her Minister who does not know the place of the Constitution and functions in this country.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Let us limit our comments to the matter before the House.

Sen. Kagwe: Thank you very much, Mr. Temporary Speaker, Sir. First, it is sad that we are discussing the life of Alex Madaga. Indeed, this is not animal farm where some animals are more equal than others; and that a person who dies in such hands as explained by the Senator can be from any community and any circle. It is good for us to give this person who died due respect by not diverting from the main issue. With all due respect to my brother Sen. Khaniri and my condolences to his constituents, what is the policy framework that can be put into place to ensure that this does not happen to anybody?

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): I am only concerned that you are not finding Sen. Khaniri's concern or his constituent to be important or serious.

Sen. Kagwe: Mr. Temporary Speaker, Sir, Sorry. Perhaps, I did not express myself sufficiently. The first thing I did was to condole with the family of Alex Madaga and, indeed, sympathized with my brother, Sen. Khaniri.

Sen. Mbuvi: Thank you, Mr. Temporary Speaker, Sir. I had risen on a point of order, but you did not catch my eye. I want to inform my brother Sen. Khaniri that there is no provision in the Standing Orders that obligates the Government to compensate all the patients who die in public hospitals. However, the Government can take disciplinary action against all those public officers who were involved in this case.

Sen. Khaniri: On a point of order, Mr. Temporary Speaker, Sir. We represent people here and as I talk, I know what I am talking about. I was very specific, I said and I believe that Madaga's family was not assisted because of where he comes from. We saw this during the Garissa attack, where victims were treated differently while the victims from another community were given full support during the funerals.

The Temporary Speaker (Sen. (Dr.) Machage): What is not in order?

Sen. Khaniri: Mr. Temporary Speaker, Sir, Sen. Sonko says the Government supports some people and not others. It is clear that some animals are more equal than others.

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! I know it is a sensitive issue, but let us be concerned and not distort facts.

Sen. Khaniri: Shame! Shame!

The Temporary Speaker (Sen. (Dr.) Machage): Order! Cool down.

Sen. Khaniri, let us have some decorum even if you are very much affected, order must be maintained at all cost. However, I might be forced to invoke some sections of the Standing Orders to your own detriment. I do not want to do so because this is an emotive issue.

Hon. Senators: Unawatetea wengine!

The Temporary Speaker (Sen. (Dr.) Machage): Order! I am talking and I am on my feet. Please, choose your words carefully; we are all adult Senators. So, let us behave so.

Sen. Mbuvi, are you through?

Sen. Mbuvi: Mr. Temporary Speaker, Sir, can the Chair clarify – in concurrence to Sen. Kagwe’s clarifications - the measures the Ministry is taking to ensure that such an occurrence does not recur in future, considering that we have limited Intensive Care Unit (ICU) facilities in our public hospitals countrywide?

The Temporary Speaker (Sen. (Dr.) Machage): We can take two more questions.

Sen. Lesuuda: Thank you, Mr. Temporary Speaker, Sir. I was worried earlier when the questions were raised. I do not think there is any single Senator in this House who takes this matter lightly whether he or she is a Member of CORD or Jubilee.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Sen. Lesuuda! Ask your question because I have already ruled on that. Do not revisit it because it will raise emotions.

Sen. Lesuuda: Thank you, Mr. Temporary Speaker, Sir. I hope that both sides of the House take this matter seriously. The issue of the late Alex Madaga is one that all of us were aware of. We want to know the timelines of some of the things that were asked by Sen. Khaniri and what measures will be put in place to deter professionals from taking such matters lightly. I also agree with Sen. Mbuvi on the need to know the measures that the Ministry is taking to have more ICU facilities in our referral hospitals. The excuse in Madaga’s case was the unavailability of ICU facilities.

(Sen. Murungi mistakenly pressed the interjection button on the console)

Sen. Murungi: Mr. Temporary Speaker, Sir, sorry I do not want to contribute on that. I am sorry.

The Temporary Speaker (Sen. (Dr.) Machage): Well, be careful with your dispatch box. When you press the button, the Chair is called to attention.

Sen. Karaba: Mr. Temporary Speaker, Sir, in as much as we condemn the actions taken by the hospital, there are many hospitals in Kenya where as you get to the casualty, the first thing they want to know is whether the patient has money even before they know the name of the patient. They want to know whether the patient has enough money and also the nature of the insurance cover, if any. They will not admit a patient before a deposit is paid. We need a clear-cut policy from the Ministry of Health on whether it is after the deposit is paid that a patient will receive medical attention or that one can be treated and allowed to pay later.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Temporary Speaker, Sir, on a point of order. I hope the Senate listens to me carefully on this issue. Is the Vice Chairperson of the Committee on Health aware that before I left the Ministry, we had developed a policy and a Bill on the National Ambulatory and Emergency Services which will address the questions that Senators Kagwe and Mbuvi have raised? If so, why is it that we are trying to reinvent the wheel when there is already a comprehensive National Ambulatory and Emergency Services Bill and policy that the Ministry should be implementing? Further, this Committee should know that without implementing a comprehensive social health insurance scheme, the problems we are experiencing with emergency will continue to

bedevil this country. What is the Committee doing to ensure that this nation has a comprehensive social health insurance scheme?

The Temporary Speaker (Sen. (Dr.) Machage): If you listened, Sen. Kittony, Sen. (Prof.) Anyang'-Nyong'o has answered 50 per cent of your questions. I hope you were listening.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. It is quite evident that many hospitals are turning away patients at will while the Constitution requires that we give medical services to those in need. What measures is the Government putting in place to ensure that no citizen is denied emergency medical attention in all hospitals?

The Temporary Speaker (Sen. (Dr.) Machage): I hope everyone listens when everybody raises his or her concerns on the Statement. There is the rule of repetition and you have to be careful not to repeat what has been said before because of the irrelevancy that it depicts. I allow Sen. Kittony to answer those ones first and we will go to round two, if your concerns have not been addressed.

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir. I sympathize with the whole situation. When we read the Report in the Committee, it was clear that there was negligence and it was not satisfactory. I appreciate the mood of the House and, therefore, we will go back and seek further clarifications and more information so that we get a satisfactory answer. It is a right of every citizen to get medical attention in this country under the Constitution.

On the issue raised by Sen. Hassan, it is the prerogative of the Cabinet Secretary or the executive to commit the Bill to either House. We will endeavour to ensure that more information is provided to you. The questions that you have all raised are valid and the Committee will go back and bring more information in the next sitting. There is no mention of the deceased's family and, therefore, we will inquire what happened to the hospitals; the compensation, among others. We have noted everything.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): There are two more pressing questions. Although you have said that you will seek answers, it is better that you receive more questions from two other Members.

Sen. Madzayo: Asante, Bw. Spika wa Muda. Tumeambiwa kwamba hatimaye Bw. Madaga alilazwa kwenye hospitali ya Rufaa ya Kenyatta. Je, ni daktari wangapi ambao walimhudumia marehemu Madaga? Hakuna hata mmoja ambaye ametajwa kwenye hii Ripoti. Ni kina nani ambao walimhudumia marehemu Madaga akiwa hali mahututi?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, this Statement is signed by the Cabinet Secretary (CS), James Macharia. He was in this Chamber fielding questions from Senators. I recall that we raised the issue of the Kshs38 billion that was used by the Jubilee Government and the President announced that specialised medical equipment had been acquired. Amongst the equipment were beds for the Intensive Care Unit (ICU). I request that you direct further that the Committee does not seek for answers, but we forward these questions to the CS to come and face us squarely. When he comes, I would like him to tell us how many ICU beds have since been purchased as a result of the Kshs38 billion that was spent. We know that out of the Kshs38 billion only Kshs20

billion was spent, but Kshs18 billion has been siphoned. If after spending Kshs38 billion on beds, we still have a shortage of beds in the national referral hospital, then the best thing is for the Jubilee Government to accept that it is unable to lead the country. It is the taxpayers' money and not your money.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale, you have made your point.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I stand by it.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale!

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. Is my Senator really in order to say that Kshs18 billion was siphoned? It is important for facts to be brought forward. Since the CS is being summoned, it would be very important for the Member to table facts about the Kshs18 billion and say why and who siphoned the money, so that the people responsible can be dealt with by the Ethics and Anti-Corruption Commission (EACC).

(Sen. (Dr.) Khalwale stood up)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! This is not a kangaroo court. Please, take your seat.

(Sen. (Dr.) Khalwale resumed his seat)

As far as I am concerned, you have not been asked to substantiate to this House, as per our Standing Order No.94. So, hold your peace. However, you have been challenged that on the day – subject to my ruling which I am about to do – the CS comes here, you should have information to challenge him on the Kshs18 billion.

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

The Temporary Speaker (Sen. (Dr.) Machage): Order! I rule that the Committee on Health should invite the CS for Health as soon as possible for a full House Committee, to answer all the questions that have been raised on the Floor of the House today and many more that might be of challenge on the case of Mr. Madaga.

What is it, Sen. (Dr.) Khalwale? I hope you will not revisit the issue, because I am going to throw you out.

(Laughter)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. We have spoken strongly on issues of corruption before. I want to assure Sen. Elachi that when the CS comes, I will face him and prove that the money was siphoned.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale, please, respect the Chair totally.

That is enough time on that issue. I will defer all the other statements because we have spent a lot of time and it is now 4.00 p.m. Our Standing Orders stipulates that the

Statements time ends at 4.00 p.m. Those are your own Standing Orders, and I am just following the rule.

ALLOCATION OF UWEZO YOUTH FUND TO
MARSABIT AND THE NEIGHBOURING COUNTIES

(Statement deferred)

DELAYED TRAVEL OF THE NATIONAL SOCCER
TEAM FOR THE RETURN LEG OF THE 2018 FIFA
WORLD CUP QUALIFIER MATCH AGAINST CAPE VERDE

(Statement deferred)

DOPING MENACE AMONGST KENYAN ATHLETES

(Statement deferred)

THE SALE OF FAKE AND COUNTERFEIT PHARMACEUTICAL
DRUGS AND PRODUCTS IN THE COUNTRY

(Statement deferred)

CIRCUMSTANCES SURROUNDING THE
DEATH OF MS. ELIZABETH AKALA

(Statement deferred)

SECURITY OF PERSONS LIVING WITH ALBINISM IN THE COUNTRY

(Statement deferred)

INSECURITY ALONG THE MERU-ISIOLO BORDER

(Statement deferred)

The Temporary Speaker (Sen. (Dr.) Machage): Because of the numbers, I will also defer Order Nos. 8, 9 and 10. I also step down Order No.11, which will follow Order No.12.

COMMITTEE OF THE WHOLE

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)
BILL (SENATE BILL NO. 20 OF 2014)

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THE HIV AND AIDS PREVENTION AND CONTROL
(AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015)

THE COUNTY INDUSTRIAL DEVELOPMENT BILL
(SENATE BILL NO. 7 OF 2014)

THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO.31 OF 2014)

(Committee of the Whole deferred)

The Temporary Speaker (Sen. (Dr.) Machage): Is the Senate Majority Leader or his representative here?

Sen. Murungi: Mr. Temporary Speaker, Sir, I was to hold brief for the Senate Majority Leader.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Murungi?

MOTION

RESOLUTION TO HOLD AN EXTRA SITTING

Sen. Murungi: Mr. Temporary Speaker, Sir, on behalf of the Senate Majority Leader, I beg to move the following Motion:

THAT, pursuant to Standing Order No.30 (3) (b), the Senate resolves to meet on Thursday, 3rd December, 2015, from 9.00 a.m. to 1.00 p.m.

The purpose of this Motion is to enable us dispose of some urgent and important business before we go on recess. Among the business that we intent to dispose of, especially tomorrow morning, is the Report on the Kenya Airways, which Sen. (Prof.) Anyang'-Nyong'o and his Committee worked very hard to produce. The very able Senator for Mombasa, Sen. Hassan, was also a Member of the Committee. It is in the interest of the country and, indeed, this House to know the findings of the Committee before we go on recess.

There is also the Report on the extension of the tenure of the Commission for the Implementation of the Constitution (CIC), which constitutionally comes to an end at the close of this year. That has been a very important Commission and we would like to know what the thinking of the Senate is regarding whether or not the mandate of the Commission should be extended in view of the various challenges that this country has experienced in implementation of the new Constitution.

Mr. Temporary Speaker, Sir, there is also the issue that has been raised by the "bullfighter" Sen. (Dr.) Khalwale, which is allowing the Senate staff to record some statements with the Director of Public Prosecutions (DPP). It is a matter which he alluded to and it is good for us to--- There is also the issue that was raised by Sen. (Prof.) Anyang'-Nyong'o as to whether or not our staff will be paid. They are also entitled to

enjoy Christmas like everybody else. Therefore, we need some time – even three hours tomorrow morning – to enable us to extend the day so that these matters are conclusively dealt with---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Wangari, I see your intervention. What is the matter?

(Sen. Wangari spoke off record)

Sen. Murungi: Mr. Temporary Speaker, Sir, I think the lawyers talk about something called *res ipsa loquitur*: that there are some things which speak for themselves. In view of the importance of the agenda items before us, I think it is only fair that we create a session tomorrow morning so that these issues can be canvassed and determined by the Senate.

With those few remarks, I beg to move. I request the Senate Majority Leader to second.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I rise to second this Motion. This Motion was discussed between the Senate Minority Leader and I yesterday and it was agreed that it is important for us – given that we will be proceeding for recess tomorrow – to have a morning session to discuss, among other things, the report of the *ad hoc* Committee of the Kenya Airways. As Members know, Kenya Airways has not been doing very well. There were reports as recently as two days ago that the airline is even unable to pay workers. The Senate *ad hoc* Committee that was chaired by Sen. (Prof.) Anyang'-Nyong'o did a wonderful job. They had extensive recommendations which we will be happy to hear when they table their Report.

The other thing that is time bound is the proposed extension of the time of the Commission for Implementation of the Constitution (CIC). As Members are aware, the Commission's term ends in December this year. Therefore, it is important for the Senate to pronounce itself on that matter before we proceed on recess. For those reasons as well as the ones advanced by the Mover of the Motion, I urge hon. Senators to support this resolution.

I second.

(Questioned proposed)

The Temporary Speaker (Sen. (Dr.) Machage): This is not a Motion affecting counties. Therefore, I will put the question.

(Questioned put and agreed to)

MOTIONS

APPOINTMENT OF SENATORS TO SESSIONAL
COMMITTEE ON COUNTY MONITORING,
EVALUATION AND IMPACT ASSESSMENT FUND

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Sen. Murungi: Mr. Temporary Speaker, Sir, I again, have the permission of the Senate Majority Leader to move the following Motion which is No. 13 on the Order Paper.

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

AWARE that Regulations for the County Monitoring, Evaluation and Impact Assessment Fund are in the process of being gazetted;

Further aware that the Regulations provide for a Senate Select Committee to administer the Fund;

Now, therefore, the Senate resolves to appoint the following Senators to the Senate Sessional Committee on County Monitoring, Evaluation and Impact Assessment Fund:-

1. Sen. Kiraitu Murungi
2. Sen. (Prof.) John Lonyangapuo
3. Sen. Stephen Sang
4. Sen. (Eng.) Muriuki Karue
5. Sen. Adan Fatuma Dullo
6. Sen. George Khaniri
7. Sen. Mutula Kilonzo Junior
8. Sen. Boy Juma Boy
9. Sen. (Dr.) Agnes Zani

Mr. Temporary Speaker, Sir, first, in moving the Motion, I would like to remind my colleagues, that you are all aware that we have been involved in a long and difficult struggle to try to raise some resources to enable the Senate perform some functions under Article 96 of the Constitution, basically oversighting the funds allocated to county governments from the national resources. We sought an initial fund of Kshs1 billion to be allocated to the Senate for the purposes of monitoring, evaluation and impact assessment of the funds that have been allocated to various counties. This exercise is very important because there has been massive looting, theft and wastage of funds at the county level under the supervision of some of our governors, giving us what is now popularly known as “devolution of corruption”.

For this country to play its rightful role in safeguarding the interest of our counties, it is very important that this fund is set aside for us to enable us know what is happening in our counties. To cut the long story short, I would like to inform Senators that finally there is some light at the end of the tunnel. The Parliamentary Service Commission (PSC) is meeting on Friday this week. From the report that I have heard, it has been agreed in principle that the Parliamentary Service Commission (PSC) will do an internal reallocation of its funds, to give us some of these money so that we can start the monitoring and evaluation exercises within our counties. The Parliamentary Service Commission (PSC) is only waiting for approval of this request from the Treasury. They have already written a letter to the Cabinet Secretary (CS) – Treasury.

Mr. Temporary Speaker, Sir, I would like my colleagues to join me in thanking the leadership of the Parliamentary Service Commission (PSC) Chairman, Justin Muturi, and the Members of the Parliamentary Service Commission, including our very able

representatives. I thank Sen. Mugo, Sen. Leshore and Sen. Musila who carried our case to the Parliamentary Service Commission, explained to them and the Parliamentary Service Commission finally agreed that they can reallocate the internal funds to support the activities of the Senate. We record our appreciation to the two Senators who are present and Sen. Musila who is not here.

I urge you on Friday when the Parliamentary Service Commission meets, please, come out with a date of when we can find these funds in our accounts. We are going on recess and we would like to start working during the recess using these funds. It is necessary because one of the conditions that had been given by the Parliamentary Service Commission for the funds to be released is that this House sets up a Committee which is being referred to in this Motion as the Committee on County Monitoring, Evaluation and Impact Assessment. This Committee will oversee those funds just like the Constituencies Development Fund (CDF) Committee oversees the CDF money. There will be regulations which are in the process of being gazetted. They will govern or set out the processes through which these funds may be used and the procedures on how they will be accessed under the supervision of the Parliamentary Service Commission.

The regulations have already been signed by the Chairman of the PSC. So, it is upon us now to establish this Committee so that as soon as the funds are released, the Committee can meet, consult and issue guidelines on how the funds can come into your accounts and how they will be used.

Mr. Temporary Speaker, Sir, I wish to stop at this point. This has been a very long journey; we are almost coming to an end. If you allow me, I would like to request the Attorney-General *Emeritus*, Sen. Amos Wako, to second this Motion.

Sen. Wako: Mr. Temporary Speaker, Sir, I will not take too long in seconding this Motion. Simple as it appears, it is one of the most important Motions that this House will ever pass to alter in some way the status of the Senate and strengthen its role, which is oversight. As you are aware, up to now, Senators do not have any funds to exercise their role of oversight throughout the counties. Our terms as it relates to offices and so on, are just the same as Members of the National Assembly and yet we have to oversee, for example, in my county, seven constituencies. If you have seven constituencies to oversee, how do you do it from one office like a Member of the National Assembly?

Therefore, I commend the Mover of this Motion. This has more or less been his brain child. He has tried a number of initiatives which I hope will see the light of the day, particularly during the referendum on having our own commission. This is very innovative; if one door closes, another door opens. He has found a way in which we can access the funds through this. So, I wish to commend him for the initiative he has taken, particularly he has had a single minded purpose on this issue. I also wish to commend our Members on the PSC, who without them, however noble the ideas we might have had, they would not have seen the light of day and to come to a situation where the PSC, chaired by the Speaker of the National Assembly now agrees. That agreement could only have been pressurized by our Members sitting in the Commission; Sen. Mugo, her good friend and Sen. Musila who is not here.

It is a big achievement. I do not know whether you realise this achievement; to get the PSC to use some of its funds. I hope it would be at least Ksh1 billion or Kshs2 billion for this purpose.

I also commend all Members who have been proposed to this Committee. We know their contributions to the House, the areas in which they contribute, their concerns and commitment on these issues. I have no doubt in my mind whatsoever that although all of us are able, this is the best team that could have been put together to be on the Senate Sessional Committee on County Monitoring, Evaluation and Impact Assessment Fund. I definitely look forward; I will be checking my box to see if all those rules are there. I want to hit the ground running as far as my county is concerned on the issues of oversight. It is only this afternoon I brought up something on the issue of health workers. That strike has taken longer than necessary because of the way it has been handled. I want to hit the ground running beginning 2016.

Therefore, with those few remarks, I support this Motion. My good friend did not ask me to second him. I would have preferred that he told me in advance so that---

The Temporary Speaker (Sen. (Dr.) Machage): Order! It is procedural. Can you say the right words? Say: "I beg to second."

Sen. Wako: Mr. Temporary Speaker, Sir, I beg to second this Motion as requested by the Mover, none other than the King of Meru. He has graciously asked me to second this Motion.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Can you have a seat?

Now that you broke the law, you freeze there as I talk so that you may remember not to do that again. The other Member should freeze; stand and freeze.

(Sen. Wako and Sen. Chelule stood in their places)

Very well. It makes me happy that way. Both of you can sit.

(Sen. Wako spoke off record)

I am still standing. Please, sit quickly.

Very well, I now wish to propose the question.

(Question proposed)

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I also wish to take this opportunity to support this Motion. It has been born out of our very bitter experience as we, Senators, watch the wastage of resources that we have allocated to our counties. This is the best thing that could happen to this House for it to have some muscle and position in which we can monitor the usage of the resources that this House votes and allocates to the counties.

The passage of this Motion and its support is very important. It is important we do it urgently because the wastage and the misuse of resources in the counties is an ongoing process. This is because every minute that we delay on this, there is further wastage of

resources. I support this Motion and wish that all the Members who have been nominated to this Committee will do an excellent job as they carry the name of the Senate in the duties of monitoring the usage of the funds in counties.

Sen. Karaba: Mr. Temporary Speaker, Sir, I stand to support this Motion and congratulate the Mover and the Committee Members who were involved. I hope that what they have told us will be true after 4th December 2015. We have had these intentions for a long time. Now that it has come to fruition, we are grateful that we can at least see what the King of Meru told us that there is light at the end of the tunnel. We are observing keenly and hope that it will bear fruits.

Mr. Temporary Speaker, Sir, we have had a lot of problems, particularity with embarrassment. We have been isolated and as lawmakers of the highest order, the Senate, we looked helpless when we saw people waste resources, but we did not have the muscle, power and office to tell them off. This is an indication that the Senate will do its assignments which is to provide oversight. However, we cannot do so without what has already been passed.

I thank the Committee. I hope as we go on recess, what will be done in that period will be translated from what we will receive at the end of the day.

Sen. Leshore: Mr. Temporary Speaker, Sir, I congratulate the Senators who came up with this idea which will benefit our country and the Senate. It has not been easy getting this. We have fought for the last two years. I, therefore, thank the Chairman of the Parliamentary Service Commission and all the commissioners because we lobbied for quite some time until they understood the role of the Senate in the new dispensation of the Constitution. I would like this Motion to be passed without delay and the *Ad hoc* Committee to hit the road fast because this Thursday or Friday, it will be gazetted. I hope that the money will be provided before the end of the year.

Sen. Mugo: Mr. Temporary Speaker, Sir, I would also like to add my voice in congratulating the Chairperson and all Committee Members. I would also like to thank the Chairperson of PSC and all the commissioners who were very supportive. There was no doubt that this fund is needed and the Commission appreciated the work of the Senators. I feel that this will enhance the Senator's mandate. It will also help the Senate to achieve her mandate.

The commissioners were very much concerned with the small percentage that is allocated to the nominated Senators. It was their feeling that the Senate will review that issue and add more resources to the nominated Senators because they also have a big constituency to oversee. I believe that my colleagues are listening keenly and that they will be sensitive to that issue.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I support this Motion and thank all those who have been involved up to this stage, particularly our representatives in the PSC. Looking at the list, I can see Sen. Murungi's name; he has been on the forefront and I thank him for steering this matter ably.

This fund will go a long way in ensuring that we deliver on our mandate of overseeing counties and being full representatives of our counties and county governments. This fund is not there to fund Senators for any other thing other than ensuring that there are better services for the people who elected us.

I support this Motion. I have no doubt in the Senators named here as they are all capable. In future, when committees are formed, we should try to vary the names from time to time so that all Senators have an opportunity to serve in such committees.

Sen. Hargura: Mr. Temporary Speaker, Sir, I rise to support this Motion noting that, initially, we kind of had a false start in the creation of this fund. However, now that the PSC has deemed it fit to make sure that there are funds for it, then it is only fair to have a Committee to oversight this. If we are now all handling the funds, we must have a committee within the Senate which will be over sighting the implementation of this Fund. I am sure that it is a welcome idea because we now have some means of effecting our role of oversight which we did not have initially. I support this Motion because it is a step in the right direction.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I would like to echo my sentiments and say that this is an idea whose time has come and congratulate all Senators who are in this Sessional Committee. We, as a Senate, believe in them and the work that they are going to do. It is about time that the Senate was also able to execute its mandate and their presence felt at the county level. We hope that this facilitation will enable us to do that. I also hope that this Committee will find it fit to review what we had agreed in this House and what we had also discussed at the Kamukunji; to review what the nominated Senators were going to get from this Fund. I hope that this Committee will look into all the issues we had raised so that we can all continue to execute our mandate as constituted in the Constitution and for our presence to also be felt in different parts of the country.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Listening to the debate that has been going on in the last few minutes, it is clear that the House has converged. Could I request that you call upon the Mover to respond?

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I call upon the Mover to reply.

Sen. Murungi: Thank you Mr. Temporary Speaker, Sir, I beg to reply.

The Temporary Speaker (Sen. (Dr.) Machage): Since this is not a County Motion, I will put the question.

(Question put and agreed to)

CIRCUMSTANCES THAT LED TO THE DISAPPEARANCE
OF TWIN BABIES AT PUMWANI MATERNITY HOSPITAL

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir. I beg to move the following Motion:

THAT, the Senate adopts the Report of the Standing Committee on Health on the circumstances that led to the disappearance of twin babies who were delivered at Pumwani Maternity Hospital on 6th January, 2015, laid on the Table of the Senate on Tuesday, 15th September, 2015.

Mr. Temporary Speaker, Sir, on 19th February, 2015, Sen. Mugo requested a Statement in the House on the circumstances that led to the disappearance of twin babies

who were delivered by Jacinta Wanjiku at Pumwani Maternity Hospital on 6th January, 2015.

Sen. Mugo specifically sought to know:-

1. The circumstances surrounding the hospital's allegations that the babies were still born upon delivery when the mother had normal delivery and heard her children crying.

2. Why the hospital gave the wrong information that the babies were born dead while the deoxyribonucleic acid (DNA) results have since established that the alleged dead babies are not a match to the parents; Mr. Dedan Kimathi and Mrs. Jacinta Wanjiku, or to each other. They are of different parents.

3. If it is an isolated incident or such incidences are prevalent in Pumwani Maternity Hospital.

Mr. Temporary Speaker, Sir, when the Members of the Standing Committee on Health embarked on this inquiry, we were motivated by our collective knowledge of the challenges faced by the expectant mothers with little or no recourse to access private hospitals. The inquest into the death of the twins pointed to the inadequacies in the internal reporting, handover and filing system at Pumwani Maternity Hospital that were noted by the Committee. The Committee recognizes the complexities of this subject and acknowledges the need for a long term approach in ensuring that this situation does not occur again. This Report presents our observations and views on some of the issues raised by all the concerned parties.

Mr. Temporary Speaker, Sir, on 2nd March, 2015, the Committee visited Pumwani Maternity Hospital and upon meeting with the management and staff, the following issues of concern surrounding the circumstances of the birth of the twins emerged:-

1. Cesarean section was not prescribed until after the examination of the following morning. Student nurse delivered the first baby when the mother had a previous scar. Stated hospital policy and handling a previous scar was not followed and medical procedures require that a doctor or a midwife must perform delivery.

2. There were no handovers. No evidence in the file from the night shift doctor of the day she delivered.

3. The notes that existed in the patient's file were not in the list comprehensive. But pogrom was not performed until up to 10 hours after the mother was admitted.

4. There was no evidence of the death certificate in the patient's file by the doctor. The midwife has no authority to certify death. This was exasperated. The Committee was informed that the hospital does not certify death when it is a case of a stillbirth. Spalding sign was not indicated in the file. Spalding sign, meconium, masqueraded fetus and odor are four signs of foetal death yet none of these were recorded in the file.

5. The use of Kangaroo bonding for babies who were deceased. The midwife and the doctor who delivered the babies were not the ones who went to the City Mortuary for the postmortem and Dr. Anyisi who had officially requested the Government Chemist to perform the DNA test had not received the released report. Doctor Anyisi tabled copies of the letters of---

(Sen. Sang crossed the Floor without bowing to the Chair)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Sang. Go back up to the Bar and bow. You have to learn the right procedure.

Sen. Kittony: Mr. Temporary Speaker, Sir, Dr. Ayisi who had officially requested the Government Chemist to perform the DNA test had not received the relevant report of the copies of the complaint he had sent which had been included in the annexes of the report. The Committee subsequently met with the Government Pathologist, the parents of the deceased twins, the student nurses and the mortuary attendants.

The summary of the Committee recommendations on the issue are as follows:-

1. The Criminal investigations Department (CID) should take up the case and bring it to the speedy conclusion on the whereabouts of these missing twins.

2. Pumwani Maternity Hospital should institute clear procedures on admission and handling of patients especially during handover. The hospital should also beef up security especially in the labour room, nursery and ward areas.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. The Vice Chairperson is doing very well, but since this is an inquisitorial matter, it is not just a question of us joining in debates. We would like to hear more. She says that Dr. Ayisi confirmed to them that he was not given the results of the DNA, and it is that DNA that will determine who the parents of these babies are. Could she go further and tell us what stopped Parliament from obtaining the DNA results?

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. It is assumed that you, as an active Member of this Senate, looked at the detailed report after it was tabled on the Floor of this House; it is assumed that you have read it. There was enough time given to you before the Motion was moved. Therefore, do not interfere with Sen. Kittony. Let her finish moving the Motion the way she knows. You want her to move it your way, but she is not you.

Sen. Kittony: Mr. Temporary Speaker, Sir, thank you for saving me. Let him allow me to finish, then he can ask me questions.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale, you will have your time to contribute.

Sen. Kittony: Mr. Temporary Speaker, Sir, doctors should write notes whenever they review a patient as per their training. To absolve itself from blame, the hospital should allow at least one relative of the patient to be presented during delivery or immediately after. The hospital should improve its records management from admission, birth, death or discharge. The hospital should find a better system of tagging a mother to her child. The hospital should develop a well-maintained and secured cold room for storing the dead. Still born babies should not be placed in the bed with their mothers after delivery.

The issue of shortage of staff, especially nurses and doctors, should be addressed. The hospital should institute internal disciplinary measures for staff that have been found to be negligent of their duties. Medical ethics should be strictly observed in the hospital from admission of patients to discharge. The City Mortuary should streamline their record-keeping processes, in particular, the receiving of bodies. The Committee acknowledged receipt of the letter written to the Speaker from the Kenya National Union

of Nurses and noted that they were welcomed to attend the Committee sittings on this matter and that it was open to the public.

The Committee really deliberated on this issue. We had public hearings, went to the hospital and interviewed several people, including staff at the City Mortuary. We worked day and night because we care for the lives of Kenyans, especially the twins whom we do not know where they are up to now. Our Committee deserves a commendation for this. We have recommended strongly that the Criminal Investigations Department (CID) takes up this matter and brings it to a conclusion and let Kenyans know the fate of the innocent twins. I do not want to believe that they are dead, but let us know what happened, which is what the Committee deliberated on. I would like this matter to be given a serious consideration.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Who is seconding? Sen. Kittony, you have to tell us who is seconding the Motion.

Sen. Kittony: Sen. (Prof.) Lesan will second the Motion.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. The Mover has moved the Motion and the intention of the Senate being involved in this matter was that we wanted to get to the bottom of the fact that the parenthood of these children is in doubt. The turning point is the DNA. They have not told us what the laboratory said. They only reached---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. The Senator has presented the report the way she knows how. It is for this House to either adopt it or refuse to adopt it. This is your third term as a legislator and you know that. You cannot fix your thinking of a medical doctor to another Senator who may have a different training. You have the opportunity to reject the Report in your contribution, if you think that way. This is the second time I am ruling you out of order on this, and I am legitimate in doing so.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, first, I want to condole and sympathize with the parents of the twins that were born and lost in Pumwani Maternity Hospital. I was a Member of the Committee that investigated the report and it exposed a lot of weaknesses in terms of security in hospitals, and more particularly, in children hospitals, with a specific and particular reference to Pumwani Maternity Hospital. The loss of a newborn is a very traumatic experience, particularly to the parents. This was exemplified from the presentation of the parents that we saw. They were really traumatized and we could see from their reports and records what they have gone through.

It is apparent from the investigations that we have done that the Pumwani Maternity Hospital case is not the only one that has occurred. It looks like it is the occurrence in most children's hospitals. As we investigated this case, we found that there was a cartel or syndicate that is involved in whisking away newborns, particularly from mothers who are in distress and going through the turbulence of giving birth and not aware of their environment. It is at this time that they lose their newborns. This is perhaps what happened.

I want to specifically state that the scientific identification by DNA is a welcomed technological innovation that will help to solve a lot of problems. DNA attempted or nearly solved the case that we were investigating in Pumwani Maternity Hospital. To date, we have not able to see the twins dead or alive. With DNA, we are able to say that those children are somewhere. This is because all the bodies that were removed from the ward on that particular date went through DNA testing and were identified. None of the children that were identified through DNA--- The margin of error in DNA is so small that we are almost definite that all the children that were tested for DNA did not show that they belong to the family that was looking for their lost children. Therefore, if those children were not present among the dead bodies that were shown, they must be alive somewhere. This is one of the important findings from the results of the DNA. I am sure that the DNA will assist us to resolve some of these rampant cases. We know of a case which happened last week in Nakuru. A child was taken away by somebody, but there was a dispute about whose child that was. DNA is the only option that could resolve this issue.

Mr. Temporary speaker, Sir, in investigating this case, we formed an opinion and we were convinced that the children were actually taken away illegally from Pumwani Maternity Hospital. It was also the finding of the Committee that because these children were not among the dead children, then they must be alive somewhere. So, the Committee made a recommendation that a criminal activity occurred in Pumwani Maternity Hospital and suggested further investigation be instituted along the criminal line. This is the recommendation of the Committee.

We brought this Report here for the Senators to make their recommendations in view of the information that we provided and, perhaps assist Pumwani Maternity Hospital and all other hospitals in ensuring that the rightful mothers go home with their rightful children throughout the country. I want to support this Motion and ask the Senators to give their recommendations. I hope they will support this Motion for posterity and the assistance of the mothers to make sure that they go home with their children.

I beg to second.

(Question proposed)

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I want to start by acknowledging the distinguished, Sen. Mugo, who brought this matter to the Floor. This is a matter that has been very emotive. Parents losing children has been a regular occurrence in our big hospitals. You remember the notorious case of Mrs. Deya and the miracle babies, how she used to traffic new babies to London for sale, pretending that she was carrying miracle pregnancies for two to three months and delivering healthy babies. This could very well be a similar case where we have had cases where children born in hospitals are swooped maliciously and criminally. One can understand if there is an accidental swoop. There have been cases of criminal swooping of children between parents, couples but this Pumwani one is very bizarre.

However, when the Committee says in recommendation one that only two parties had an interest in the lost twins; the hospital and the parents, that is not true. There are

more parties interested in the twins, including the State. In fact, the primary interest lies with State that is the custodian of the lives and well being of all human beings living on our soil from conception. The State is the first primary interested party. We have not had a through criminal inquiry into this matter and this is a lapse.

Mr. Temporary Speaker, Sir, secondly, the fact that the Committee concluded that the parents of the twins reluctantly participated in or witnessed post-mortem, should put everybody to inquiry. The reason you are invited to post-mortem process is normally as the most proximate relative is, one, to identify the body of the dead person either by way of body marks, birth marks or any other curios features. Secondly, where it is a new born baby, the primary duty should have been to subject the bodies that were being examined at the post-mortem to a DNA test with the parents. This is the point Sen. (Dr.) Khalwale has been painstakingly trying to point out to the Chairman of the Committee. In the absence of a DNA test to match whether these were Jacinta's children that were carried on the post-mortem, it is not possible to tell whose children they were.

Sen. (Prof.) Lesan: On a point of order, Mr. Temporary Speaker, Sir. I am sure that it is contained somewhere in the report that extensive DNA was done on several people. This includes the two parents of the twins; that is, the father and the mother, and seven other dead bodies that were retrieved from the same ward at the same time. Therefore, there was extensive DNA testing that was done in these cases.

The Temporary Speaker (Sen. (Dr. Machage): Indeed, if you listened carefully to the Mover, she mentioned about those DNA tests.

The Senate Minority Leader (Sen. Wetangula): Sen. (Dr.) Khalwale said it was not done. If it was done, then the distinguished Senator, they did not bring out that point very strongly because that is where the cracks lies. We have recommendations of a criminal inquiry, we would be happy to find out from the Report whether this criminal inquiry had been done and what were the conclusions. If a criminal inquiry is carried out and there is somebody culpable, whether it is a doctor in Pumwani or anybody else, action should have been taken. The trafficking of children is a very complicated international syndicate. It runs from doctors, nurses and hospital managers. It is a very complicated criminal web where a hospital is given an order by somebody sitting in Los Angeles or London, that they want a child male or female of this type from this kind of parent. The doctors start watching the woman gestation with that criminal intent, then at the end, when children disappear like this, they start faking deaths and faking disappearances and you end up with cases such as this.

Mr. Temporary Speaker, Sir, good as it is, the Report does not bring the saga of the twins to a conclusion we can live with. At the end of the day, Jacinta and her family have not been told whether the dead twins were her children or not. She does not believe they were. The State has not conducted an inquiry into the disappearance and, or possible death. Nobody knows whether the newborns died and no one can confirm that the twins died. I am sure the distinguished Sen. (Prof.) Lesan agrees with me that some children died because there were some bodies but there is no conclusive evidence that they were Jacinta's.

In a hospital with a turnover of many births and with cases where young irresponsible expectant mothers deliver and disappear, sometimes children die and are

substituted for somebody else's. The painful case of Jacinta and her family should have been the duty of the Committee to recommend for legal services for her. The Constitution provides for the provision of legal services to the persons who cannot afford. We are expected, as a Senate, to recommend to the aggrieved family to seek proper legal advice including taking up legal action against parties that have occasioned this painful loss of their children. No amount of compensation can substitute a loss of a child because every mother wants to bring up their children. However, compensation to some degree mitigates the sense of loss and pain that parents suffer.

Mr. Temporary Speaker, Sir, as we debate this Report and suggest recommendations on how hospitals should be run, we still have Jacinta in pain. There must have been some lapses, and I have seen mentions in the Report about the hospital. There are no two women who can go to delivery on one bed unless it is a broken system. Chair, you are a doctor and I know you run hospitals and you still do. When a woman delivers, the attendant maternity personnel are under obligation as soon as the delivery is over and the child gives the usual first wail to tag the child.

Where there is a large turnover like Pumwani Maternity Hospital, the risk of possible mix-up is avoided by tagging children upon delivery. If a misfortune like death occurs, the child will be identified by the tag immediately after birth. Any hospital that fails to do this is veering away from the expectations of both the medical profession and practice. I come from a twin family. My mother had four pairs of twins and she told me that some of my twin siblings were born six hours apart. So, where there is a delivery like that, the first twin will invariably be taken to the nursery as the mother continues in labour to deliver the second twin. The first delivered child cannot be taken to the nursery facility without a tag identity. Where there is loss of life, the first twin may be identified as a first delivery.

These lapses are issues that I think that the Committee should take up with the Ministry of Health and send recommendations to help the health institutions all over the country and especially the maternity hospitals. Pumwani Maternity Hospital is the busiest maternity hospital in the country. Children are born there almost every 30 minutes. It is being expanded to be the biggest maternity facility in the region. Fair and good but there must be just and fair handling of mothers and the newborn babies. The worst that can happen to a family after nursing a pregnancy is to lose a child on birth and worse enough to know that the lost child is unavailable.

Mr. Temporary Speaker, Sir, from what I have read here, I am not persuaded nor satisfied that Jacinta's children died. I am also not persuaded nor satisfied that these children are the ones that a postmortem was carried on. I believe it could be another case of child theft and trafficking. They could have been stolen and trafficked to somewhere.

I support the Report.

Sen. Lesuuda: Thank you, Mr. Temporary Speaker, Sir. I support this Report and I thank Sen. Mugo who requested this important Statement. Before going to the details of my comments, from what we see on the recommendations, it is not in depth enough on what was to be done on this issue. There are good observations and recommendations put forth by the Committee out of their visit to Pumwani Maternity Hospital and listening to various officers at the hospital. However, some of these recommendations are well

known to the practitioners and the management and every other officer at the hospital. The Committee should have gone further than that.

Mr. Temporary Speaker, Sir, I do not know whether this Report binds the people who need to take the investigations further and those who need to get justice for the family. We need to move a Motion so that the Report becomes actionable. We know that when many mothers go to maternity, they go with a lot of expectation that they have nursed a pregnancy for nine months and are ready to receive a baby. The subjects here were twins and I can imagine how elated the parents were.

By going to a hospital, it is almost a sure way that a mother will be taken care of and have a safer place to deliver. We have been advocating both in the urban and rural areas that mothers should deliver in hospitals. We know of the complications that might arise when mothers deliver at home. The hospitals, which are beacons of hope, have become a place where mothers are afraid to go. They doubt whether they will deliver safely. This is something that worries all of us. A place where mothers are sure that they are attended to with the best services is making them to consider delivering at home.

Mr. Temporary Speaker, Sir, we have been happy that the mortality rate has been dropping because mothers have been delivering in hospitals but it is unfortunate if these hospitals turn out to be places where children are lost. This is not a new issue. It is something that we have been reading in the newspapers dating years back that children in Pumwani Maternity Hospital are stolen. With the high turnover of delivery in Pumwani Maternity Hospital, it becomes a vulnerable facility to lose children. Parents are given various excuses, for instance, claiming that there were stillbirths, among others. Since this matter is alive in this House, it should be looked at keenly with the urgency it deserves once and for all. Just imagine these are the reported cases. How many other parents are losing their children daily in Pumwani or any other maternity hospitals which go unreported?

We have it with us and we should get clear assurance from the Ministry of Health regarding measures being put in place, so that we do not just have a big and good referral hospital in our country and in the region, but which cannot assure parents of the safety of their babies. We want parents to go there satisfied that they will come out with the best results from the hospital. We do not want a situation where parents go to the hospital half-heartedly wondering whether or not they will get their children.

I know that this issue is not only rife in Pumwani Maternity Hospital. It is not just about children getting lost, but we also know that there is negligence in some of the hospitals in our counties. For example, in Samburu County, we lost three mothers who had gone to deliver the other day, just because of negligence. One of them delivered on the pavement, while she was already at the hospital. We lost another one through a caesarean section. As a country, I know we have put in a lot to ensure that our children and mothers are safe. There are areas where we have worked a lot and the free maternity that was introduced by the Jubilee Government has really encouraged many mothers to go to hospitals. However, if they go to the same hospitals and face the challenges that they are facing, we would be negating some of the strides that we have made as a country.

I thank Members of the Committee for the input. Some of the issues that emerged and what they saw are very pertinent. If you look at the bullet points of the issues that they raised, – from the time the mother was received up to the time she went to give birth – you can see the issues and concerns that emerged. From the Committee's visit to the hospital, you can tell that there are dire issues in the hospital which need to be addressed even further. I hope that those who will receive this Report at the Ministry of Health will make sure that the issues are addressed.

Mr. Temporary Speaker, Sir, the Committee should also do a follow-up after sometime to ensure that their recommendations are put in place by the Ministry of Health, so that we just do not discuss them here and finish. I hope that the Committee will then do a follow-up to see that these issues have been raised, so that once and for all, our biggest maternity hospital will have a good name in this country and not become a shame to parents and mothers. Parents should get justice following the loss of children in the hospital.

With those remarks, I beg to support the Motion.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, from the outset, I support this Motion. It is a sad moment because if Jacinta and Dedan, especially the sister of Dedan, did not have access to social media, the whole incident would not have come out. The way the report has been handled – in terms of how the information has been given – it is in such a way that when you look at the documentation, there seems to be a very well planned or orchestrated motive by the health officers who gave this report in terms of explaining what happened.

I am looking at the report by the Medical Superintendent, Dr. Akumba. The mother insisted that the babies were the right ones, but the father said that they were not. When Sen. Kittony moved this Motion, she talked about three very key issues that are very critical in hospitals; the internal reporting, the systems of handover and how it should be done, the filing system and how that should be followed through. That seems to be the basis of the problem.

I concur with Sen. Lesuuda that the work of this Committee should not stop at this. In fact, the Committee needs to even extend and look at other cases that have come up and see how solutions were found for those specific cases. First, such cases have become rampant. Secondly, Jacinta was a victim. She became a victim in the first instance since she did not do an ultrasound. Therefore, she did not know whether the babies were dead or alive. Therefore, she was very easy to convince. What percentage of women can access the ultrasound and go for prenatal care, so that by the time they get their babies they know what is happening?

It is really sad because there are two twins growing up somewhere, completely detached from their families. The belief is that the twins are alive somewhere else and not where they are meant to be.

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

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

Page 9 of the document needs to be clarified because it gives stages of an abnormal birth. Somebody reading through this section may think that they are reading about how an abnormal birth takes place, but I think they are procedures that need to be taken. The procedures are very important because they give the basis of how things are meant to be done. However, it begs the question about what is happening to supervisory facilities of health institutions. How was Pumwani Maternity Hospital able to get away with this for so long without somebody identifying it? If Dedan Kimathi and Jacinta had not gone on social media for their plight to be known to the world, nobody would have known. We do not even know whether these were the only lost twins. Maybe there are very many more. So, something needed to be done from the onset.

It is amazing that the system that has a lot of clarity, for example, medical notes being taken---. That is what interns are trained to do during their course. Where are the notes and the information that was given? There is a process of handling a pregnant mother. For example, her hand should be stamped as a sign of identification from the beginning. The mother is meant to sign a document stating that she has been informed of a problem, for example, if she is not able to read or write.

It is very important that some of the issues tackled in Paragraph 9 should become a mission for the Committee to ensure that every detail is followed in a very clear and orderly manner, so that things are done in the proper way. For example, the bodies had no tags or labels. That is not even standard practice. How were the bodies taken to the mortuary without that being done? On the other hand, the Pumwani Maternity Hospital staff went through all the bodies in the refrigeration and stated that the ones that had been autopsied were not the ones; that they never found the bodies of the dead children. Such form of contradiction is all over the Report.

Various important issues have emerged, but how will they be addressed in the future so that we do not have such sort of inconsistencies taking place? A student nurse delivered the first baby. Is it standard practice that a student nurse can actually deliver a baby without a main nurse at the station? When the mother had a previous scar, how was that possible? Most of the time, an alternative is made the moment it is known that a mother has a scar. There is even a contradiction because the mother seems to have identified that the first baby--- She said that the first baby she saw was dead but the second one was not, but she delivered through a caesarean section. If that was the case, was it half or full anesthesia?

How did the nurse put the baby in a kangaroo position on the mother? At what point was this happening? There are so many inconsistencies, and I think they can only point out to one thing; that there is something completely wrong with this specific case and that something has gone completely out of hand that needs to be investigated over time so that people can know and find a way forward.

Mr. Temporary Speaker, Sir, looking at page 23 at the Committee's observations and final recommendations, it is also good in the final editing to put Committee observations and final recommendations separately. Putting them right at the beginning confuses one. When somebody is reading the first section of the Committee observation, it looks like they are recommendations but this is the section which the Committee is giving the sort of contradictions that they saw coming out of the case as they were

looking at it. The actual recommendations come later and they have been titled on page 24 but these are specific recommendations from this particular Committee.

Looking at the observations, the same contradiction that had been noted earlier in the Report keeps coming up, for example, there were gaps in the way the expectant mother was handled because she wrote for herself during the admission but the nurse wrote on her behalf after she gave birth. So, there is a level of inconsistency. The mother; Jacinta, had a previous scar and was scheduled for an ultrasound and a caesarean section but this did not happen until she gave birth. That is not even clear because the ultrasound was given as they were trying to determine whether there was a second baby or not. This is a whole lot of confusion. The mother said that when she asked about her babies, she was told that they were in the nursery. However, we know that the procedure should be that the babies have to be shown to the mother immediately.

Mr. Temporary Speaker, Sir, I think we have taken a lot of advantage of some level of ignorance but may be a lot of trust. Many mothers go into hospitals feeling confident that they will be helped to get their babies successfully. However, somebody somewhere is doing business. It is big money. Shame on that person. It is completely unacceptable that you can actually do such business because you then end up with children who will grow without their parents, never know their culture or background just because you want some little money.

The Senate Minority Leader (Sen. Wetangula): It is big money!

Sen. (Dr.) Zani: Sen. Wetangula says it is big money. I hope they rot using that money. I hope they are not even able to use it successfully. It is just the whole story.

I sympathise with this Committee. Sen. Kittony, it must have been a lot of hard work for this Committee because the contradictions are just enormous. I think I like the way you have put your Committee observations reflecting the level of confusion that was there. There is need to move forward so that they can move on with what they need to do. The parents agreed with the hospital to dispose their babies and yet they had said that the babies were not theirs. So, how did they agree? When finally the DNA was done, the father agreed that those were the babies but the mother disagreed.

Finally, the Report is not even clear. Was the DNA finally done? What was the result of that DNA? It is because in one of the paragraphs, I read that the DNA was finally done but then the spurious bit is that a DNA is being done on probably the wrong victims –if we may call them that. You are doing a DNA on the wrong bodies. So, obviously you will not find concurrence between those bodies and those specific parents because the foul play has already been done.

Mr. Temporary Speaker, Sir, I think the base recommendation is that the hospital should institute internal disciplinary measures for staff that have been found to be negligent. It should not be the general warnings that we hear every day because nobody responds to them. It would be good for somebody who is culpable for this situation to be answerable for this specific case. I think it would be foolhardy for such a case to reach the height of the Senate and then end up wishy-washy; neither here nor there. We should not end this case.

If we have to spend more time, we need to get that time, get into the details of this case and find the culprits. This is because if it comes to the Senate and we are wishy-

washy; neither here nor there, these are the recommendations. What next? The babies have gone. If I wanted to get into the trade of selling babies, I will now be convinced that it is a good one and that I will get away with it. So, why would I not engage in it?

Mr. Temporary Speaker, Sir, I think we need to be really serious. I commend the work of this Committee. I just request that they need to go further and find out exactly what happened and give us more details. We need to hear more about this case. Medical ethics should be strictly observed because these are students who take the Hippocratic Oath to defend and protect life but obviously, there are other issues that are coming up. So, follow-up mechanisms are very clear and that is very critical.

Women have to worry so much about so many things. First, whether they will get pregnant at all because not everybody gets pregnant. Two, when they get pregnant, will they or their babies die? Three, when they get their baby alive and whether they will keep them alive or not, is not an issue they need to worry about. If you give birth to your baby, that baby is alive. Enjoy that baby and let that moment not be deprived from you.

Sen. Mugo: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to contribute to this Motion. On the onset, I thank the Chairperson and the Members of the Committee because I have witnessed how many hours and how hard they really worked to put together this report. It was a very difficult assignment as there were even contradictions between the mortuary and hospital staff. It was not easy. I congratulate the Committee.

I also thank the Committee for putting so many hours into this in trying to answer the difficult questions. As it is now and as has been said, the babies have not been found yet. Somebody somewhere has to find these children so that we can put a stop to this. I think that is what the Committee has tried to recommend.

Mr. Temporary Speaker, Sir, I note that on bullet 14, the Kenya National Union of Nurses (KNUN) were asking what my interest is in this issue, purporting that I had a hidden agenda. I would like to indicate from the very start that I did not even know these parents. I have never met them and I do not know the family. I saw the story in the *Daily Nation* and it was a very sad one. The parents were asking who could help them with DNA. They knew those were not their babies but they could not afford to pay for DNA. The parents are quite poor. The father is jobless. I do not like to use the word poor but they are jobless and did not have any income whatsoever. I got their number from the *Daily Nation* newspaper reporter who had reported on the case. That is how I got to call them and offered to pay for the DNA. It is the same way that I have in the past paid for medical cases even when I was in the Ministry of Health. I cared.

Mr. Temporary Speaker, Sir, I would like to add that part of our job as legislators and Senators is representation, legislation and oversight. This is part of representation. So, I was just doing my work. Luckily, when I called the Director of Medical Services, he said that they would do the DNA free of charge. They said it is part of their social responsibility. In fact, it is the Principal Secretary (PS), the lady, who confirmed that even in the press. I also thank the Ministry for taking that interest.

The other question from the KNUN is where I got the results. They were also given to the County Medical Officer. I thank him because he was very cooperative and, in fact, called me to ask me to send the parents to his office, which is what we did. His

office took the parents to the Health Ministry for the DNA. It is the county that did that bit. I thank them.

Mr. Temporary Speaker, Sir, I believe that this Report was released to me, the hospital and the county doctor because I had requested and offered to pay. So, there was nothing behind it whatsoever. As I said, I did not even know these parents, other than when they came before the Committee to provide evidence.

I would like to add, as has been said by most Senators, that this practice is rampant. It is big business. Parents keep on bearing the pain when their children are stolen from this or that hospital.

Mr. Temporary Speaker, Sir, it is our duty as Senators, Legislators and Members of Parliament to protect the poor. These parents could not hire a lawyer, as one of the distinguished Senators suggested. They are not even employed. That is why they were airing their grievances in the press for somebody to help. So, I believe that it is our duty now to assist them. There are many things that do not tie up. The Committee went ahead even to tell the professionals who are trained how they should run the hospital because from the interviews which were done, you would have been surprised how they are running hospitals as professionals. Every recommendation here, after what I heard, makes sense.

We should give this Report to the Ministry of Health, the Director of Medical Services or whoever is in charge to ensure that these procedures are followed. However, because of many inconsistencies, I do not think the Committee can completely follow to come up with the final course of action unless we have lawyers in this Committee which would take a long time. That is why I support the recommendation that this matter should be handed over to the Criminal Investigations Department (CID) to investigate and come up with the facts because what came out from the staff who handled the twins from the hospital to the mortuary was unbelievable. You could not follow it; there were many contradictions. For instance, one said: "I received the bodies but they did not have any labels on them." Why would bodies be taken to the mortuary without labels, if they are real? Then they said that the bodies that were provided for the postmortem were fresh yet before any post mortem had been done, this had taken over a week.

Therefore, I urge my fellow Senators to support this Report and demand that it does not end here. When we give it to Government officials who are charged with this work, the Committee will follow up the issue to see how it ends and to be convinced that the truth has come out and that nobody has been made to change the story from what it is for some considerations. We must get to the bottom of this so that we support and help many parents who are in tears.

I do not want to keep on repeating what has been said because it has been said again and again that this is a multi-billion racket which has invaded not just Kenya but it is an international ring. We do not want it to thrive in our country. We would like to see that it has stopped and make sure that maternities are safe.

Last week, we heard of the other case in Nakuru. We are sure they are rampant; there are many more. Stern action should be taken to ensure that those who are doing it will not do it anymore. This is murder. I call it murder; if you steal somebody's children

and we do not know where they are. The DNA test was done. The children were not found in the mortuary. So, where are they? We have to find them.

I believe we will pass this Motion. I urge all Senators to do so, follow it up to the end, see to it that we unravel this mystery and stop this racket from going on.

With those remarks, I beg to support.

The Temporary Speaker (Sen. Murkomen): Before I give Sen. Muthama an opportunity, who is Temporary three?

(Sen. Elachi nodded)

Okay, you will get an opportunity later. So, it is the Whips from both sides.

Proceed, Sen. Muthama.

Sen. Muthama: Mr. Temporary Speaker, Sir, with a lot of pain, I rise to contribute to this Motion. Sen. Mugo narrated very clearly what necessitated her to seek this Statement. This matter affects Kenyans. I congratulate you, Sen. Mugo, for being concerned about a poor Kenyan who had no capacity even to come and approach you. This is a poor mother who was pregnant, had labour pains and went to the best maternity hospital in this country expecting to give birth to her twins, bring them up to add to the population of this country and to bring up Kenyans who might have changed the lives of many people.

I do not know whether I will abstain, reject or support this Motion. I do not know what position I will take at the end of my contribution. The reason is that what Sen. Mugo sought was not about the bodies of the twins, but about the disappearance of new born twins. There is nowhere that she has quoted through her request for that Statement that there is a possibility that the twins died. It is the disappearance of two children. It pains me when Ms. Jacinta says to Sen. Mugo, "I gave birth to live children and I heard them cry and that was the end." She could not breast feed her children. She was left with the pain of giving birth and the pain of losing her children.

When I look at the forward of the Report, on page three, the second paragraph from the bottom, it says:-

"The Committee recognises the complexities of this subject. We acknowledge the need for a long term approach in ensuring that this situation does not occur again."

Mr. Temporary Speaker, Sir, this is a life of a human being, whether they were two hours or 30 minutes old when they disappeared. That life before the eyes of the creator is the same as the life of Sen. Muthama, Sen. (Prof.) Leshan, Sen. Lesuuda and everybody here. But a tedious investigation by this Committee was done. What we are not seeing here – and what would have been the highlight of this Report – is that children were born, they died or disappeared. It is between disappearing of the children being alive and a box being taken to City Mortuary wrapped and the situation remains there.

Mr. Temporary Speaker, Sir, we are turning out to be a society that will need Jesus Christ to come and close Kenya once and for all as he did at Noah's time and bring a new generation that will do things in a different way. We are stealing land. We started by stealing money and we found it was not enough. We went to land and we found it was

not enough. We went back to the Government and we found it was not enough. We have tried to steal everything in this country and we found it was not enough. Now, we are stealing children.

That the life of a human being can be taken to the market and be auctioned, and the only thing that we can get from Pumwani Maternity Hospital is that this situation should not be repeated again. This Report should be forwarded to experienced investigators to go and investigate.

Mr. Temporary Speaker, Sir, when are we expecting this Report to come back? If it is going to take three years to come up with the report, it is not helping at all. We will have now lost thousands of new born babies. What is the business of having laws in this country? What is the business of having civil servants to serve in institutions like Pumwani Maternity Hospital if such a thing can happen? In the same page three of this report, if I look at paragraph four from the top where it is marked two, the report says why the hospital gave the wrong information that the babies were born dead while the DNA results have since been established, that the alleged dead babies are not a match to the parents. Mr. Dedan Kimathi and Mrs. Jacinta Wanjiku owe to each other, they are of different parents.

Mr. Temporary Speaker, Sir, you look at the Report of a box being taken to the mortuary and again you look on the right side that the babies are disappearing alive and yet the DNA of unknown does not match the parents. What a lie! We are here and we have been elected to lead and protect the interests of Kenyans including their lives. We know, as Sen. Wetangula said that there was an individual who was producing miracle babies, and in three months, she could give birth to five babies. In another three months, she could give birth to 10. These are Kenyans. There was a report that was going through social media and it seemed to originate from the Zimbabwean President, Robert Mugabe who said:-

“Kenyans seem to be having a University that produces degrees known as Bachelors of stealing.”

Mr. Temporary Speaker, Sir, that is the name we have. So, when we walk and alight in international airports carrying our passports and you present it with your face to say you are Kenyan, immediately you are classified as a Bachelor of stealing. This issue must be taken seriously and we want those investigations to be conducted and truth be established. I failed to see the recommendation of the sacking of the people who were in charge in that hospital.

Sen. (Prof.) Lesan: On a point of order, Mr. Temporary Speaker, Sir. My friend Sen. Muthama has made a very serious allegation about the presence of a University for stealing in this country. This is very serious and it affects the reputation of all Kenyans, Senators included. I think this is a point that we must deny or otherwise ask the Senator to clarify or give evidence to the fact that there exists such a school in this country. Otherwise, we should all start to deny that because our reputations are at stake.

Thank you.

The Temporary Speaker (Sen. Murkomen): I think more importantly Sen. Muthama, is whether the President of Zimbabwe said it or it is part of those parody

accounts people go to in social media in the name of a President of a country and it is perpetrated by many Kenyans. We must be careful in that regard.

Sen. Muthama: Mr. Temporary Speaker, Sir, I will try to be careful but the truth of the matter is that the allegations were made against Kenyans and that is how we were quoted. I can go further and say that even when the Pope was here, he told us that we take care of corruption and protect it like sugar.

The Temporary Speaker (Sen. Murkomen): Sen. Muthama, I want to dispose of the most straightforward issue; whether the President of Zimbabwe said what you said or whether there was evidence to that effect. If there is none, you can withdraw that statement. You do not need to apologize because the President of Zimbabwe is not here. You can always withdraw but now proceed with the Pope's version.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Three weeks ago, it was on *BBC*, *The Mail*, *The New York Times* and in the South African media. This is what Mugabe said:-

“The people of Zimbabwe, be careful of the people of Kenya. When you go to Kenya, everybody in Kenya is a thief. They steal everything, they will infect you with bad manners and I think their universities offer a course called Bachelor of stealing.”

Mr. Temporary Speaker, Sir, I am surprised you missed it. My friends from Zimbabwe confirmed that he said it.

The Temporary Speaker (Sen. Murkomen): I saw it but from a parody account.

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. I would want Sen. Muthama to substantiate the allegation that there is a university in Kenya. Whereas I am the Chairman of the Senate Standing Committee on Education in Kenya, I would like to be appraised of this university and its location so that I can put it in the record because I do not have that one in my list of universities. I think that is too bad.

The Temporary Speaker (Sen. Murkomen): Hold on Sen. Muthama. I think so that we proceed – I know you are going to respond – of course you know newspapers are not referred to in this House, and the Speaker sitting here has also had an occasion to witness in the social media those kind of things, but further interrogation has shown that it is parody accounts, whether for Donald Trump or for the President of Zimbabwe, there has never been clear allegations that it was a true excerpt for creation in the social media. You must be careful about the Standing Orders and substantiation of issues. If you have no evidence which can be substantiated, you withdraw but you can substitute with the Pope because he was here.

Sen. Muthama: Mr. Temporary Speaker, Sir, what I said was in the media. It was on *Cable News Network* (CNN), *British Broadcasting Corporation* (BBC) and in the newspapers. It is not a joke. I am not saying that Kenyans steal or have a school which offers degrees in stealing. It was said and even when the Pope was in the country---

The Temporary Speaker (Sen. Murkomen): We need to close that issue.

Sen. (Prof.) Lesan!

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I have no doubt that the President of Zimbabwe said that kind of thing. But we are best placed to know whether or

not what was said out there is true. Whether there exists a university for that kind of education, it is in our interest, both on this side and the other side of the House, to defend that position which is erroneous. Whether or not it was said, it does not really matter. It is us in this country---

Sen. Karaba: Mr. Temporary Speaker, Sir, more often, we have been told that we should not depend on hearsay, reports from newspapers, *Twitter* or text messages. What kind of ruling will you give against my friend Sen. Muthama, because he is going against a ruling that was done some time back? He is getting us further---

The Temporary Speaker (Sen. Murkomen): That is okay, Sen. Karaba. I have heard you.

Sen. Elachi: Mr. Temporary Speaker, Sir, it will be out of order for the Senate to discuss about universities and tell our young people that we have a university for thieves. It would be good if the Senator of Machakos withdrew those remarks, because the young students will wonder whether Senators are serious about their education. Let us not take that route.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, we need clarity. What is written in the newspapers is a reality of what is happening. Sen. Muthama said that "the newspapers have said." Whether or not it will be verified is totally a different process. As a society, we can have that discourse.

There is a lot that is happening and people are questioning. Some people are questioning the way certificates are attained. Some of them are fake and have been attained from other institutions. These are the realities. We have been in academia and we have dealt with this. We need to deal with it stringently to ensure that we come back to the glory that Kenya had in terms of qualifications.

The Temporary Speaker (Sen. Murkomen): What is your point of order?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, the point of order is that, he is reporting what the media has said. He has not said that there is such a university. Therefore, he can not substantiate by having to name it.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, is it in order for all of us collectively to try to truncate debate and free speech by disallowing examples? What Sen. Muthama said was not that there is any university in this country that offers thievery as a course. He simply cited somebody who said this and said that he hopes our country will not go in that direction. Surely, that cannot be offensive to anybody. When we are debating, we should be allowed to think as freely as Romans and as figuratively as we can, so that we enrich debate.

The Temporary Speaker (Sen. Murkomen): Sen. Muthama, the ruling of the Chair on this is that if you have said that the reports attributed to this and that, I think to that extent, it is alleged by those people that there is that university that does that. That is acceptable to that extent.

Sen. Muthama: Mr. Temporary Speaker, Sir, let me use the words "it was alleged." However, corruption in this country is coming to this level. The President has confessed that corruption in this country is beyond repair and he needs Kenyans to assist him. We should not just criticize the action of stealing children and not shout about losing Kshs200 million. If those children had a chance to grow up in this country, maybe they

would have generated Kshs400 billion for this country. Let us not treat cases of corruption differently. Corruption is corruption and stealing is stealing. It has no boundaries.

Could I be given two more minutes?

The Temporary Speaker (Sen. Murkomen): You have one minute to conclude.

Sen. Muthama: Mr. Temporary Speaker, Sir, as I said from the beginning, I do not know whether I will support, reject or abstain from voting on this Report. I hope that those who will be given this Report to implement will give us a true report at the end of the day. Those who are involved should not only be jailed but hanged.

Sen. Elachi: Mr. Temporary Speaker, Sir, first, I thank Sen. Mugo and the Committee. I pray to God that Ms Jacinta Wanjiku will move on from this tragedy. This is not the first time we are losing children. We need to pray to God that after serving Kenyans for many years, we will hand over to a generation that will change this country. It is unfortunate that leaders who have been in institutions of power are the same ones who are lamenting.

What will happen to the young ones who have come in and need encouragement to move this country forward? It is important for the institution of the Senate to understand that we want to see a new breath and that is why we have a new dispensation of the Constitution.

From the Report, there is a family that is crying somewhere. Likewise, a few days ago a patient was killed at the Kenya National Hospital (KNH). There are many questions that arise. It was a general ward and he was not the only patient. This is the same as when Ms Jacinta woke up and was told that she had a stillbirth, and that the babies were dead. She was taken through a painful process as a mother, of doing a DNA test and later being told that the babies are not hers.

What is happening? What are the challenges? What do we feel as human beings when we do some of these things? Pumwani Maternity Hospital was one of the best hospitals in Kenya. Many people in this country were born in this hospital. It was among the best in East Africa in terms of midwifery.

When you look at recommendations of the Committee, you wonder what is happening with our doctors. Doctors have left everything to be done by students. Corruption in this country has many faces. Doctors in many of our health facilities are taking advantage of students. They report in the morning and go to their private clinics. We have seen this happening in all our hospitals. The doctors will just walk around and sign everything that has been done by those young students. At the end of the day, the student will be blamed because he or she has no choice. However, we should not be blaming students, but the doctors.

Mr. Temporary Speaker, Sir, we need to monitor our institutions. It is a pity that when these issues are raised by the media, we start the blame game. We need to monitor and see to it that our institutions are working in order to deliver services to our people. Once something has been messed up, no amount of investigation will remedy the situation. It is no wonder that doctors and nurses who were involved in the disappearance of these twins are still on duty.

They collaborated with others to ensure that when a woman delivers a baby, that baby disappears mysteriously. This is not just happening in Pumwani Maternity Hospital, but in many other health facilities in this country. Women are crying out there for losing their babies.

If we had fully devolved health services in this country, some of these things would not happen. This Senate must do a thorough investigation in all our health facilities. We cannot continue sitting here assuming that everything is okay when many patients are suffering and have undergone wrong surgeries and so on. We have very many pending cases of negligence and wrong prescriptions by doctors. All these cases should be investigated so that patients who have suffered under these doctors get justice.

Mr. Temporary Speaker, Sir, if indeed, as a country we need to deal with the challenges we are facing, the first step is to examine our character and attitude. We should ask ourselves: When I go to work in the morning in a public office, what is expected of me? Am I doing my job just for the sake of it or because of pay? There were days when doctors and nurses were driven by call for duty. It is no longer a call. Nowadays, they do not treat it as a career. They come in with an attitude. They do not have the attitude to give service, but they are driven by salaries and other things. That is it. These are some of the challenges we face as we move on.

We also need to look at the education sector and ask ourselves whether students are enrolled to medical colleges as a career or they are being forced by circumstances. In most of our colleges and universities, we have parallel or Module II programmes where students are allowed to upgrade their education in medicine. Are these programmes well structured to produce competent doctors and nurses?

Mr. Temporary Speaker, Sir, many people are joining various professions just to have names, for example, to be called doctor so and so. Therefore, when they go to give services, they do not even have the heart to provide the service. It is something we must start looking at critically. The professions which are necessary to transform this country must be merited and students must work for them. If one does not meet the qualifications to be an engineer, architect, doctor or lawyer, they can pursue other professions. That is when the best services are provided.

When I imagine Jacinta, I think it would be prudent if the Senate visited her to hear her story. It will enlighten us on how to manage trauma. As we talk about it, maybe we have traumatized her. Maybe she is wondering if we might be of any help to her. Therefore, we cannot raise her hopes and end up shelving the Report. We have to ensure that we follow up with the investigators to ensure that we get to the bottom of what happened. After that, the Senate must make a visit to the hospital so that we understand how it operates.

When I look at the National Assembly's Committee on Health, it is trying to ensure that the health sector becomes the responsibility of the national Government. This is because out there, people are crying. The hospitals have not taken the right drugs. Some of the governors have decided to purchase drugs elsewhere. When you visit KEMSA, you find that drugs are unavailable or they are expired because the counties are not purchasing from them. At the county referral hospitals, there are no drugs for the patients. This is because the health sector is not being taken seriously and viewed as a

money minting sector. Nobody should use the health sector to make money. This is a service that must be provided to the people.

Mr. Temporary Speaker, Sir, it is this Senate that has to prove that it is a devolved function and it must work. It is not a service that only provides ambulances we see roaming all over. It is time we provided quality service. We ought to reflect on the extent we have provided health service to the people. The governors decided to run it as if it is an administration block and not a health facility. Governors are known to have made it difficult for the performance of the institutions that have been devolved to the county level. Many Kenyans are wondering if they have to go to a county referral hospital or a hospital here in Nairobi.

The objective of devolving the health sector was to take services closer to the people. The Senate should ensure that before this current term ends, we look into the health sector in so far as the counties are concerned. By the end of our term, we should, for instance, have three counties that we can derive pride in. It is not about building the medical training institutions that the counties are currently doing. It should be more than that.

Mr. Temporary Speaker, Sir, I remember there was an unfortunate incident that occurred in Embu. We never took it with vigour the way we have done with this. That is why it takes a personal initiative the way Sen. Mugo did. Nobody followed up with the Embu case where infants died while in the Intensive Care Unit (ICU). We talked about it and left yet it was a critical issue we ought to have followed up.

Finally, we also need to improve our mortuaries. Poor people need to enter hospitals and find good attitude by nurses or doctors who are attending to them. I always say character and attitude will kill our country. If a patient visits a hospital where doctors and nurses have a negative attitude and that they are not being paid well, lives of such patient are at stake.

Mr. Temporary Speaker, Sir, I support the Report but it is time we sat and asked ourselves, as Senate, how to audit this devolved function. For at least one of the functions, people will remember that we ensured that the services were devolved and they received better quality services than what they used to receive. All of us here should ensure that the Criminal Investigation Department (CID) takes up this matter seriously.

The case should be closed after we have known that either the doctor or nurses who were on duty are in jail, where the records are and what happened, so that Jacinta can be satisfied that the case was followed to the letter. She will have no child, but at least she will be satisfied that her case was heard and closed.

I beg to support.

Sen. Hassan: Mr. Temporary Speaker, Sir, thank you for this opportunity. I also take this early opportunity to thank Sen. Mugo for having brought this matter to the Senate. I also appreciate the extensive work that has been done by the Committee.

I join those who spoke before me to say that as Senate, we need to shorten the duration upon which we process such types of complaints or statements. This Statement was sought sometime in January and we are finally concluding the report in December. We need to improve our systems to ensure that we are more efficient in terms of coming up with such types of reports.

Mr. Temporary Speaker, Sir, having read through this Report, I just want to highlight one fundamental issue. Most of the people who frequent Pumwani Maternity Hospital and other Government institutions, unfortunately, are not from our rank and file. My daughter was born in Nairobi Hospital, with the highest care and level of attention one could ever imagine. Most of us here have either given birth in such prestigious hospitals or have had access to such types of facilities, if not for ourselves, then, for our grandchildren and many others.

As leaders, we need to appreciate that we lead poor people. One of our most fundamental duties is to protect the poor. However, this is a country where the poor have been made very vulnerable by systems that are so skewed. I have said it in this Senate that I believe I will live to see that day when the Government will make it illegal for anyone who works in Government, be it the Senate or any structure of Government, to be attended in private hospitals. That is the only way we will improve public health care. If you knew that your daughter would be born in Pumwani Maternity Hospital, as the Governor or the Senator for Nairobi or any county of this country, you would make sure that it has the highest level of care. Most of us have found private solutions to issues affecting the public. We have the best health care money can buy.

Mr. Temporary Speaker, Sir, as we interrogate this, we also have to interrogate the consciousness of this nation. Our consciousness as a nation is extremely and fundamentally flawed. I have entered public hospitals many a time. Most of the times, we go there for political grandstanding for the purposes of getting opportunities. Governors, Senators and other politicians walk in and out. Until and unless we commit actual resources to these types of hospitals, I do not think the doctors, politicians or hospital managements are to blame. The politicians and leadership of this country are to blame even multifold.

Mr. Temporary Speaker, Sir, this Report demonstrates the level and extent of neglect, 50 years after Independence. We said we were getting Independence to fight with disease, ignorance and poverty. Majority of Kenyans today still live below the poverty line while a few of us languish in almost stinking, filthy and immoral wealth. A few of us access the best health care when people today are dying of basic disease.

So, let us not interrogate two patients but what this system has done to the many of us. I thank this Report for exposing just one particular incident. For us to acknowledge that there is rot somewhere in this country, an incident must occur. If this incident is not a conscience score, then I do not know what else can be. This country needs to take action and I believe we must move progressively to that extent. No private schools or universities to functionaries of Government, unless you care for it yourself. It is the only way that we will determine public good.

Sen. Elachi talked about our generation. It must have a fundamental shift from the past. Today we live in a community of the privileged and grandeur. The Pope shamed all of us upon arrival. Even, I, as the Senator for Mombasa had a bigger car than the Pope when he landed in Nairobi. Forget about the fleet of vehicles. The Governor of Nairobi, the President and everybody else were leading with fleets. The Pope did not come for flirtation with the mighty but to give hope to the poor. This political class has failed time and again. Most of what we do here is just emotional outbursts for the purposes of

cameras. Hardly do we morally reflect this in our lifestyles. You get an opportunity and you steal from the very poor.

Mr. Temporary Speaker, Sir, I heard some of us talk about this opportunity where people commit acts of fraud in the procurement of medicine. Today, the national Government takes care of maternal health. How does it monitor the utilization of this maternal health? They give Kshs5,000 per mother. They need to mainstream it. It is not enough to give these counties which are already corrupt and without processes. If it is a conditional grant, let every penny go to maternal healthcare.

The people who do this are sleeping in Karen and Lavington estates. What is happening in this country is annoying. Sometimes people ask us why we are so annoyed. How is it possible for you to live in Kenya and care for this country and not get annoyed? You must be living in abject privilege. We have no conscience. Look at what is happening; pictures of poor and vulnerable people. This is where it happened. If you did it to a son or daughter of the mighty, you would have been in jail or resigned for negligence. We are telling them to investigate one year on.

Where is the sense of outrage and consciousness in this country? It is difficult. As young Kenyans who have grown up in the system, we are trying our best every day to avoid material greed which puts our country into abject poverty. What has happened in this country over the last 50 years is history that we must rewrite so that the future generation will learn. If we need to make an about-turn in our healthcare systems, we need to start making sure that every public servant visits these institutions.

Mr. Temporary Speaker, Sir, we should stop this issue of being given insurance; where you even get a priority card for Nairobi Hospital so that your life is better than everybody else. This needs a mind shift. We are a class of privileged spoilt brats, as Kenyans put it. We think we can jump queues at the airport, must be given the best cars or use fuel guzzlers. Some people do not even know how much it cost to make a phone call because most of their life, institutions of government have been footing their bills. They do not know the cost of fuel or anything else in this country. They will not even be affected by what was in yesterday's Gazette Notice because the public is paying for their facilities. So, we relinquish the majority of us to poverty, and then come to this Senate, bring a report later and say: "Investigate".

I remember that there was a son of a professor from the United States International University (USIU) who was mistakenly shot by the police. The police was prosecuted for murder within days. When the son of hon. P.K Muiruri was shot, under the pretext of being a *Mungiki*, the man is under death row but when this happens to the poor, who we must protect in this society, we write a report of the Senate and probably this will rest there. What will happen? How many Senate reports have I seen? What is different about this one? So, let us back ourselves with some bit of honesty as a country. It has reached a point where we must say enough is enough. We have ruined this country.

The Temporary Speaker (Sen. Murkomen): What is it, Sen. Mugo?

Sen. Mugo: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator in order to keep on saying that this Report only states, "investigate" while the reason for this Report is so that we can also enrich it because there is still room for amendment to propose what would make it more forceful?

Sen. Hassan: Mr. Temporary Speaker, Sir, on that account, I stand guided. However, I believe that we have gotten to the limits of our capacity. This Senate is incapable of a criminal investigation. Therefore, that recommendation is reasonable to that extent but my concern is; how swiftly we will act on it? This is because there are limits to the capacity of this Senate. It has many limits. Most of the time, we make recommendations to other agencies to carry out investigations.

Mr. Temporary Speaker, Sir, nonetheless, I thank my senior, the one and only *Jogoo* in the House at this point in time, Sen. Kittony, who with her team have come up with this Report which, as much as we are outraged, gives us a basis for debate because it becomes a valid document for public discourse.

I thank them and as I said, as we go on as a country, we must become more and more audacious. I saw Sen. (Dr.) Zani acknowledging the fact that we need to start using public facilities for us to start giving our time and effort to these public utilities. Otherwise we will never deal with this situation but nonetheless, thanks for this expose and Sen. Mugo for bringing it. I believe that something will happen and some action will be taken and somebody will start to have faith in us as their representatives.

With those remarks, I beg to support.

The Temporary Speaker (Sen. Murkomen): I call upon the Mover to reply.

Sen. Kittony: Mr. Temporary Speaker, Sir, I take this opportunity to thank all the Senators for their contributions. I read the mood of the House that this is, indeed, a touchy issue and needs our contribution. There is no other place to put things right other than this Senate.

This Report has room for improvement. We have heard all what you have said and the Committee acknowledges it with a lot of humility. This Committee did a lot of work. The report that we got was rather chilling and traumatizing. Indeed, we were privileged that we had a team of doctors in the Committee. We were able to get some gist of what we were looking for. I also want to say that we even went as far as seeing those dead bodies in the mortuary although we were not supposed to do so, but we had to do it.

The Temporary Speaker (Sen. Murkomen): Order, Sen. Kittony! It is now time for interruption of our business, but if you assure the Chair that you would conclude in five minutes we will give you the five minutes. If not, we can postpone until tomorrow.

Sen. Kittony: I will, Mr. Temporary Speaker, Sir. As I was saying, the work of the Committee was traumatizing and chilling and we even went to the mortuary and saw dead bodies. That was not our work, but we had to.

We have strongly recommended that the Criminal Investigation Department (CID) do their work because none of us has expertise in this. If this Report is handed over to the right department, the truth of this matter will come out. In the Committee, we have a number of doctors who are in the House. We did not have Members with expertise in criminal activities.

We have recommended this Report be forwarded to the CID and with all the support we have noted here, this report may help Kenyans who may be victims of such circumstances. There is no other place to do things right other than this august House.

Finally, I want to thank all the Senators who have contributed to this Motion.

I beg to Move.

The Temporary Speaker (Sen. Murkomen): First, before I put the Question, this is not a matter concerning counties, therefore, we will vote in the usual manner.

(Question put and agreed to)

ADJOURNMENT

Hon. Senators, it is now time for interruption of the business of the House. The House, therefore, stands adjourned until tomorrow, Thursday 3rd December, 2015, at 9.00 a.m.

The Senate rose at 6.35 p.m.