

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 5th November, 2014

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

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

PRAYERS

The Deputy Speaker (Sen. Kembi-Gitura): There is a Paper to be laid on the Table by the Chairperson of the Committee on Roads and Transportation. If it will be discussed tomorrow, then it must be tabled today.

Next Order!

NOTICES OF MOTION

The Deputy Speaker (Sen. Kembi-Gitura): Is Sen. Mutula Kilonzo Jnr. not here?
Next Order

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Any Chairperson of a Committee present here to issue a statement? The Order Paper shows that there are a good number of statements to be issued or to be sought today.

Is the Chairperson of the Standing Committee on Lands and Natural Resources here? He is neither here nor is Sen. Mutula Kilonzo Jnr.

(Sen. Nabwala stood up in her place)

Sen. Mukiite, are you seeking or issuing a statement.

Sen. Nabwala: Mr. Deputy Speaker, Sir, I had requested a statement from the Standing Committee on Lands and Natural Resources.

The Deputy Speaker (Sen. Kembi-Gitura): The Chairperson is not here.

Is the Chairperson of the Standing Committee on Labour and Social Welfare here? It appears that no Chairpersons are present.

Sen. (Prof.) Lonyangapuo, do you have a statement to make?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed, Senator.

PERSONAL STATEMENT

CONFLICT ALONG THE BORDER OF BARINGO AND TURKANA COUNTIES

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I rise to make a Personal Statement pursuant to Standing Order No.45(2)(a) regarding the ongoing conflict at the border of Baringo and Turkana Counties, especially in a place called Kapedo. I am making this statement because there have been allegations by some leaders linking me to the said conflict. This has been brought to the public domain through the media. I would, therefore, like to set the record straight by refuting these allegations very strongly. They are baseless and far from the truth.

I also strongly condemn any act of banditry in the said counties or elsewhere in Kenya. The Killing of the 19 police officers by bandits was very unfortunate and should never be allowed to occur again in Kenya. As one of the peace loving leaders in the North Rift, I have made attempts to establish the root causes of the sudden killings, especially of the *askaris* in my effort to find out what is ailing the area in question.

I was told that on 30th August, 2014, a young man of Pokot origin was beheaded in Kapedo when he visited a shopping centre riding on a motor bike. His head has not been traced up to now and the headless body is still lying in Kabarnet District Hospital Mortuary in Baringo County. The locals attempted to seek General Service Unit (GSU), District Commissioner's help and the chiefs to locate the head so that the body can be buried to no avail. To make things worse, the said killer posted the photograph of the head of the young man on *Facebook* with the following inscription:-

“Here is the head of the devil.”

Mr. Deputy Speaker, Sir, I have been informed that this is what led to the blockage of the road into and outside Kapedo; hence the mess we are in today. Out of concern, as a reasonable leader, I inquired into the problem, but I have been accused of perpetuating lawlessness in a camouflage for scramble for minerals and oil in Turkana County. This cannot be further from the truth.

Indeed, the oil and mineral issue has nothing to do with the current conflict.

As I conclude, I would like to reiterate that there is need to thoroughly investigate and ascertain the root cause of the conflict. Kenyans living in the conflict zone need to live in peace and be assured of their safety which is possible only when the cause of the problem is established and addressed.

As I have been told, some characters have gone ahead to open a *Facebook* page using my name, Prof. Lonyangapuo and posting malicious things purporting to come from me. Those ones should be treated as an attempt to malign my name.

I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Prof.) Lonyangapuo. That was a Personal Statement made by Sen. (Prof.) Lonyangapuo. I think that is the end of the matter on that issue.

Sen. Hassan.

Sen. Hassan: Mr. Deputy Speaker, Sir, I rise to seek a Statement on the state of security in Lamu County.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Hassan, I will allow you to seek the statement, but I want to indicate to you that we have already gone through Statement Time.

I only came back to them because Sen. (Prof.) Lonyangapuo had a Personal Statement to issue. Otherwise, we had finished with Statement Time because you were not here.

Sen. Hassan: Mr. Deputy Speaker, Sir, your kind consideration is highly appreciated.

The Deputy Speaker (Sen. Kembi-Gitura): I shall indulge you, but I am just indicating to you that the business of the House starts at 2.30 p.m. When the Order Paper is called, it is good that we are here so that we can transact the business of the House together.

Sen. Hassan: Much obliged.

The Deputy Speaker (Sen. Kembi-Gitura): You can go ahead.

STATEMENTS

STATE OF SECURITY IN LAMU AND OTHER PARTS OF THE COAST REGION

Sen. Hassan: Mr. Deputy Speaker, Sir, I rise to request for a Statement on the state of security in Lamu County and other parts of the coast region. I rise pursuant to Standing Order No.45(2)(b) of the Senate Standing Orders to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the state of security or insecurity in Lamu County and other parts of the coast region. In the statement, the Chairperson should:-

(i) Explain the progress made so far in the restoration of normalcy in Lamu County following the terror attack of 15th June, 2014.

(ii) Explain the extent of the investigations to which the perpetrators of these criminal acts have been brought to book bearing in mind a foreign terror organization, the *Al Shabaab*, claimed responsibility for the attack.

(iii) Explain why almost five months after the terror attack, the police still have in place a punitive curfew that has disrupted the way of life of the majority of the residents of Lamu County and impacted on the economic sphere of the place.

(iv) To state whether the Government is aware of the economic impact and in specific terms the loss incurred as a result of the curfew.

(v) State whether the Government will take up the loss incurred as a result of the curfew bearing in mind that the responsibility to guarantee security is that of the national Government hence the responsibility to bear the loss.

(vi) Explain the preparedness of the organs of national security to deal with insecurity in Mombasa and other parts of the coast region bearing in mind the sporadic

incidents of insecurity which include targeted killings of clerics and private citizens in the recent attempted attack on the Nyali Barracks in Mombasa and the Administration Police camp in Malindi.

(vii) State the Government's intervention to remedy the devastating effects of insecurity has had to the tourism sector in the coast region.

(viii) State the steps that the Government is taking to stop incidents of insecurity that are being witnessed in several parts of this country.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, this statement is for your Committee.

There was a similar statement sought yesterday on other spates of insecurity in the country which I requested you to check in the HANSARD. I suggest that you check the HANSARD and also take the request from Sen. Hassan. You may have to give one comprehensive statement on both instead of two because they are touching on the same issue.

Would that be fair to your Committee?

Sen. Haji: Mr. Deputy Speaker, Sir, that would be fair. Apart from the Lamu insecurity and the curfew, there was a request for a statement on the security of the whole country which you directed to be issued on Tuesday. I do not know whether my brother would wish me to deal particularly with Lamu or with the earlier statement as it were.

The Deputy Speaker (Sen. Kembi-Gitura): I will leave it to you because these are two separate statements sought by two separate Senators. It just occurred to me that they are related.

If it is convenient to you and your Committee to issue two separate statements, then so be it.

Sen. Haji: Mr. Deputy Speaker, Sir, it will not be a problem.

The Deputy Speaker (Sen. Kembi-Gitura): When do you want to issue a Statement on Sen. Hassan's request?

Sen. Haji: Mr. Deputy Speaker, Sir, you directed the first one to be issued on Tuesday, next week. This other one can be issued on Thursday.

The Deputy Speaker (Sen. Kembi-Gitura): Let us do it on Thursday, next week. Is that okay, Sen. Hassan?

Sen. Hassan: Mr. Deputy Speaker, Sir, for the record, it is quite fair that Thursday, next week, should be convenient.

Sen. Haji: Mr. Deputy Speaker, Sir, I have two statements to issue. You guided me on one yesterday and I am very pleased that I have a very elaborate answer.

The Deputy Speaker (Sen. Kembi-Gitura): The one from Sen. Kagwe?

Sen. Haji: Yes, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I can see he is in the House so you can issue it if you are ready.

DECLARATION OF MONDAY, 7TH JULY, 2014 AS A PUBLIC
HOLIDAY BY A SECTION OF COUNTY GOVERNORS

Sen. Haji: Mr. Deputy Speaker, Sir, this statement regards the declaration of 7th July, 2014 as a public holiday.

Was it Sen. Mositet who requested for the statement?

Sen. Kagwe: It was me, Mr. Deputy Speaker, Sir.

Sen. Haji: Then there must be some confusion here, but let me just read it.

The Senator sought to know whether the governors have legal authority to declare a public holiday. If not, what appropriate action should be taken against a governor who makes such a declaration?

Mr. Deputy Speaker, Sir, regarding the authority to declare public holiday, I would like to state as follows:-

1. The law is explicitly categorical as to the public holidays celebrated in the Republic and the authority by whom other public holidays may be declared. Article 9 of the Constitution sets out the national days which are also public holidays, celebrated in the Republic. These are:-

(a) Madaraka Day; to be observed on 1st June;

(b) Mashujaa Day; to be observed on 20th October; and,

(c) Jamhuri Day; to be observed on 12th December.

2. The Constitution further provides for Parliament to enact a law to prescribe other public holidays and observance of public holidays.

3. In this respect, the primary legislation governing the subject of public holidays is as per Act Cap 104.

Section 2 read with the First Schedule to the Act further provides a list of public holidays observed in the Republic.

4. Significantly, Section 3 confers upon the Cabinet Secretary for Interior and Coordination and National Government, the power to declare other public holidays either in addition or substitution of the list provided in the Schedule.

Section 3 further states:-

“The Minister may at any time if he thinks fit, by notice in the gazette, declare any day to be a public holiday either in addition to the days mentioned in the Schedule or in the substitution for any of those days and either throughout Kenya or in any district, area or part thereof, and thereupon any day so appointed shall be a public holiday in all respects as if it were a day mentioned in the Schedule, in Kenya or the locality specified in the notice; and where, in any year, any day is so declared to be a public holiday in substitution for any of the days mentioned in the Schedule such latter day shall in such year cease to be a public holiday in Kenya or the locality specified in the notice.”

5. In the above circumstances, the issue of national and public holidays celebrated in the Republic is a matter effectively determined by the Constitution and the laws of the country. The authority to declare any other public holiday is vested upon the Cabinet Secretary for Interior and Coordination of National Government.

6. Article 3 of the Constitution solemnly enjoins “every person to respect, uphold and defend the Constitution.”

The Public Holidays Act, Cap 104, is not clear as to the ensuing consequence of unlawful declaration of public holiday. The authority to declare public holidays emanates from a law made pursuant to the provision of the Constitution.

7. Therefore, any declaration otherwise than is prescribed by law would amount to a breach of the Constitution.

In the event that such a decision has been taken by a county governor, the law provides the following remedial actions:-

(a) Under Article 181, such a governor may be subjected to removal from office if it is determined that they have acted in gross violation of the Constitution and the law.

“A county governor may be removed from office on any of the following grounds:-

(a) Gross violation of the Constitution or any other law.”

(b) Further, any person acting in the public interest may institute legal proceedings alleging violation of the Constitution under Article 258(1) and seek appropriate orders to safeguard the Constitution.

The Article states:-

“Every person has the right to institute court proceedings, claiming that this Constitution has been contravened or is threatened with contravention.”

(c) Additionally, as shown above, the responsibility of making such a declaration is a function vested in the national Government by law. Accordingly, the decision by a governor to make such a declaration would amount to a dispute between the two levels of Government. In this respect, the Intergovernmental Relations Act, 2012 enjoins the national and county governments to take all reasonable steps to resolve the matter amicably before resorting to judicial proceedings.

Section 31 of the Act provides as follows:-

“The national and county governments shall take all reasonable measures to:-

(a) resolve disputes amicably and;

(b) apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or any other legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution.”

Mr. Deputy Speaker, Sir, this statement is signed by the Solicitor-General, Njee Muturi.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutahi Kagwe, do you wish to seek any clarification?

Sen. Kagwe: Mr. Deputy Speaker, Sir, the matter is self explanatory. But having said that, you have just heard the Chairman talk about some lack of clarity regarding what actually happens to such individuals who declare national holidays. Given that politics is full of all sorts of people, including egomaniacs, it is important for us to ask the Chairman to liaise with the Ministry concerned and ensure that the Ministry makes a law

to give effect to this aspect of the Constitution, so that in future, nobody just wakes up one day, abrogates himself or herself the responsibility of declaring public holidays and, in fact, continues on and declares a day a public holiday.

Further, it is important that this matter be on record that, indeed, declaration of any day as a public holiday other than by the people the Constitution allows is gross violation of the same Constitution.

Sen. Haji: Mr. Deputy Speaker, Sir, indeed, the statement was very specific and clear that any declaration should be done within the Constitution. The Constitution is supreme to any other law; unless the Chair guides us, I do not see the need for any law to be made since the Constitution will deal with such a case when it arises.

The Deputy Speaker (Sen. Kembi-Gitura): Well, thank you Senator. There are no further requests from the Floor.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! Are you standing on a different issue?

Sen. Hassan: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): But you must press your request in good time. What is your point of order?

Sen. Hassan: Mr. Deputy Speaker, Sir, I just want to make a clarification that the procedure is laid out in law. Is it accurate to say that if I declare a public holiday outside the law, then in the natural event it is not a public holiday, then we will know that is just a political statement which does not make it a public holiday. Is that accurate?

Sen. Haji: Absolutely, Mr. Deputy Speaker, Sir. I think that reservation is very valid. If it is not in conformity with the Constitution, then it is null and void. As I said yesterday, it should be disregarded.

The Deputy Speaker (Sen. Kembi-Gitura): That is now settled. Everybody seems satisfied.

Sen. Haji, thank you for a comprehensive answer on that issue.

Sen. Haji: Mr. Deputy Speaker, Sir, I have another statement which was sought by Sen. Munyes. It has been outstanding for a while.

The Deputy Speaker (Sen. Kembi-Gitura): Is it a long one?

Sen. Haji: No, it is a very short one.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, go on.

CUSTOM BARRIERS AND RESTRICTIONS AT NADAPAL CUSTOMS BORDER POST

Sen. Haji: Sen. Munyes requested for a statement on whether the Government is aware that Nadapal Customs Border Post of Kenya and South Sudan suffers from numerous customs and restrictions from the national Government. The response is as follows:-

Nadapal Customs Border Post is open for free movement of people and goods trading between Kenya and South Sudan. Where such movement is for import, export or transit, regulatory conditions set out in law for such movement must be met.

In addition, additional officers have been posted at the border and additional four-wheel vehicles sent to the border for use by officers to serve Nadapal and patrol the Kenya-South Sudan Border.

Secondly, on whether the Government is aware that Nadapal Customs Border Post is not covered by the electronic cargo system technology practiced in all international border posts; the response is as follows:

The Electronic Cargo Tracking System (ECTS) is fully operational on the gazette route to Lokichoggio and covers all goods destined for Southern Sudan. Trucks and other motor vehicles on transit to export to South Sudan continue to be processed at the border and those armed with ECTS Seals are disengaged/disarmed before they cross the border.

Thirdly, whether the problem at Nadapal affects revenue collection and social economic development of Turkana County and the Eastern Equatorial State of South Sudan the response is:-

Nadapal Border Post is a fully operational customs station and traders are encouraged to use it, as long as all customs laws, procedures and processes are adhered to.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo. I am sorry, Sen. Munyes.

Sen. Munyes: Mr. Deputy Speaker, Sir, John is my brother. We share the same name.

The Deputy Speaker (Sen. Kembi-Gitura): I apologise. I think it is because he had issued a Personal Statement not so long ago. That confused me a little.

Sen. Munyes: Mr. Deputy Speaker, Sir, unless the Chairman can confirm today that the ECTS is fully operational by this morning, then I will agree with what he is saying. What I know is that this system is being operated in a very selective manner. I want to give an example. Trucks ferrying petroleum products are not allowed to access that border through Turkana. The customs officers recommend the Malaba-Busia border. This has really affected revenue and development in Turkana. I want to justify this by the number of trucks. Five years ago, there were 13,000 trucks annually passing through our border. They have now dropped to 3,000 because we cannot track petroleum products. Somebody in Eldoret is diverting those products through Malaba and Busia. Turkana is a shorter border to Sudan by 500 kilometres. To go through Malaba, you have to go through two borders to access South Sudan. Why are we giving due advantage to Uganda and not accessing the border that is directly affecting our people?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o, are you seeking a clarification on this one? Then go on.

Sen. Haji, there are very many requests for clarification coming in; please, take note, so that you can deal with all of them together.

Sen. Okong'o: Mr. Deputy Speaker, Sir, I also want to know whether the Chairperson can tell us whether they are aware that there is an oil crisis in Juba because

of this very long distance which my Chairperson asked about. Because of this long distance, there are gas shortages in Sudan. Is the Government aware of that? What are they doing about it? The shortage of oil which passes through the Kenyan border following a long distance is now causing a huge crisis in Juba and in some other cities. What is the Government doing about the same?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, further to the question that my brother and neighbour, Sen. Munyes, has asked, to demonstrate the gravity of the matter, as a result of diverting all these vehicles through Uganda, there is now a deliberate move not to repair or build the Kitale-Kapenguria-Lodwar-Lokichoggio Road. As a result of this, the road is now a mess.

Secondly, we want to know whether that is now the Government policy; that we must drive these lorries to Uganda and neglect our own road, which would have actually made it better.

Thirdly, how many active border points do we have that are manned by our people in Kenya? I have one example in my county. That is the border between Kenya and Uganda at a place called Konyau. The Ugandans have built a fully fledged immigration office as you cross from Uganda, whereas there is no single building or officer manning the Kenyan side. What plans does the Government have and why are we wasting revenue by allowing our money to be collected on the other side by the trucks that are going and yet there is nothing that is being brought into Kenya?

Thank you, Mr. Deputy Speaker, Sir.

Sen. Haji: Mr. Deputy Speaker, Sir, regarding the observation made by the Questioner, I think he is in a better position because he has said that up to yesterday, maybe there were no vehicles crossing the border. So, I think we need to countercheck this. I will check further and, perhaps, report back to the House.

Regarding the question from my colleague from Nyamira, I do not know whether the number of vehicles not going there is as a result of insecurity in Southern Sudan or whether it is as a result of the bottleneck being created at the border point. It is quite a new observation which also needs to be referred to the Ministry for an answer.

Regarding my brother here on my right on how many border posts there are in Kenya, that requires another question altogether so that we can populate all the border posts that are being manned by the immigration officers.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Munyes, I can see that you are not satisfied.

Sen. Munyes: Mr. Deputy Speaker, Sir, I want to appreciate the statement from the Chairperson, especially when he says that we can check. I know that they are very selective; they want to blockade oil products and the people of Eastern Equatorial State. Sudan is a very large country; they have federalism and the people of Eastern Equatorial State have complained to us that they are getting unfair advantage because their regions – like Torit – are now facing a petroleum crisis because they cannot fuel their cars. They have requested us that this border, which is closer to them, will actually support South Sudan, Turkana, West Pokot and all these regions where trucks pass through. You can imagine 13,000 trucks dropping to 2,000. It is a big loss to our people.

Mr. Deputy Speaker, Sir, I want to call upon the Chairperson to investigate and report back to the House on whether it is true that there is sabotage by customs officers in Eldoret, who are diverting trucks from Eldoret through the Malaba-Busia Road.

Thank you very much, Mr. Deputy Speaker, Sir.

Sen. Haji: Mr. Deputy Speaker, Sir, I think Sen. Munyes is raising a very new thing, because if it is Eastern Equatorial State which is complaining, it could be that the Government of South Sudan is not interested in seeing to it that the fuel is taken to their country. If that is the case, Kenya can do nothing. That is an internal problem in southern Sudan. So, I think he should request for another statement on that issue.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Munyes, I do not want us to make this another debate because you were just supposed to seek clarification.

Let me hear what you have to say.

Sen. Munyes: Mr. Deputy Speaker, Sir, it is not Eastern Equatorial State only in South Sudan which is complaining. Many of our traders hauling petroleum products by road have found it difficult to go an additional 500 kilometres, destroying their vehicles and going through two borders, yet Kenya can develop its own border with South Sudan. So, we are just passionately appealing to you to consider supporting our traders and business people. Through that, we will be supporting Turkana, West Pokot and that entire route from Eldoret, where those trucks will pass. They will impact on the economy of those areas as they pass through to South Sudan.

Thank you very much, Mr. Deputy Speaker, Sir.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, we request the Chairperson bring an exhaustive answer to this statement. This is because all the yards in Kapenguria, Chepareria, Ortum, Kainuk, Lodwar and now Nadapal, where these lorries used to park and the hotels and lodgings that were found there are now empty. We want the lorries to come back so that the economies of our people can actually continue to thrive. We do not want the workers there to be laid off, like what has happened in Mombasa, where no tourists are coming in now.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Obure, are you rising on the same point?

Sen. Obure: Mr. Deputy Speaker, Sir, I have been listening to these exchanges very carefully. It seems to be a very important matter touching on the economies of two countries; our own economy and the economy of South Sudan. But I cannot fully comprehend why the Chairperson of the Committee on National Security and Foreign Relations is the one dealing with this matter when, in fact, it should be dealt with by the other Committee on Finance, Commerce and Budget. Has this matter been directed to the right place?

The Deputy Speaker (Sen. Kembi-Gitura): But you are aware that he chairs the Committee on National Security and Foreign Relations. External trade is a function of the Ministry of Foreign Affairs and International Trade. Is it not? Here, they are talking about foreign trade exiting through the border point in South Sudan. So, it was directed to the right Committee. The only thing I do not know is whether Sen. Haji is satisfied with the answer in view of the very poignant points being raised by the two Senators from that locale.

Sen. Haji: Thank you, Mr. Deputy Speaker, Sir. First of all, I think this Committee does not only deal with security. We also deal with foreign relations and international trade---

The Deputy Speaker (Sen. Kembi-Gitura): Order! I have dealt with that part, Sen. Haji. I am sure that I am correct on your mandate. So, kindly deal with the other issues now.

Sen. Haji: Mr. Deputy Speaker, Sir, what I am avoiding is wasting the time of the House on a matter of fact. Kenya can only sympathize with its own traders. However, if it is South Sudan which is refusing to allow these vehicles to go through certain areas, can Kenya really enforce that? That is the question. So, if it is the feeling that an answer should be given, I am very positive that the answer will be the same. I have already dealt with security matters myself.

The Deputy Speaker (Sen. Kembi-Gitura): That is what I was asking you; whether you are satisfied that the answer is satisfactory.

Sen. Haji: It is satisfactory, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Now, we have to end this debate. I will only allow Sen. (Dr. Machage) because he has sought the Floor on this issue. Sen. Munyes, you have had your take on this.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, listening to the answer from the Chairperson, there is a lot of lacuna that needs to be filled on our own policy on foreign trade.

One, is it only us who are dictated to by foreign countries on how we should trade? We should also consider supporting our own traders such as the trading posts in Turkana while we are transporting our goods to Sudan. Why should we be dictated on which route to use?

Secondly, is it the policy of the Government to alienate or set aside Turkana so that it is less developed?

(Applause)

Sen. Haji: Mr. Deputy Speaker, Sir, I did not know that my colleagues were following the entire debate. As to the trade between countries, this is done on a willing buyer, willing seller basis. You cannot trespass a country without the authorities of that country allowing you to enter. The question is whether the area concerned is a closed area because of the problem of South Sudan. That is the whole issue. There is the question about closing up the economy of Turkana. All Kenyans are looking forward to seeing the resources in Turkana start working. Nobody can stop the economy of Turkana.

COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM MIGORI COUNTY ASSEMBLY**

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, in the galleries, we have staff members of Migori County Assembly. I will acknowledge them by calling out their names:-

Michael Orwa, Administrative Assistant;
Matiku Alcent, Records Management Officer;
Winnie A. Odit, Librarian; and,
Teresiah Nyamohanga, Assistant Librarian.

Feel welcomed in the Senate. I hope that you will learn something from your visit. I am happy to see that your Senator is in the House this afternoon.

(Applause)

STATEMENTS

Hon. Senators, we have a few statements to be issued. The only clarification I would like to make is that on the statement issued by the Chairperson of the Committee on Lands and Natural Resources, Sen. Lenny Kivuti, number one and two on the appendix, the statements have already been issued by the Chairperson, Sen. Lenny Kivuti, the reports were also tabled. Therefore, Sen. Kivuti will not issue the statement again. I made this direction not so long ago, I think it was on Tuesday or Thursday last week. I said Sen. Nabwala or Sen. Mutula, can only seek a clarification on this matter. Now that you have not said that you want to seek any clarification, we also have another statement by the Chairperson of the Committee on Labour and Social Welfare.

(Sen. Nabwala stood up in her place)

Sen. Nabwala, you know very well how to proceed in this House. Do you want to make a point of order or to intervene? You know the button to press.

Sen. Nabwala: Thank you, Mr. Deputy Speaker, Sir. I had pressed the wrong button and that is why I did not catch your eye. However, I have comments to make.

The Deputy Speaker (Sen. Kembi-Gitura): Do not make comments. Seek a clarification from the Chairperson if you have any and let it be short.

**ALLOCATION OF LAND IN CHEPCHOINA SETTLEMENT
SCHEME IN TRANS NZOIA COUNTY**

Sen. Nabwala: Mr. Deputy Speaker, Sir, I will seek a clarification on the allocation of land in Chepchoina. I am aware that Phase I and Phase II are completed. However, we have a delegation that has gone to court. This delegation first went to see Sen. Zipporah Kittony. We brought the documents concerning this and gave them to the

Cabinet Secretary. The Chairperson of the Committee on Lands and Natural Resources should tell us what he will do about those people who are complaining because they were displaced and about 11 people also died.

REPORT ON MASONGALENI SETTLEMENT SCHEME
IN MAKUENI COUNTY

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., were you seeking a clarification on Masongaleni?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, first, I want to thank the Chairperson and the Committee for inviting me when they were deliberating on this issue. My only clarification on page nine of the resolution is that the Committee has made very general observations whilst the National Land Commission (NLC) and the Minister in charge of Land, Housing and Urban Development made very specific commitments. I will deal with them one by one so that the Chair can deal with the resolutions. This is a matter that we can take forward in case they default so that resolutions are clear.

The Cabinet Secretary in charge of Land, Housing and Urban Development was very specific that the title deeds for Masongoleni would be issued this financial year. The Report does not say so. The NLC confirmed that the list of prominent personalities that was tabled in this House was revoked and they were going to give a letter. That is not in the recommendations.

Three, the NLC and the Ministry confirmed that they would check the issue why the people of Masongaleni are not allowed to construct permanent houses or bury their dead because of the fact that they do not have any documentation to prove ownership. That clarification was supposed to be in the report, but it is not there.

The issue as to whether or not in paragraph “a” whether this is political or administrative, we all know the problems between the NLC and the Ministry of Lands, Housing and Urban Development; to ask them to form an independent committee is like telling them not to do anything. Both parties came separately to the Committee and made separate commitments. Therefore, in terms of resolutions which will be owned by this House, I propose that the resolutions be very specific to what they said. They should be very specific to the commitment that they made, including sub division, demarcation, title deeds and clarifications as to what these people should do in terms of burying their dead and constructing permanent houses. Those issues have not been addressed.

Lastly, the Minister in charge of Lands, Housing and Urban Development, Hon. Charity Ngilu was---

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, Sen. Mutula Kilonzo Jnr. has persistently addressed some cadre as Minister. Is he in order to use wrong titles?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., could you clarify that?

Sen. Mutula Kilonzo Jnr.: The correct term is Cabinet Secretary. I apologise to the Senate for misrepresenting the Constitution.

The Cabinet Secretary in charge of Lands, Housing and Urban Development, Hon. Charity Ngilu, was kind enough and magnanimous I must say, in saying that the

national Government was going to waive the charges that have been imposed on the people of Masongaleni. The Government has spent taxpayers' money in buying this land. Therefore, it was a contradiction to resettle them and to ask them to pay for the title deeds. This was given as a commitment which is not part of the resolutions.

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. I am a Member of this Committee and I had sought a clarification which was not forthcoming from the Ministry concerned.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, you are a Member of the Committee and so you are the one who should be giving clarifications. You have a joint responsibility as Members of the Committee.

Sen. Ndiema: Mr. Deputy Speaker, Sir, the time given was so short for the answer I sought to be given. We discussed this in our Committee and we thought it wise to first handle the other issues.

The Deputy Speaker (Sen. Kembi-Gitura): I will find it very difficult to allow you to seek clarification from the Chairperson of your own Committee because that will send very wrong signals. This means that either you have not read that report or it is not unanimous. I find it very difficult to allow you to raise a point of order against your own Committee.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I had raised this issue here. I am not seeking a new Statement.

The Deputy Speaker (Sen. Kembi-Gitura): You had sought a Statement from your own Committee?

Sen. Ndiema: Mr. Deputy Speaker, Sir, not during the Committee sittings, but here on the Floor of the House. I had sought to know the county of the residents of each allottee of Chepchoina Scheme. The names were given, but I would have wanted to know from which county each of the allottees came from. That has not been included in the answer which has been given. I know it is possible for the Ministry to provide that information. I do not know why they are avoiding that.

Sen. Haji: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Senator in order to seek for that clarification when, in fact, he was the District Commissioner who allocated those parcels of land at Chepchoina Scheme?

(Laughter)

Sen. Ndiema: Mr. Deputy Speaker, Sir, these plots were allocated---

The Deputy Speaker (Sen. Kembi-Gitura): Order! I have not given you the Floor.

Sen. Kivuti, maybe you could answer to those three issues.

Sen. Kivuti: Mr. Deputy Speaker, Sir, this matter took quite some time because we gave an answer to this House quite a while ago. Several additional clarifications were sought and that prompted us to make in-depth investigation into the two cases; both Chepchoina and Masongaleni. Now the good thing is that when we were making the interventions with the NLC and with the Cabinet Secretary for Lands, Housing and Urban Development, both Sen. Nabwala and Sen. Kittony who had sought the statement were

present. The deliberations were so open and that is why I think the clarifications being sought now are not very serious.

We got a presentation from Sen. Kittony about some people and now Sen. Nabwala is reporting that there has been some disquiet to the point of some people being killed. We know that in land matters, you cannot completely disquiet people. What was presented in the report was that both cases in Phase I and Phase II of Chepchoina are completed and closed. All representations agreed to the fact that in Phase III all the injustices which were done in Phase I and Phase II should be addressed, particularly with regard to ethnic balancing. Phase III has not been alienated, but it will be done shortly. That is contained in this report.

Mr. Deputy Speaker, Sir, Sen. Ndiema actually got an answer from the Ministry. He required them to go to the Registrar of Persons and get the identity cards---

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Chairperson to say that I got all the answers while he knows that the country of residence for each allottee has not been given as I had requested. In any allocation of land, there must be an identity card in the Ministry showing where that person is normally resident.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I am surprised that my Committee Member has already made a conclusion even before I finish the first sentence on what he requested for. The identity card numbers that the Senator is asking for are all listed in the report.

There is the name, the identity card number and area of residence of all the allottees. However, just to clarify for the benefit of the Members, Sen. Ndiema needed to know more details about those identity card numbers and the Ministry of Lands, Housing and Urban Development is not domiciled in the Registrar of Persons' offices. They actually told us in our committee that they are not able to give further details other than the identity card numbers.

If there is any other different issue on that, I will come to it after I have answered Sen. Mutula Kilonzo Jnr.

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. I sought to know where each of the allottees is normally resident and he has not given an answer. Would I be in order to request that this particular item be referred back to the Ministry because the Ministry has deliberately declined to give information which it has?

The Deputy Speaker (Sen. Kembi-Gitura): I do not belong to your committee, but in what context do you want to know the area of residence of each allottee, so that we can know whether we are going to send it back?

Sen. Ndiema: Mr. Deputy Speaker, Sir, it has been a policy for the Government when allocating land to reserve a certain percentage to the people resident in that county and a certain percentage to other Kenyans from elsewhere.

I would want to get this information to ascertain whether the percentages as per policy were attained. If we do not get this information speculation and counter accusations will continue to be there for nothing. I want this clarified so that when we go Phase III, we do not repeat the same mistake.

I also want to request Sen. Haji to withdraw the statement that I was involved in the land allocations. These allocations were done just recently. He should withdraw.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kivuti, you know we are dealing with the issues of land. Are you able to give those answers that have been sought?

Sen. Kivuti: Mr. Deputy Speaker, Sir, the question being sought is now being changed because everything about the percentages of communities who were allocated land is contained in this report. However, I am aware that Sen. Ndiema needed further information on the identification cards. That is to say, the information which is in the Registrar of Persons about the ID cards is what he was seeking. I told him it is okay we can wait, and ask for that from the Ministry of Land, Housing and Urban Development. The officers of the Ministry said that, that information can be found from Registrar of Persons. The Ministry does not keep information on registration of persons.

The Deputy Speaker (Sen. Kembi-Gitura): This information is in the report on page 9. So, I do not know what exactly we are seeking. Unless you want to know exactly who it is and from where? If you are talking about phase two, for instance, the information is there.

Sen. Kivuti: It is true the information is all there, but he needed to know each person. *Huyu alichukulia kipande kipi* in which sub location. May be that is the kind of information he wants to know.

The Deputy Speaker (Sen. Kembi-Gitura): I do not know where we are getting on this. The problem I have here is that you two gentlemen are from the same Committee. Page nine of the report stipulates names of people and their numbers. I do not know what exactly you want to have.

Sen. Khaniri, what is your point of order?

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. Sen. Ndiema has made a claim that there is a Government policy that specifies that when this kind of land is being allocated, there should be a certain percentage going to the local community. I think it would be important that he cites that specific Government policy. The initial complaint that was brought by the Senator who requested for this statement was that there were fears that some land could have been allocated to foreigners, non-Kenyans, and specifically Ugandans. I think we have allayed those fears, we have gotten all the ID cards of the allottees. We have ascertained that it is Kenyans who were allocated this land. The land is owned by Kenyans and no single foreigner.

Therefore, Sen. Ndiema is totally out of order.

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. I need a clarification because it has been quite a while since this issue was raised and the plight of those people is wanting. I do not know whether I am in order to ask what their plight is. Are we going to continue like this because when we raised the issue, we thought that it will be resolved, but I know the plight of these people is wanting? Therefore, we still need more information from the Committee Chairperson on this issue of land.

The Deputy Speaker (Sen. Kembi-Gitura): Have you read the report?

Sen. Kittony: Yes, because land is a very sensitive issue.

The Deputy Speaker (Sen. Kembi-Gitura): If you have read the report, you know what I said, Sen. Kittony; that the report was tabled and I requested Senators to read it so that they can seek specific clarifications from it. What you are asking could be in the report.

Now, Sen. Ndiema, I think Sen. Khaniri has dealt with a substantial amount of your question. I do not know about the policy that you raised or where it is, but on the issue of numbers, because I do not want us to dwell here too long, I will refer you to pages eight and nine of the report which talks about the people who were allocated this land; in phase one (J) page eight; in phase two (M), page nine.

Sen. (Dr.) Machage, what is your point of order?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. The issue and situations on minorities of this country in the management of their historical rights of land cannot be put under the table by ignoring the legitimacy of Sen. Ndiema's question to know---

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. (Dr.) Machage! Who is ignoring Sen. Ndiema's quest to know?

Sen. (Dr.) Machage: I am coming to that.

The Deputy Speaker (Sen. Kembi-Gitura): No. Who is ignoring the quest, is it the Speaker or the Chairperson of the Committee?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, that is being openly seen from the statement and the denial or total refusal of the Chairperson of that Committee to address a question that Sen. Ndiema has persistently asked in all the days that he has tabled that statement in this House. He has the right to know the details of the residents that are in that area, so that he is able to protect his people. Is it in order, therefore, that, that answer is not being provided?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Nabwala, what is your point of order?

Sen. Nabwala: Mr. Deputy Speaker, Sir. I support Sen. Ndiema because---

The Deputy Speaker (Sen. Kembi-Gitura): It is not a question of supporting, what is your point of order?

Sen. Nabwala: My point of order is; in the first paper that was tabled in this House, Sen. Kivuti had a Statement on the policy which said 60 per cent of land would be reserved for locals and 40 per cent was for foreigners. Why he is insisting on the ID numbers and so forth is because we know some foreigners from the neighbouring counties were given land at the expense of locals in Trans-Nzoia. Trans-Nzoia County is a very unique county. In 1992, we had very serious clashes where people from the mountain died. These displaced people are still living in market places. As a delegation of Senators from Trans-Nzoia County, people want to know how we are going to settle them. That is why this question has been raised by Sen. Ndiema all the time. I think we still need further clarification.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wangari, what is your point of order?

I hope Sen. Kivuti you are noting all these things because you have to deal with them.

Sen. Wangari: Mr. Deputy Speaker, Sir, I had actually put my request for an intervention earlier, but you have dealt with some of the issues.

We have dealt with this issue and it has taken such a long time in the committee. We have had consultative meetings with other Members and the leadership from the

National Assembly. We have called them in and discussed these issues. However, for purposes of moving this forward, it will be very important that specific questions are asked because this report is not new in this House. Most importantly, we have already directed so. Therefore, we should read the report. It is unfortunate that as the Chair, you are the one referring people to what pages of the report to read because they have a set of questions in their minds first before reading the report. It will then help even the committee in terms of tackling the follow-up questions because they will be more specific.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Obure: On a point of order, Mr. Deputy Speaker, Sir. I want to make a proposal if it would help us to move forward. Sen. Ndiema wants to know the county of origin of these allottees. The Ministry of Land, Housing and Urban Development has stated that they have no capacity. It does not deal with that. Therefore, they cannot provide the information. Would it help if I suggested that a different question be filed to the Registrar of Persons so that the origin of these people is established through that mechanism?

The Deputy Speaker (Sen. Kembi-Gitura): Well, that would help. Let me say this because as you say, we must move forward on this issue.

Sen. (Dr.) Machage, it is not fair to say that people are being stopped from asking questions. I think that is unparliamentary and unfortunate because nobody is being stopped from raising any issues. Nobody is trying to make any less important the issue being raised by Sen. Ndiema. However, it is a question of specifics even without making a ruling. Page nine of this report says:-

“Phase II comprises of 18 public utilities and 1,663 plots which were allocated to local communities as follow:-

Pokots, 600; Luhyas, 452; Turkanas, 226; Sabaots, 202; Others, 183.”

Page eight says:-

“Phase I, Pokots, 569; Sabaots, 550; Others, Marakwets, Turkanas and Nandis, 40”

I am quite willing to send this matter back to the committee so that they can then specify what exactly it is that you want. What does not appear quite right is that all of you are Members of the same committee. I would like to understand whether you want, in case of say of Luhyas, to be told, for example, where the Luhyas are from. In the case of the Turkanas and Pokots, you want to be told exactly where they are from. We cannot go on like this on this issue; it has to come to a close.

The report has been tabled and Sen. Ndiema wants to know where everybody comes from. I do not know whether or not this is possible. But it is only you in the committee who can tell us. I do not know the import of that request, but like Sen. (Dr.) Machage says, although he blames people of stifling others, it is imperative that this is clear because it has to do with the issue of land.

However, the point I making is that we cannot continue on points of order on this issue. When the points of order come from the same committee then it means that this report is either not agreed on or something is not correct about the report.

What I am going to order, in the specific issue of Chepchoina, is that you have to go back and put your house in order. Let us know what you are capable or not capable of doing. If Sen. Ndiema was not a Member of the Committee then maybe this would pass. That is my order on this issue so that we can move forward. There is a lot of business to do in the House.

Sen. Kivuti: Mr. Deputy Speaker, Sir, it will be good for you to give me a hearing because we deliberated on Sen. Ndiema's matter at the committee level. That is why I felt free to bring what we discussed to the attention of everybody. I am happy Sen. Chris Obure has already brought it out. What we agreed is that the committee must give the lists of all the allottees and their identification numbers. They are in this report.

I would request, if you need us to rephrase a supplementary question on where these ID cards come from. That is not really a large question. It is more of where do these Kenyans come from.

As for the question from Sen. Nabwala about foreigners, we deliberately addressed that by telling the Ministry to give the ID numbers to prove that the allottees are Kenyans. We got them. When we have got the Kenyans who were allotted and even their tribes, which is normally not very good for this House, but it was done. If we want to interrogate a supplementary question---

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Ndiema! Sen. Lenny Kivuti is on a point of order. Let him finish what he is saying.

Sen. Kivuti: On where any registered ID comes from, it would be very easy because we will just take this report and note all the ID cards which are there and we put a supplementary question. If that comes up, I will be the first person to request that, that question be forwarded to the relevant committee on National Security and Foreign Relations headed by Sen. Haji.

The Deputy Speaker (Sen. Kembi-Gitura): I understand where you are coming from, Sen. Kivuti as the Chairperson of the Committee. However, the point I am making is this: We have taken almost an hour on the issue of Chepchoina. We have a report of the committee which was tabled. I want to assume that Sen. Ndiema, as a Member of the Committee, has read the report. He does not agree with the report. In my view, that is the understanding I get which is unfortunate. It is unfortunate that Members of the same committee do not agree with the report which is tabled in the House. This is because before it was tabled either there was a divergent view on it, or a dissent as we call it in law or it was agreed that it is a report of the committee. To me, it looks that this is not a report of the committee because one of the Members is disputing it.

The point I am making here is because this is a property of the House. If you look at the report on pages eight and nine, it says where the allottees come from.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Ndiema! The report states where all the allottees come from as listed in the five bullets on page eight and nine. If you wish to have a more specific answer on each of that group of people, then it can only go back to the committee or you can raise a supplementary question on this issue,

which I guess is what you are doing now. For us who are not Members of that Committee we are getting pretty confused about this because it is going on and off. It must come to an end.

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. The issue that I am raising is not about communities or tribes. That is already provided. I am not disagreeing with the report in as far as the information already given is concerned. What I am not agreeing with is that there is some information I had sought, and which I do not need to make a supplementary request. It was already made here that apart from getting the ID numbers we need to know from which county each of the allottee comes from. Trans Nzoia County is cosmopolitan. We have the Pokots, Saboats and so on. I am not asking about the tribes; I am not concerned about this. What I am concerned about is: How many allottees were given from Trans Nzoia County regardless of tribe? How many came from outside the county regardless of tribe? That is the information I wish to have.

Mr. Deputy Speaker, Sir, it is a right under the Constitution to get information on anything. On the information I am asking about the IDs, the Ministry of Lands, Housing and Urban Development cannot issue a title deed without a copy of the ID being in the file of each allottee. What I am asking is nothing that is impossible. We do not even need to go to the registration bureau or to refer that issue to the Committee on Foreign Relations and National Security. This is something that can be obtained from the files. As we all know, every allottee has an ID. What we want to know is, from which county that allottee came from.

The Deputy Speaker (Sen. Kembi-Gitura): Had you sought for that information?

Sen. Ndiema: I had sought it on the Floor of the House.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. Mine is just to give a brief reaction to what you said. Just the fact that in my own understanding, there is one dissent from the committee, does not exclude the fact that it is still a report of the committee. If we were to go by what I read in the Standing Orders, if we cannot arrive to a consensus, then that report is subjected to a vote. If the vote is a majority vote, on account of that majority vote notwithstanding and they accept that, that is the majority position, then it becomes the report of the committee. However, nothing excludes anybody from registering a dissent.

Sen. Elachi: On a point of order, Mr. Deputy Speaker, Sir. I do not know if I am in order because I hear the discussion is going differently. I remember Sen. Ndiema requesting for that information. However, I do not know whether it was to come in as another statement or what the agreement from the Chair on the same was. We said it has to come in as another statement. Maybe the Chairperson can clarify this to us because I do not think it will have to go through a vote. We need to know if the statement was sought.

Sen. Haji: Mr. Deputy Speaker Sir, I can understand where Sen. Ndiema is coming from. Although practically 60 per cent of the allocations normally go to the local people and 40 per cent to squatters and other people, but all border areas, including my area, there are many Kenyans who are given IDs. There is also a possibility that some non- Kenyans have been given IDs. The only way he can know as the representative of the people is to know who comes from where.

Finally, I want to apologise to you for the erroneous statement I made that he was a District Commissioner there.

Sen. Ong'era: Mr. Deputy Speaker, Sir, I want to make a point that I understand where Sen. Ndiema is coming from. Since you have already made a ruling, I do not think it is too much for this matter to go back to the committee so that these issues can be interrogated. We know that Trans Nzoia is a volatile situation.

There have been many squatters in that region. I do not think it is too much to request this matter to go back to the committee so that they can get these facts. We know that when one is given a letter of allotment in the Ministry of Lands, Housing and Urban Development those details are there.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Ong'era. This is my direction on this issue: This matter will go back to the Committee. However, for us to understand exactly what is going back to the committee, I am giving Sen. Ndiema a chance now to state exactly what he needs, so that it can be captured in the HANSARD. The committee must deal with this issue, once and for all. Briefly just say what you want. It is going to the Committee in which you belong, and then you are going to get a report to the House, telling us the exact position on that specific issue. You have two minutes to do so.

Sen. Ndiema: Mr. Speaker Deputy Sir, I do agree with the report. However, the additional information I had sought is the county of residence of each allottee. We already have the names and the ID numbers of the allottees. The county of residence according to the ID quoted in that list is what we need. That is all.

The Deputy Speaker (Sen. Kembi-Gitura): My order is that this matter will go back to the Committee.

The committee will report back and tell us whether they have been able to identify where these people come from. They will tell us whether it is not possible or whether it is within the capacity of the committee to do so. That will be the position. I do not know how long this will take for you to come back to us because I notice there are many allottees.

Sen. Kittony, I would like to bring this matter to a close. We cannot keep it going on forever.

Sen. Kittony, you have a point of order?

Sen. Kittony: Mr. Deputy Speaker Sir, you have done well to send it back to the committee. My concern is the plight of the people who are waiting. This is because if we have a problem we have to find a solution. How long are these people going to wait to get a solution to their problem?

The Deputy Speaker (Sen. Kembi-Gitura): That is a different issue. The issue I am dealing with right now is the issue that has been raised by Sen. Ndiema.

Sen. Kittony: Because it has taken a very long time!

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): All these things are there and they are in HANSARD.

Sen. Lenny Kivuti, as you deal specifically with the issue of Sen. Ndiema, let us know about those other issues. That is my order for now.

Sen. Kivuti: Thank you, Mr. Deputy Speaker, Sir. We will deal with that. I cannot give the actual timing because we are going to write to the Ministry to give the specific question on county of residence, or county of issuance of the ID. Before I sit down, it may be good to mention something with regard to the concern of Sen. Kittony because although Sen. Ndiema is denying this report, he is the one who corrected the resolutions in our committee.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Kivuti! We will not go back to that now.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I will not go that way. If you look at the resolutions, we have Phase III coming up, but it has been put on hold by a court process. It was agreed even with the NLC and at the Ministry that the people who were affected; the people who Sen. Kittony is talking about will be considered in Phase III. At this moment, I do not think I can give a date when Phase III will be completed.

On the issue of Sen. Nabwala's comment on nationality of the allottees, that one is already dealt with. All are Kenyans because they have Kenyan ID cards.

Mr. Deputy Speaker Sir, if you allow me I can comment on Masongaleni. This is because of the issues raised by Sen. Mutula Kilonzo Jnr. It is good that he was present in all the deliberations. They were many, including the ones for the Konza City. The questions which originated in this whole exercise were five which are listed on page 3. The number of persons issued with allotment letters is 1,809. The size of land allotted to each person is as per the list which is attached in Appendix 1. The Cabinet Secretary talked about a list which was cancelled, which brought a lot of issues in this House. It is true that the list was cancelled and is also annexed in Annex 2. We did not have to put everything in the resolutions. We made the resolutions as brief as possible, but gave all the information supporting the answers.

On whether there is a database of persons issued with allotment letters, the answer is, yes. The people are annexed in Annex 1. Whether the survey has been done, the answer is yes and we were shown the survey plans. The Cabinet Secretary said that she could seek a waiver, but I do recollect and it is there in our report that there was a resolution in this House that such a move will be unconstitutional, and it is there in the report on page 3 at the bottom. This was objected citing Article 210(1) of the Constitution which states that:-

“No tax or licensing fee maybe imposed, waived or varied except as provided by legislation.”

For that reason, I do not want to submit that we have made any legislation to waive the fees for titles for Masongaleni, but if it does come, because there are some cases like in the coast region whereby people were given titles without paying. I, As a Senator, will support Sen. Mutula Kilonzo Jnr., the Senator for Makueni in case we get to that. But I do not want to state that, that is the position of the law.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Senator. That brings us to the close of that issue which has taken inordinately long to finish.

Proceed, Sen. Madzayo. Do you have a statement to make?

Sen. Madzayo: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I notice that Sen. Okong'o is not here now.

Sen. Madzayo: Sen. Chris Obure is present, because this question was asked by two---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Obure, you are holding brief for Sen. Okong'o?

Sen. Madzayo: The question touches on Kisii and the distinguished Sen. Ong'era is also present. Two Senators from the region are present. I wonder whether---

The Deputy Speaker (Sen. Kembi-Gitura): You have another statement for Sen. Nabwala? Is it ready?

Sen. Madzayo: Yes, Mr. Deputy Speaker, Sir. I also have a statement for Sen. Nabwala, but it is quite short.

The Deputy Speaker (Sen. Kembi-Gitura): Deal with the one for Sen. Nabwala first since Sen. Okong'o is not here and Sen. Obure is not holding his brief.

Sen. Madzayo: Mr. Deputy Speaker, Sir, we have already agreed with Sen. Nabwala---

The Deputy Speaker (Sen. Kembi-Gitura): You have agreed that she will not seek her statement?

Proceed, Sen. Madzayo.

STATUS OF ELDERLY PERSONS CASH TRANSFER PROGRAMME

Sen. Madzayo: Thank you, Mr. Deputy Speaker, Sir. Sen. Nabwala had asked a further question on the number of beneficiaries of the Cash Transfer Programme (CTP) for the elderly persons per county. We have received the data which explains each and every county for the year 2013 and the new beneficiaries for the year 2014. I have agreed with her that I will provide her with the data and that will put an end to this. Should she not be satisfied, then she will be in a position to ask a further supplementary question.

The Deputy Speaker (Sen. Kembi-Gitura): So, you want us to put that on hold to another time?

Sen. Madzayo: That is the position.

The Deputy Speaker (Sen. Kembi-Gitura): Okay; fine. Sen. Okong'o is here, you can give his statement now.

COMPENSATION FOR IDPS IN NYAMIRA COUNTY

Sen. Madzayo: Mr. Deputy Speaker, Sir, this was a question which was asked by the distinguished Senator for Nyamira, Sen. Okong'o, together with the distinguished Senator for Kisii, Sen. Obure. They had four questions; one was the various persons from Nyamira and Kisii counties---

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. Okong'o?

Sen. Okong'o: Mr. Deputy Speaker, Sir, I am surprised that the Chairperson is responding yet the standard procedure in this House is that I should be supplied with the written statement so that I can be in a position to deal and interrogate.

The Deputy Speaker (Sen. Kembi-Gitura): I am sorry; what did you say?

Sen. Okong'o: Mr. Deputy Speaker, Sir, I said that the standard procedure in the House is that the written response should have been supplied to me in advance in order to allow me to critique it---

The Deputy Speaker (Sen. Kembi-Gitura): You do not have a copy?

Sen. Okong'o: I have not been supplied with a copy.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Madzayo, why is that the case? Or have you just got it?

Sen. Madzayo: Yes, Mr. Deputy Speaker, Sir. I have just received the answer. I had asked Sen. Obure whether he would be comfortable if I went go through it.

The Deputy Speaker (Sen. Kembi-Gitura): But this is a statement which was sought by Sen. Okong'o.

Sen. Madzayo: Mr. Deputy Speaker, Sir, it involved both the Senators.

The Deputy Speaker (Sen. Kembi-Gitura): Now, let me see. What is the purport of your point of order, Sen. Okong'o? Are you not ready to receive the statement? If that is so, I will understand and I will be with you. So, maybe I should then ask Sen. Madzayo to give you a copy of the statement and it can be answered tomorrow. Is that good for you, if you have not seen it at all?

Sen. Okong'o: Mr. Deputy Speaker, Sir, that will be okay so that we can be supplied with the written statement. I agree with you that it can be given tomorrow so that we can critique it.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered; the statement will be given tomorrow afternoon. Supply him with a copy of the written statement. I am happy that you had discussed it with Sen. Obure, but, you see, it would appear as if Sen. Obure did not have the authority to receive the statement on behalf of Sen. Okong'o.

(Laughter)

So, that is it for now.

Sen. Njoroge is not here. Let us hear Sen. Wangari.

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir. I had actually put an intervention because the Speaker has ruled earlier that any statement becomes the property of the House. That is the matter of procedure. Apart from practice, it is mandatory for Chairpersons to give the written statements prior to reading them in the House. I just want a clarification on that issue.

The Deputy Speaker (Sen. Kembi-Gitura): Well, how do you interrogate a statement that you have not had time to look at? These statements are important for our procedures. The correct thing to do is to give the person who has sought the statement a copy of it, so that he or she can raise issues on it.

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir, for the guidance. However, let me move on to the more important issue. If I am allowed to ask for a statement that I had requested on---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wangari! You have to intervene. What are you seeking now? You have raised an issue and I have dealt with it.

Sen. Wangari: Okay. So, do I put the intervention again?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): As I said at the beginning, Sen. Wangari, you know how to do things correctly, do you not? Today we had a bit of a problem at the beginning because most people were not here when we began. I said that I am going to reorganize the Order Paper so that we can have the Paper laid by Sen. Obure and then a Notice of Motion given by Sen. Mutula Kilonzo Jnr.

Sen. Martha Wangari, what is the point of order now? What is your intervention?

DESTRUCTION OF INSULIN MEANT FOR
CHILDREN WITH DIABETES

Sen. Wangari: Mr. Deputy Speaker, Sir, I am just seeking to do the things right. I am sorry for the prior confusion because I thought I could still do it under the same intervention. But if you allow me, on 1st of October, 2014, I requested for a statement from the Standing Committee on Health on the issue of the destroyed insulin medication that was in Kenyatta National Hospital (KNH) for children with Diabetes Type II. That issue was due on 21st but it was deferred to last week; last week it was again deferred to this week. I am still waiting for that response from that Committee.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, you are the Chairperson of that Committee. This issue has been outstanding for a very long time. Do you have anything to say about it now?

Sen. Kittony: Mr. Deputy Speaker, Sir, I am a Kenyan and I really would like to know my status. I have been listening to what has gone on this afternoon. I know that you have made a ruling, but just allow me because I think it is very important for us to know where you come from. I know where I was born and I know where I live. But if this is what it is, then it is very important for me to know whether I am a foreigner or I am a Kenyan; and I live as a Kenyan where I am.

Thank you, Mr. Deputy Speaker, Sir. I wanted to be heard and to be in the HANSARD.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, I was addressing you as the Chairperson of the Committee on Health!

(Laughter)

Sen. Kittony: I am sorry, Mr. Deputy Speaker, Sir. What question was that? I did not hear your question; I was a bit disturbed. I wanted to be sure who I am.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kitonyi, there was a statement that was sought a very long time ago on the destruction of insulin. It was sought by Sen. Martha Wangari, it was supposed to have come back as long as 21st of September or October, I am not sure of the date. It is quite sometimes back. That statement has not been issued. Do you have the statement or what is the position about that statement?

Sen. (Prof.) Lesan: On a point of order, Mr. Deputy Speaker Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Lesan, I have not called you. We know we must take this House seriously. I am addressing Sen. Kitonyi.

(Sen. (Prof.) Lesan stood up in his place)

Order! I am not seeing any intervention from Sen. (Prof) Lesan. I do not know what you are standing up to do.

Sen. Kitonyi, can I have an answer from you, please? If Sen. (Prof.) Lesan wants to answer on your behalf, then he should show that he wants to intervene.

Sen. Kitonyi: We will give the answer in two weeks.

(Laughter)

Sen. Wangari: Mr. Deputy Speaker, Sir, this issue was very urgent. I asked for it on 1st October 2014, and the Speaker has ruled consistently that it be brought the following week. We are now on 5th of November of 2014. It would be very unfair for me to ask for another two weeks. In fact, I should ask that the answer be brought tomorrow.

The Deputy Speaker (Sen. Kembi-Gitura): Indeed, I would say that the Committee on Health is not taking this issue seriously.

That is the statement I would like to make now. Sen. (Prof.) Lesan was here when the issue was raised not so long ago. Sen. Ziporah Kitonyi; the Chairperson was here. The HANSARD is there and I am sure the Clerk's office has sent this request for statement to the committee. Therefore, I do not think it is right to casually say that you will give it in two weeks. The House wants to know whether you will be able to issue this statement. If so, what are problems because it has been more than a month since the statement was sought? This matter came up only last week in the House.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker Sir. Indeed, this matter came back in the committee's meeting this morning and we addressed the issue. The question on the drugs was directed to the Ministry of Health. The Ministry of Health attempted to answer that question, but we thought the national Treasury needs to deal with the issue of Kenya Revenue Authority (KRA). Therefore, it required that the question came back and was redirected to the Treasury to give an answer relating to the factors that affect the KRA.

Mr. Deputy Speaker, Sir, we have been attempting to get this answer to the House as soon as possible. I am sure that if we are given another week or so, because the

question has already gone to KRA and, therefore, we are able to get both answers from the Ministry of Health and the KRA.

Thank you, Mr. Deputy Speaker Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Very well, I direct that you give this answer on Wednesday 12th November, at 2.30 p.m., next week, so that this matter is put to rest.

(Statement deferred)

Sen. Kisasa: Thank you, Mr. Deputy Speaker, the whole of this afternoon I have been lost because I wish Sen. ole Ndiema could explain to me the foreigner in that context.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! we have by passed that matter by more than half an hour ago. We have moved from that matter until an answer is given.

Sen. Kisasa: Thank you, Mr. Deputy Speaker, I thought that----

The Deputy Speaker (Sen. Kembi-Gitura): No. it is not possible, you are completely out of order!

Yes, Sen. Abdirahman.

Sen. Abdirahman: Thank you, Mr. Deputy Speaker Sir. I think there is something wrong with that part of the House today. I am sorry to say this because there seems to be constant confusion arising from either their mental absence or, probably, the lack of seriousness on the part of the Jubilee Government because they represent the Government.

We are following a certain pattern or order in this House. Once you give your ruling on a matter, it is important for us to abide by it. It will save us a lot of time as the House to move on. I would rather you give us direction again.

The Deputy Speaker (Sen. Kembi-Gitura): I have given you direction. I have told Sen. Mshenga that she is out of order. What else do you want me to say? Sen. Wangari, your matter is finished; it shall be raised again on 12th Wednesday, November, 2014. That is when you shall get your statement.

Now, I will go back once more for Sen. Obure to lay the paper. I can tell you that I am operating under Standing Order 39 to alter the Order Paper.

PAPER LAID

REPORT OF THE COMMITTEE ON ROADS AND TRANSPORTATION ON MAINTENANCE OF NAIROBI-MAGADI ROAD

Sen. Obure: Thank you, Mr. Deputy Speaker for indulging me. I beg to lay the following paper on the table of the Senate today, 5th Wednesday, November 2014.

The Report of the Committee on Roads and Transportation on the maintenance of the Nairobi-Magadi Road.

Thank you, Mr. Deputy Speaker, Sir.

(Sen. Obure laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Sen. Mutula Kilonzo Jnr. can you give your notice of Motion.

NOTICE OF MOTION

ESTABLISHMENT OF INDEPENDENT COMMISSION ON COUNTY BOUNDARIES

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir, for using your discretion under Standing Order No.39. However, I beg to give notice of the following Motion.

THAT, noting the constitutional role of the Senate in the protection of the interest of counties and their governments and the implementation of the devolved systems of governments. Pursuant to Article 96 of the Constitution; aware that the 47 counties are based on the delineation of administrative districts as created under the Provinces and District Act of 1992; further aware that there exist deep-rooted and historical boundary disputes between the districts which were inherited by the resultant counties; aware that there are existing boundary disputes between various counties which raise questions on the exact boundaries between the counties; recognizing the provisions of Article 188 of the Constitution of Kenya that mandates Parliament to approve alteration of county boundaries on the recommendation of an independent commission set up for that purpose; the Senate urged the Sessional Committee on Devolved Government to initiate and prioritize the drafting of legislation within ninety days to provide for the establishment of an independent commission to inquire into, examine and indentify the boundaries of counties, taking into account the criteria set up in Article 188(2) of the Constitution and to recommend appropriate changes to Parliament so as to comprehensively deal and resolve the inter-county boundary disputes to enhance national cohesion and stability.

Thank you, Mr. Deputy Speaker Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, next Order.

MOTIONS

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

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

(Sen. Kagwe on 16.07.2014)

(Resumption of Debate interrupted on 16.07.2014)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ole Ndiema was on the Floor. He had 12 minutes left when this matter was interrupted. I see that he is not here, so the Floor is open to any Member who wants to contribute to this Motion.

Sen. Okong'o: Mr. Deputy Speaker, Sir, I thank the Committee which I belonged to, for doing very comprehensive work and bringing a report to the House for adoption. The Committee was initially known as the Committee on Education, Information and Technology. It was one of the most vibrant in this House. I am glad that we are seeing the results of the work that we did.

As we speak, I am happy to report that the County of Nyamira, for instance, where we visited, is now laying the fibre terminal. This will assist young entrepreneurs, educational institutions and the rest to harness the work of ICT. It is also important to note that in most counties we visited appeared to be very vibrant and knowledgeable about matters of ICT. The current leadership and management of the Committee on ICT needed to follow up on where we left so that they can work effectively to embrace this technology.

As you are aware, we are working on Vision 2030 which requires that we comply. It is unfortunate that the Jubilee Government, headed by the President, gave a promise to young children but that has become a mirage. It is important that if they have failed to deliver on that promise, we explore other avenues. We can use the CDF money to work on this. The infrastructure, especially from Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) Corridor project is on course. It is important that each and every Kenyan especially those in learning institutions embrace this technology. The work of this Committee was exemplary. We want to ask them to continue working with other institutions in this framework so that Kenya, which is a business hub in this region, can ensure that our people in the counties benefit effectively from this technology.

We are aware that banks like the Equity Bank want to be part of this business. We want to encourage young entrepreneurs and other persons. I also want to ask the Government to fast track the stagnated arrangements so that banks like Equity can be allowed to work on this network and enable many Kenyans attain the goals they have set in this area.

As you are aware, when we travelled far to Dubai with our able leadership who is still our able Chairman, we traversed to go to an area where there is a terminal cable in Lifuja, Dubai. We wanted to check and see why Kenyans are paying more money on the area of calling rates. Our Chairperson said that he would work with the current Government on this. The other party told us that it is the Kenyan Government which had not taken the initiative to do a follow up.

We walked on foot to see a five metre terminal which is making the Kenyan Government pay a lot of money through Safaricom and all other calling agencies which makes calling rates in Kenya higher. Our Government has not taken the initiative to negotiate with the Dubai based company which is providing the fibre optic from that end. We need to ask our Chairperson to follow up with the relevant Ministry which is headed by the Cabinet Secretary, Dr. Matiangi, who also appears to be very vibrant in the job so that calling rates are lowered to assist Kenyans to make calls to different business avenues.

I was happy to serve in this Committee. I commend their job and this is the right way to go in this House.

With those few remarks, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, there are no other Senators interested in debating. The Mover is not also here to reply. That was Sen. Mutahi Kagwe and he is not here to reply.

The Motion before us does not affect counties. The Mover is not here and making a reply is not mandatory. Therefore, I will put a question.

(Question put and agreed to)

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

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

the grave danger their departure poses to the health sector; the Senate calls upon the National and County Governments to urgently address the concerns of medical practitioners to avert the looming breakdown of health services in counties.

(Sen. Ndiema on 1.10.2014)

(Resumption of Debate interrupted on 1.10.2014)

The Deputy Speaker (Sen. Kembi-Gitura): On this Motion, Sen. Peter Mositet had six minutes to make his contribution. So, the Motion is still open for debate.

Sen. (Prof.) Lesan, are you seeking the Floor?

Sen. (Prof.) Lesan: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Nabwala, you may proceed.

Sen. Nabwala: Thank you, Mr. Deputy Speaker, Sir. I rise to add my voice on this important Motion concerning the shortage of doctors in our counties. We know that health is a devolved function and most of the responsibilities lie with the counties to ensure that health facilities are functioning. However, they are facing challenges. One challenge is that when doctors were transferred, there should have been wide consultations between the Kenya Medical Dentists and Practitioners' Board (KMDPB) which is a body that regulates and works closely with doctors. Doctors feel insecure working in the counties. The reason they feel so is because of training. In the past, we know that the national Government was responsible for training of doctors. They have also been trained in many other courses outside the country. So, when a doctor is transferred to a county, particularly in the remote areas, those facilities are not there. Most hospitals in the counties are ill-equipped. They do not have facilities for dialysis and no medicine. If we transfer a highly qualified doctor to a county who would maybe like to use his skills to help the patients but then you find that the facilities are not there. So these doctors are not really challenged; that is why you find that most of them seek greener pastures elsewhere.

Mr. Temporary Speaker, sir, in terms of remuneration, when the doctors were transferred from the national Government to the county governments, this should have been made clear so that when you go to the county government, you know at what level you are going to serve the county. These doctors serve in various job groups at the national Government whereas in the counties, we do not have those particular structures. So this is a challenge to the doctors. Kenya, as country is already facing a shortage of doctors as per the World Health Organisation (WHO) standards.

This is one issue that I think the national Government and the county governments should work closely together to sort out because the migration of doctors from counties is making patients suffer. Devolution was meant to move services closer to the people and if we cannot deliver services as doctors, then we are not helping the people in the counties. Our own people are really suffering.

Therefore, Mr. Temporary Speaker, Sir, it is very important that the doctors' issues are addressed by both the county and the national governments with the involvement of all the stakeholders, like health professional bodies, Non-Governmental Organizations (NGOs) and development partners.

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

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

Therefore, Madam Temporary Speaker, I support what my colleague, Sen. Ndiema, has brought up on the Floor of this House because it is a critical issue. At one time, we visited Mombasa County with the Committee on Health and paid a courtesy call to the administrator. We were told that they had closed down some theatres because they lacked consultants who could operate on patients. So, this problem is big and we need to look into it. As legislators, I think we should make sure that we allocate more money to counties, particularly for health. Alternatively, counties should account to this House how much they allocate to health because you find most of the money has been allocated to roads while we forget the health facilities. In most hospitals like the one in my home county of Trans Nzoia, there is no medicine.

You will find a doctor attending to a patient, prescribes the medicine but asks that patient to go and buy medicine and then come back to be treated with that medicine. I remember one case where I went to condole a woman who had lost her daughter. This woman gave me the story of how her daughter had been admitted at the Kitale District Hospital in Trans Nzoia. The doctor attended to the girl who was in Form Three. He prescribed some medicine and at Nine O'clock, the case became critical. When the doctor was called back, he said: "Oh this is meningitis." He then wrote a prescription for the mother to go and buy medicine so that the daughter could be treated. This mother looked at the daughter who was dying, looked at the prescription and decided to stay by her daughter so that when she dies, at least there would be somebody by her side.

Madam Temporary Speaker, I agree with what the Mover of the Motion has said that the national and county governments should address the concerns raised by medical practitioners to avert the looming breakdown of health services in the counties. It is the responsibility of the Senate to protect counties, where we have district hospitals and health centres. So, it is our responsibility as legislators to make sure that there are proper structures. It is our responsibility to make sure that jobs are well defined for the medics so that they do not resign to go and work elsewhere.

I beg to support the Motion. Thank you.

Sen. Okong'o: Thank you, Madam Temporary Speaker, for giving me the opportunity to add my voice to this timely Motion. The first mistake that maybe the Senate made was to unbundle this function. This function could have been left to the national Government. It is ironical that the national Government remains with 85 per cent of the national budget and the meager 15 per cent that is sent to the counties is even left to health care facilities.

Madam Temporary Speaker, mistake number two on this line is when governors, some of whom do not understand the problems faced by medics, are left to be in charge of health care. For instance, in Nyamira County, we have a hospital called Nyamira Level Four Hospital. I have been to that hospital two to three times, playing my oversight role and what I saw in there is terrible. If you go to the kitchen, you will be surprised to see what the patients eat; it is a semblance of a kitchen. If you go to the mortuary, you will wonder because corpses are stacked over one another and a small five litre container of formalin is hanging as a preservative. When a medical superintendent who is educated and knowledgeable about these issues raises them to the county government, he is told that he is playing politics. I was in that hospital recently and the laundry is terrible. The workers are using Ariel and Omo to clean the beddings.

The Temporary Speaker (Sen. Ongoro): Sen. Wangari, do you have an intervention? What is your intervention?

Sen. Wangari: Thank you, Madam Temporary Speaker. Is the Senator for Nyamira in order to condemn this House for unbundling a function and taking it to the county, yet we know that that role was done by the framers of the Constitution, we voted for it and the Fourth Schedule is very clear on how these functions are allocated?

The Temporary Speaker (Sen. Ongoro): Are you giving information---

Sen. Wangari: No, it is a point of order. Is he in order?

The Temporary Speaker (Sen. Ongoro): Is he out of order? Proceed, Sen. Okong'o.

Sen. Okong'o: Madam Temporary Speaker, all these functions were unbundled in the Constitution, but it was not mandatory for us to unbundle them to the counties if they were not ready to take that position. So I do not think I am out of order to give such a sentiment. I said "maybe the first mistake we may have made." I used the word "May."

The Temporary Speaker (Sen. Ongoro): You are not out of order. You are giving your opinion on this Bill and I think you are within the confines of the provisions.

Sen. Okong'o: Thank you, Madam Temporary Speaker. As I was saying, some of these problems we are facing especially when I am talking about a county hospital called Nyamira Level Four Hospital, whereby I have had issues with the County Government, I play my role of oversight. I do not have to tell anyone that I am going to any area of Nyamira County. So, when I made my impromptu visit to that hospital, it cost the job of our medical superintendent.

That is why it is very important for the national government and the county governments to come up with mechanisms of arresting these situations. It takes many years of agony for a doctor to rise to the status of a medical superintendent. So, when an officer in the name of a governor transfers him from that position to another hospital without really understanding or addressing the issues that have been raised, it is sad and tragic. These medical superintendents in all hospitals do not have a kitty to arrest situations.

Madam Temporary Speaker, at one time, the same hospital lacked oxygen. It happened to be in the county and I was talking to the finance officer, who is a very young man. I asked him what the problem was since people were dying at the hospital. He told me that there were bureaucratic procurement procedures to follow. That is why it is very

important that maybe the national and county governments, in liaison, need to come up with a body, maybe a medical service board whereby it will be very difficult for anybody to transfer a person without following very well laid down procedures.

Madam Temporary Speaker, that is why this Motion is timely. It is very important that the national Government, which keeps 85 per cent of the money, should reconsider dealing with the issue of health because they are as essential as the issue of security. If the Jubilee coalition Government is not going to work fast and send money to the counties, the *Okoa Kenya* Initiative will become even more popular, so that more money can be given to the counties. Those governors who squander the money should be sent to the gallows. Health, security and agriculture are the backbone of our people's livelihood. As we pass this Motion, we should follow it up so that we can come up with a mechanism of salvaging the image of our medical officers who are suffering at the whims of the county governments. I do not understand why the Jubilee Coalition Government chose a banker to head this Ministry because sometimes he does not understand the agonies the doctors. If it was a medic heading such a Ministry, it would have been easier for him or her to understand what goes on in the Ministry.

With those few remarks, I beg to support.

Sen. Murungi: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Motion. We, in Meru County, are very embarrassed because – when I talk about embarrassment, I am talking about pecuniary embarrassment – the Level Five hospital in Meru which we used to call the Meru General Hospital is on the verge of collapse. The annual recurrent expenditure for that hospital is about Kshs300 million. You know the struggle we went through in this House when we tried to increase the allocation of funds for Level Five hospitals. Although there were revisions in figures, we, in Meru County, got the lowest amount in allocations because out of our request of Kshs300 million which is the budget that has been given to us in the last financial year, this year we were only given Kshs68 million. We do not know what to do with the Kshs68 million; whether to buy drugs, to pay some staffers and not others or to close part of the hospital.

Madam Temporary Speaker, I think when these funds are being allocated, it is very important to look at the functions that are taking place at an institution instead of drawing a line and giving out the money arbitrarily without any basis at all. We have told them to spend the money and when it is finished, those who gave us will tell us what to do with the hospital. We are staring at a crisis because maybe that money is going to run out by December this year and we will be staring at a new crisis in January largely because of poor planning of public finances particularly in the health sector.

We have seen what the devolved funds have done. All our dispensaries and health centres are now well equipped. We are regularly getting supplies of medicine. In the past, we used to wait even a whole year without any delivery of drugs taking place. I must comment the County Government of Meru, especially our County Executive officer for health Dr. Morara, because he has done a great job in making sure that health facilities are well equipped and we have also got ambulances in some of the health facilities which we had asked for, for many years, but we could not be given. I must say that we are

enjoying the benefits of devolution in the health sector in those lower levels but there is a real challenge in Level Five hospitals.

Madam Temporary Speaker, this Motion is very important because I know there is a push in the Senate for us to have referral hospitals in every county, even in the counties where the Level Five hospitals do not exist today. We expect that in the next few years, there are going to be at least 47 county Level Five hospitals in all the counties. The challenge we are going to face is the retention of qualified specialists in those counties. We are already experiencing this problem. There are some counties where we do not have enough indigenous specialists and we have to rely on other counties.

It is not that sometimes we do not have those specialists, but of course, we know the specialists are concentrated in one county called Nairobi; at the Kenyatta National Hospital, Aga Khan Hospital, Nairobi Hospital and other hospitals. If you go to other areas like Mandera and Turkana, the specialist there will be a clinical officer. There is a similar story in the outlying districts. It is going to be a real challenge unless we have a policy which will ensure that we recruit and retain specialists of various kinds in those other counties. I think this is what this Motion is trying to address.

Madam Temporary Speaker, this is not just a matter for the counties, it is a matter which requires cooperation between the national Government and the county governments. Were it not for other issues which will be offending the Constitution, maybe what we would have for doctors is a board equivalent to the Teachers Service Commission (TSC) where it is in control of the teachers and it is able to post them everywhere in the country. It does not matter where a teacher comes from, he or she can serve in other counties. If we had a body which was controlling doctors like that, so that a doctor gets a letter posting him to Lodwar or Garissa, he has no choice because he has signed the contract and agreed that he is going to serve in any county in the Republic of Kenya---. Maybe that way, we could to make sure that there is equitable distribution of this resource because these doctors do not make themselves; they have been trained by professionals using facilities that have been funded by Kenyans. The doctors' training in the medical school is funded by Kenyans and, therefore, Kenyans should benefit from that investment. We should have a mechanism for determining where that doctor whom we have invested in goes to work.

It is very unfortunate that any person with a little money now does not die in Kenya. They are dying in South Africa, India, the United States of America and other places. I think time has come for Kenya to build facilities of excellence in terms of diagnosis and treatment in this country. I know when our friend, Sen. (Prof.) Anyang'-Nyong'o, was the Minister for Health, he came up with a very good proposal and they said that they had money from the National Hospital Insurance Fund (NHIF) to put up a world class facility; a centre of excellence in some land in Karen which would cut all these trips people are making to external countries because even where we do not have the topnotch world class experts, they could bring those experts to our facility here, get the operations done and then the experts can go back home. It will be cheaper. What is making this treatment abroad expensive is not only the patient you are taking the hospital, but you are taking the patient, a relative and sometimes a local doctor. This is a minimum of three people and sometimes they are going to stay there for three months.

We are enriching countries like India because even people who are not sick are going there on medical tourism to support the patients. We can save this country a lot of foreign exchange if we invest even Kshs5 billion or so in creating such a facility here. In the long run, it will be a great saving for this country. It was a great idea by Sen. (Prof.) Anyang'-Nyong'o. It is very unfortunate that it was shot down by some Kenyans and it has never been revived. I think time has come for the national Government to do something like that so that where the Level Five hospitals are not able to deal with those cases of such complexity and magnitude, then we could have our own central referral facility of excellence as the ultimate centre where we can deal with these complicated cases.

Finally, Madam Temporary Speaker, as people who are monitoring what we are doing with what the national Government resources allocated to the counties, it is for us to oversight those resources to ensure that---

The Temporary Speaker (Sen. Ongoro): Your time is up. You know we are digital now, but I think you still have a minute or so.

Sen. Murungi: Thank you, Madam Temporary Speaker. You have been very generous to me.

The Temporary Speaker (Sen. Ongoro): Okay.

Proceed, Sen. Ong'era

Sen. Ong'era: Madam Temporary Speaker, thank you for giving me this opportunity to also support this Motion. From the outset, let me congratulate Sen. Ndiema for bringing up this important Motion that is discussing the state of health services in our counties. As you are aware, since September 2013, many doctors have resigned from public hospitals in Kenya. The highest number of these doctors who resigned was in Embu County where over 16 doctors resigned. This is unacceptable. We, as the Senate, must interrogate these issues and come up with a solution. The reasons why many of these medical practitioners are resigning is because of the many problems which are really genuine. Amongst these problems, I want to highlight three of which I think are very critical in this country.

Madam Temporary Speaker, one of them is that they have inadequate funds to pay the doctors or the medical practitioners. As you know, we have been trying severally in this Senate to raise the budget for medical facilities in the counties but this keeps on being shot down at the National Assembly. It is high time that we amended the relevant provisions of the law including the Constitution so that the Senate can actually deal with the allocation of revenues directly and the matter is finalized here in the Senate.

We cannot have a situation where doctors do not have guaranteed security of tenure. We cannot have a situation where doctors are not guaranteed that at the end of the month they know whether they will get their salaries or not. We cannot have a situation where we know that health services are actually one of the most important essential services in this country but we are holding doctors at ransom; these are the people who provide services or and a key instrument in the provision of those services. The manner in which we are treating our medical practitioners is unacceptable. We are not respecting them despite the fact that they offer a very important service.

Madam Temporary Speaker, when I look at the national budget, it grieves me to note that security is given the highest amount of money and yet the state of insecurity in this country leaves a lot to be desired. Yet health, which is also an essential service, the money is not being devolved down to the counties. It is high time that we reduced the number of personnel at the Ministry of Health Services here at the national level. What work are these people doing other than just sitting in their offices and calling it a day? The real work – as you know because of devolution – lies in the counties and that is where the money needs to be devolved to. We need to bring an amendment to the Medical Health Act to ensure that we leave just skeleton personnel at the national headquarters and all the funds – maybe we say two thirds of these funds – be devolved to the counties.

Madam Temporary Speaker, I want to agree with Sen. Okong'o when he says that although we devolved these services, we did so too early. We should have had adequate planning because we were given a three year period and we should have done proper planning so that by the time we have our medical doctors in the counties, we have enough funds. Today, as you are aware, the governors are faced with a real problem. They do not know what to do because they do not have enough money with which to pay the doctors. While I commend the President and the Governor of Kisii County for making Kisii County a referral and teaching hospital, however, you may have very beautiful buildings and put this in the newspapers or in the gazettes but if you do not have doctors who are going to teach these students, we will not have achieved the targets we are talking about.

Madam Temporary Speaker, I noted that the hon. distinguished Senator for Meru, said that in another two or three years, we will have 47 Level Five hospitals in this country. This cannot be achieved unless we have enough money being devolved to the counties. That is why we must all come and support the *Pesa Mashinani* initiative so that we have enough money in the counties that can do the work that is needed for medical services.

I want to end by quoting something here that I felt that I needed to bring to the attention of this House. Last year, as you know, many doctors went on strike and this is what Dr. Sultani Matendechere, the Secretary General of the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) asserted; he felt that the national Government should reverse the transfer of salaries and the entire management of health services from the county governments to the national Government so that they can avert the looming breakdown of health services. This is coming from an expert but we need to find a solution. The solution is not to reverse what we have already done. The solution is to find more funds in the counties so that we can ensure that our health facilities are meeting the adequate thresholds that are required and to ensure that doctors or nurses are not living in fear that they do not know where they will get their bread tomorrow.

Madam Temporary Speaker, I thank you and I support.

The Temporary Speaker (Sen. Ongoro): Yes, Sen. Adan

Sen. Adan: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this important Motion. We do not have to regret having devolved this particular function because we made a decision as a country that this

service should be transferred to county governments. However, in my opinion, we should have come up with proper structures in terms of devolving this important function. This is a service that touches on the lives of Kenyans.

The way we have handled it is like we have pushed all the services to the county governments without them being prepared. If I was asked, I would have said that we should have come up with a structure where we upgraded all the hospitals within the counties before we transferred all the services. That way, they would have managed to take care of themselves. I am saying this because most of these hospitals, especially the district hospitals, are worse than they were when they were under the national Government. They are all falling apart and are downgraded. This is simply because of the challenges they are facing.

A very good example is where I come from, Isiolo County. These are the counties that have suffered for many years. There are no medical facilities. I remember when I used to work with the Ministry of Health many years back, the Ministry of Health used to get the largest share of the budget in this country. If that budget was available, it would have been given to the counties so that they are able to develop those hospitals. Procurement is a big challenge because the hospitals do not have the capacity for procurement.

The other point that I want to raise is that of hiring staff. I am telling you for a fact that most of the people we actually hire in those hospitals do not understand the medical fraternity. This is purely because county governments are political governments. So, we appoint people depending on whether they supported us or not. We are not looking for the professionals. Clearly the professionals are getting frustrated. Most of them have decided to leave especially the experienced doctors and nurses.

They have made a decision to leave those hospitals because they are not provided with the facilities that they should work with. Secondly, the people who are appointed to man those hospitals do not understand or know head or tail what a medical department looks like. If we are not very careful, we will lose all these professionals. The poor people who cannot afford medical care, especially women, are really dying, day in, day out. Nobody talks of that. Most of them do not have anywhere to go to. Clearly, we have a lot of challenges.

We need to come up with a proper policy in terms of how these hospitals are going to be run. Personally, I feel that the Ministry of Health should come up with a structure or a standard kind of policy where they oversee the running of those hospitals; whether they meet the standards in procurement, appointments and so on. If we do not do that, then we have lost direction especially when it comes to health facilities.

Health is a critical aspect in our lives. Previously when there were challenges in district hospitals, we used to run to referral hospitals. Most of the referral hospitals are actually charging exorbitantly these days. Poor members of our communities cannot afford the charges. The district hospitals do not have facilities. It is high time that this Senate sits and makes a decision especially for the department of health services. They should actually review or maybe look at the way these hospitals are currently running and come up with a proper intervention. If we do not do that, then all our hospitals will be run down, they will shut down and Kenyans will get frustrated. Of course, the doctors will go

and open their *kiosks* wherever they are. However, where will the poor Kenyans go? The Senate has a mandate. I propose that maybe we need to task the relevant committee to see what challenges those counties are facing especially in terms of delivery of services after the function has been devolved.

Finally, initially there was job security in those hospitals. However, those professionals do not have job security. They are facing a lot of frustrations. The doctors and professionals are actually raising these issues. Clearly, we must come up with a solution to the current challenges that we are having in our counties that are affecting our hospitals.

Thank you, Madam Speaker.

Sen. Wangari: Thank you, Madam Speaker. I want to start by congratulating the Mover of this Motion. It is a very timely Motion because what we are going through as a country in the health sector is actually a time bomb. When I was a Member of the Committee on Devolved Government, the practitioners had seen this problem quite early. They had seen the signs and they had come to petition the Committee with a proposal on what needs to be done.

I know there have been numerous problems. There has been even clamour to get referral hospitals like my colleague Sen. Kiraitu has said in every county. If you cannot secure funding for the few existing referral hospitals that are in the counties today, the budget has been halved, it would be almost impossible to run 47 referral hospitals. The challenges experienced by the practitioners at the county level are quite serious. They have articulated these issues in the media and even come to the Senate. They are looking upon us to make a decision. In any employment, what you look for is job security, on the job training and being able to have a clear mind when you are working. But today, it has become a political decision on how this will be done at the counties. This is terrible.

If we are not able to create confidence in these practitioners, there will be haemorrhage, it has already started. There are opportunities outside this country. These practitioners are taking them because when they look at what they expect at the end of the month, they are not even assured of their salaries. They have committed their salaries to other obligations, maybe a mortgage or a loan that they are paying using the same salary. It is not an assurance any more. How then do we attract other youngsters to join this profession if we are not able to manage the ones that we have?

I know a Senator had earlier said that the highest we get in the health centres in some counties is a clinical officer or a nurse. That is the person who is commonly known as *daktari* because we cannot attract any higher. Either they are retained in Nairobi, as has been said earlier, or they have left. The uncertainty in this sector will drag this whole country down.

Madam Temporary Speaker, I know the issue of policy and standards has been left for the national Government. But if you read the Constitution in Article 189, it talks of cooperation between the national and county governments. We must be able to join these two levels of government in working together for the benefit of the country.

Article 189(1)(c) states as follow:-

“Government at either level shall—

(c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.”

What we have suffered these few months, like 19 or 20 months ago since this function went to the counties is that the county governments do not want to be told how to do it. They want to run and be the ones doing the staffing. They do not want the national Government anywhere. We cannot work like that. This function has been in the national Government. We have had our share of problems, but the problems that we are having now are worse than they were when the sector was under the national Government.

When we do an audit on devolution, we should ensure that we succeeded in bringing services closer to the people. We should do statistics and see, for example, if we were losing 100 people in a day, then have we reduced that, now that the services are supposed to be closer to the people? If we do an audit and we do not get that improvement, then we would have failed.

Madam Temporary Speaker, it would be important, as this Senate, to offer guidance either through the Committee on Health in conjunction with the Sessional Committee on Devolved Government for them to look at the proposals presented by the practitioners themselves, because they have been outspoken. They have said it; that the solution may not be to reverse the whole function to the national Government, but the co-operation in terms of directing policy, standards in terms of staffing and the training. These proposals are there; they are not going to come anew.

It would be important that the governors, through their Council of Governors (CoGs), have consultative meetings because most of the problems we are having in this country – and I have said it before – is because we do not want to talk to each other; we want to talk at each other and we do not want to listen. At the end of the day, it is the children who will suffer because they will not get access to the hospitals; it is the women who will suffer because they cannot get to the hospitals; it is the men of this country who will suffer. If we cannot sort out this mess, then we would have done a disservice to this country.

Madam Temporary Speaker, in an extreme situation, a reversal of a function is not entirely impossible and that is why the drafters of the Constitution in Article 187 talk about it; that if we feel that a function is better performed at a certain level, then the two levels of government should enter into an agreement in order to transfer a function. But I do not want us to run out of our house because it has started raining. I would propose that we tackle the problems that we have, but if we do not talk about the retention of these practitioners, we will have a problem now and in the future.

So, Madam Temporary Speaker, I want to support this Motion and hope that the Mover will take it forward maybe in terms of legislation, in conjunction with the relevant committee in order to come up with a law that will help deal with these problems, because the proposals are there. The practitioners themselves are willing to even appear before the committee to see how best we can deal with this problem.

Madam Temporary Speaker, I beg to support.

Sen. Omondi: Thank you, Madam Temporary Speaker, for allowing me to contribute to this Motion. First, we must agree that when we are starting something, we must have teething problems. But we should not allow the teething problems to be a problem that will make us fail to achieve what we wanted to achieve.

Madam Temporary Speaker, the starting point is all about devolving functions and the funds. We do not see the reason why most functions should be devolved to the county governments, as per the Constitutional requirements, but the financial support is not devolved fully. This is becoming a problem. There are three functions that we, as a country and we, as legislators, must take seriously. These are the areas of education, health and the security of our people.

Madam Temporary Speaker, we have Kenyans and their families who cannot afford to access health services like the other Kenyans. These Kenyans rely on us, as legislators, to come up with policies that are going to make them access health facilities or health services. At the moment, Kenyans are suffering; they cannot access health services simply because the function was devolved, but there is no harmony where the county governments and the people who are offering these services are coming together to learn and understand how best they can deliver services to Kenyans.

Madam Temporary Speaker, when I visited one of the health centres in my constituency, it was pathetic. Yes, the Government is giving free maternity healthcare to mothers who are delivering, but the environment where these mothers are giving birth is wanting. The environment where this service is given is so pathetic; the way the beddings, the food and the medicine are, I think it is not free the way it is said to be. Because of the lack of motivation, insufficient staffing and the lack of security to service providers, the medical service practitioners have relaxed. You will find that the casual workers are now billing for the medicine; they are serving medicine without proper prescriptions of this medicine and in a way, it shows how the people of Kenya have been neglected when it comes to health services.

It is really important for us to take health seriously. We should support it in terms of financing the health services, putting in place structures and making sure that the people who handle the patients are qualified. You will find a hospital which is supposed to run for 24 hours closing at 6.00 p.m. So, the patients who are coming in after 6.00 p.m. have to sleep in the hospital without being attended to. These patients would have been better staying at their houses. This shows that the health service providers have lost hope because of lack of motivation, lack of promotion and the way they are being mishandled when it comes to looking unto them as people who offer the service that is very critical to Kenyans. This makes them not to care whether they have left behind patients or whether these patients need their attention. It is not their business. The same way the education sector is having its ups and downs is the same way the health service sector is also questionable.

Security is also wanting and we must come out strongly because if these three functions fail to pick up, then others will not reach where they are supposed to reach. At the end of the day, we will have a sick country where Kenyans are sick; a country where the security of the people is not guaranteed, then we are not going to achieve economically as a country.

So, Madam Temporary Speaker, I want to support this Motion, but I want to call upon the Committee on Health, in which I am a Member, to sit with the health service providers and the relevant County Executive Committee (CEC) members in charge of each county to find out the best way to go to address this problem that is affecting the provision of health services in this country.

Madam Temporary Speaker, with these few or many remarks, I beg to support.

The Temporary Speaker (Sen. Ongoro): The Senate Majority Chief Whip, Sen. Beatrice Elachi.

Sen. Elachi: Madam Temporary Speaker, I also rise to support the Motion. Indeed, the health sector is a devolved function. The moment you devolve a function, bringing it back to the national Government becomes challenging.

I know that this is a process that we started last year. We have had many challenges in agreeing with the practitioners. As we move on, I want to appreciate the counties. I know we have counties that are doing well in terms of building facilities. In this Senate, maybe we need to have a clear report on the status of health facilities in the counties.

Having said that, we know that it has been a challenge for us to request the national Government to retain the remuneration of doctors at the national level. This is something that this House should follow up on. When we sit together, as Members of the different committees that are involved, the Committee of Devolved Government and the Committee on Health, this should be one of our proposals. I know that the health practitioners were challenging the way promotions are done, following up on pensions and how to ensure that they are still appreciated in the work that they do. We still have a challenge of doctors in terms of their numbers. We know that we have fewer doctors. The Senate should guide the country because this is the House that ensures that functions are devolved with the resources required.

We have different challenges within the health sector. We have challenges facing clinical officers, nurses, doctors and the different skilled practitioners. As we move on, I know that our Government will ensure that we bring in critical facilities that will enable practitioners to have a better environment to work. However, as they do that, we urge the Government to ensure that their remuneration is taken care of so that we do not have different facilities in the country suffering.

We also need to go beyond that and ask ourselves, as Senate, how we will audit the different dispensaries that we have. I know that through the CDF and the devolved funds, we have many dispensaries that have been built. Do we have facilities and medical practitioners? This is something that this House must look at. As we complete the year, the Motion will come in very handy.

The year is coming to an end and we need to do an audit. We need to ask ourselves, by the time we were devolving the health sector, how many medical practitioners we had. We also need to find out, in the time that we have faced challenges, how many have moved to the private sector and what shortage we have. We have a huge shortage in the health sector. The Government had promised to employ more. I think it is this Motion that we need to follow up. Can we urge the Government, as it increases the number of teachers, to also look at the health sector? We need to move on knowing that

within the service sectors of health, schools and the police, we have a balance that takes care of the local *mwanaanchi* that we are trying to serve.

The biggest challenge we face now is to ask the Senate and the National Assembly to look at their reports and harmonise them. It is important for the sector to agree that once in a while the two Committees can sit together and give a way forward to Parliament as an institution in the challenges it faces. The House will then have knowledge on how to deal with the issue.

We may push and urge but at times we do not even know what a report is saying and whether the things in it are good or bad. It is always good, in the service sectors to try and liaise and work together in both Houses so that when we have a report, we all agree on one issue and how to assist Kenyans.

We also need to ask ourselves whether the National Assembly has, indeed, given a good allocation of funds this time round to the health sector. You will find that we give money but the money goes to administration and policy work. The reason you find doctors and health practitioners being very angry is because most resources are left somewhere hanging. They then have to ask themselves how they should work.

We need to thank God that today Kenya is safe from Ebola. I want to thank the Committee on Health that will go to the borders tomorrow to look at how prepared we are so that they also bring us a report. They will tell us whether we have doctors, whether they are skilled and if they have been trained. I know the Committee on Devolved Government will stand firm and say that health matters have been devolved. It is the Senate to ask how we should assist medical practitioners to ensure that their remuneration package remains the way it has been, they will still get their annual increments and that their pensions are safeguarded.

I know that by the time we agreed with the Governors to devolve the health sector, those are the questions that Senators were asking. How do you safeguard practitioners not to feel vulnerable within their duties especially when it comes to their pay? I know that we played a lot of politics. I know that at times, we are engaged in a volatile manner with the governors. However, at the end, we all agreed that since we had devolved the function, it was for us to unpack and debunk the functions in an acceptable way.

Therefore, as I support, I hope that the Mover of the Motion will follow up on this matter. We must get a clear report that shows us, right from the time we devolved the health sector to date, its achievements and challenges. I know that in the Committee on Devolved Governments, we have ensured that we have consultancy that we have given out. We will have a clear report on the same. We are doing this for all the sectors that were devolved under the Fourth Schedule. I hope that this will help the House to understand where we are and our challenges. We have many challenges in the health sector.

I know that we have governors who are not following the law. Some of them have decided to reallocate the same monies for health to a different sector which is another issue that we need to deal with as we look into the reports. The issue of drugs is very critical in all hospitals at the moment. The facilities are also wanting. However, we have some which are okay.

I know that the District Hospital in Mandera is doing very well. They have employed more than 22 doctors who are doing very well. This is something that we need to look into. We need to look at each county and how they are moving on. The counties that will suffer – where we have a huge number of practitioners – are the ones which were operating under provinces. Those hospitals are really suffering. When you visit the referral hospitals, you will find that there is a lot that is wanting.

Sen. Karaba: Thank you, Madam Temporary Speaker for allowing me to contribute in support of this very timely Motion. This Motion is very emotional in the sense that we are discussing a life of a person and the state in which Kenyans are living in today. We are discussing the desperate attempts by the Government to rescue those who are sick and they cannot be rescued.

The Ministry of Health ranks among the service Ministries just like the Ministry of Education. For the Ministry of Education not to have been devolved, it means that there was something that was not considered. We should have even devolved national schools to counties which cannot afford to maintain the services. Provincial schools should have been fitted in the former districts which would not have coped.

When the Transition Authority (TA) devolved the health services to the counties, they should have considered many things before that decision was made.

Madam Temporary Speaker, there are many hospitals in pathetic conditions. I can quote Kerugoya Hospital in my county. If you go to that hospital, you will find patients sharing beds while others are sleeping on the floor. It does not matter whether one is coughing and another one is smiling; they are all dumped together. Some hospitals do not have hospital uniforms and patients sleep without blankets. The wards are very cold, particularly during the months of June and July. Some of them do not have driers to dry their clothes and so, they sleep in wet clothes. These hospitals should at least be elevated to the level of the former district hospitals. We should implement the terms of this Motion to the letter so that we save our people who are suffering. Those of us who are in Nairobi are at least better off. How about those people living in areas which are very far from the capital City?

The other weekend 20 *askaris* were killed and to airlift even one of them was a problem. I know not all of them were going to die because of gunshots. At least a helicopter should have been provided to go and airlift the officers. We could even have hired the African Air Rescue (AAR) helicopters. We do not even have anything that can save somebody from a marauding lion in north eastern Kenya or in the Mara.

If somebody were to be bitten by a snake somewhere in Tana River, he or she cannot be airlifted because those facilities are not there. Why are we not serious about our people? Our people depend on what we legislate in this House and that is the reason why this Motion has come so that we can exonerate ourselves from the blame and tell the Government that there is need to think about this problem.

Madam Temporary Speaker, we have medical personnel who have been trained using a lot of Government funds. To train a doctor, it costs more than Kshs5 million at the University of Nairobi, but still they are not enough because there are so many people who need the services of doctors. These people will go for greener pastures because they have also suffered to become what they are and so they will not go to wherever the TA

would prefer them to be, but offer services elsewhere. They will go to where employment is more lucrative, for example, overseas hospitals where the remuneration is more attractive than here in Kenya.

The doctors and nurses work under very risky circumstances and yet we do not compensate them. They can easily be infected with any kind of disease while handling their patients, because they are the first ones who handle the patients. Before a patient dies for a particular disease, the nurse or doctor would have come into contact with them. For example, if there was Ebola like it is in West Africa, the first person to get into contact with this patient is the doctor. So, if there is any chance of another person dying, it would be the doctor. That is why they are asking for better remuneration and that is why we also need to protect them.

Madam Temporary Speaker, there are doctors and nurses who deserve to be promoted. Some of them are supposed to be at the rank of chief nursing officers and maybe we only have one in Kenya. How do we get somebody to progress from a district hospital all the way to the rank of a Director of Medical Services in a county? It has become impossible. Therefore, this is like killing a profession because these doctors may decide to leave and it is only the country which will suffer because we shall lack these medics.

How many people are going to India on a daily basis? I have heard of very many people from my county. India has become a destination of our sick people because Kenya cannot afford to even provide a dialysis machine which only costs about Kshs3 million. I am told the Kisii Medical Hospital bought one. We should emphasize that every county must have one life supporting machine. We should make it compulsory that every hospital in the county should have certain requirements before it is recognized. It should also have an ambulance which should be mobile. All these facilities are lacking in our hospitals and in the end our people die.

In fact, death from illnesses has become very easy. We are losing people after short illnesses. That is why the obituaries pages in our daily newspapers are always full because there are many people who are dying because of lack of practitioners. Most of our medical practitioners are moving to other countries in the East African region; Tanzania and Uganda, just because we cannot compensate them adequately. This will not happen without devolving enough funds to the counties. This is a very sad situation. I would recommend that if there was any devolution to take place in the health sector, we should have first devolved the dispensaries to see how the counties would have coped because those are the ones which are located far afield.

They will now be able to advise whether they can advance to health centres, district hospitals, Level Five Hospitals and so on. This is so that we can afford to treat people where they are supposed to be treated. Without that, we will be going around the point which will not help us.

The Temporary Speaker (Sen. Ongoro): Order. Your time is up. We are really digital and our time keeping is perfect. Do you support the Motion?

Sen. Karaba: I support, Madam Temporary Speaker, Sir. However, the timer did not show the red colour.

The Temporary Speaker (Sen. Ongoro): It did, you were not looking.

Sen. Mvita Mshenga Kisasa, you have the floor.

Sen. Kisasa: Asante sana, Bi Spika wa Muda. Kwanza, naomba kutoa hongera zangu kwa Mama wa Taifa, Bi Margaret Kenyatta, kwa kazi nzuri anayofanya. Nia yake hasa ni kuona kuwa tunaishi vizuri na hakuna vifo vinavyotokana na maradhi yoyote. Anataka kupunguza vifo hivi virudi chini kabisa.

Pia, naomba kutoa shukurani kwa kamati ambayo niko, ya Afya. Kama unavyojua kesho tunaenda safari ili tujue hali ya kupambana na ugonjwa wa Ebola kwenye mipaka iko namna gani. Maoni yangu pia kwa viongozi ambao tuko hapa ni je: Wangapi ambao ukienda nyumbani, labda wapitia pale hospitali? Ni kama tumeacha zile hospitali bila mwelekeo. Ukienda pale kama kiongozi, wale wauguzi wanajua viongozi wetu watakuja. Kama ni usafi, utawekwa wa hali ya juu. Ni wajibu wetu wote kama viongozi tuige mfanao wa Mama wa Taifa na Kamati hii ya Afya. Lazima, kama umeenda nyumbani, upitie uangalie ni nini kinaendelea katika hospitali hizo na uchunguze vile wagonjwa wanatibiwa.

Ukienda nchi kama Botswana, utaona ya kuwa hospitali ambazo zina vifaa muhimu, yaani zina kila kitu kinachotakikana katika uuguzi ni zile ambazo ni za mwananchi wa kawaida. Hapa kwetu, sote tunaenda kwenye hospitali za mabwenyenye. Ni jambo la kuhuzunisha sana. Pia, nilikuwa na maoni yangu kwamba hizi hospitali zinazoitwa Level 5

zingefanywa za wanafunzi kujifunza. Utaona ya kwamba wanafunzi hawa wanapelekwa kwa hospitali ndogo ndogo. Utaona ya kuwa mwanafunzi yeyote ambaye anasomea kiwango fulani cha udaktari ama uuguzi hafuati njia mkato. Utaona kuna nidhamu ya hali juu kwa sababu kuna mwanafunzi ambaye anasomea pale. Pia, utaona kuwa hawakimbi pale kwa sababu kuna mtu ambaye anawachunga. Utapata ya kwamba hatutahitaji pesa nyingi sana kwa sababu wao wenyewe hupewa kiwango kidogo cha pesa kama wanafunzi na tutakuwa na wanafunzi wa kila kiwango; wa mwaka wa kwanza, pili mpaka wa tatu. Hiyo hospitali itakuwa na wauguzi moja kwa moja.

Bi. Spika wa Muda, tukiangalia mishahara ya wauguz hawa ni duni sana. Huwezi kufanya kazi na hujui utalipwa lini na utalipa nyumba yako lini au utapanda matatu uende kazini na pesa gani. Yaani una ishi tuu. Ukiangalia hakuna kitu ambacho kiko sawa. Ni dhuluma moja kwa moja. Ukiangalia mishahara hautoshi, ni duni na hujui utaupata lini. Ukiangalia kazini, pia kama muuguzi hauna vifaa. Hauna kitu cha kujikinga na maradhi yoyote, mradi ni shagala bagala---

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. Did you hear the Kiswahili that the Senator has used in the House, "Shagala Bagala"? I do not know whether that is part of Kiswahili or English. What is it?

The Temporary Speaker (Sen. Ongoro): Sen. Kisasa, you choose to address us in Kiswahili. We have a problem with that word, is it a Kiswahili word?

Sen. Kisasa: Bi Spika wa Muda, hilo ni tamko la Kiswahili ambalo lina maana kuwa hakuna mwelekeo; kitu ambacho hakiangaliwi au hakiwekwi inavyotakikana kiwe. Ndiyo ninasema "Shagala bagala."

Hon. Senators: Sawa kabisa!

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, that is a Kiswahili word. You need to update your spoken Kiswahili.

Sen. Karaba: All right, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Proceed, Sen. Kisasa.

Sen. Kisasa: Bi. Spika wa Muda, tukiangalia yote haya, utaona ya kwamba tuna hitaji uhusiano ama ushirikiano kwenye kaunti na Serikali kuu. Tusieme zile hospitali za kaunti zitaachiwa tu kaunti. Lazima tuwe na ushirikiano kabisa. Kama nilivyosema hapo awali, lazima tuwe tunapitia kwenye hospitali hizi ili tuwaangalie wagonjwa kama viongozi. Wakati mwingine, unaweza kufungwa bandeji ili uone wale wauguzi wanafanya kazi gani. Pia, unaweza kuvaa bui bui ili wasikutambue na kwa kufanya hivyo, utaweza kujua jinsi watu wako wanavyotibiwa.

Ni shida kubwa ambayo tuko nayo lakini kama viongozi tukiungana na ule mwelekeo wa Mama wa Taifa, itakuwa ni vizuri kwa sababu mwelekeo huu umepunga Wakenya wengi. Tukiwa na wananchi ambao hawangaliwi vizuri ki matibabu tutakuwa tumepoteza kwa sababu kazi pia haitakuwa haifanyiki. Mtu akienda kazini siku mbili akiwa mgonjwa, mahali pa kukimbilia ni hospitali. Lakini ukienda hospitali, hautapata madawa. Ukienda hospitali utabebwa na ambulansi ambayo itapiga kelele kote njiani na ukifika kule hakuna mtu wa kukupokea. Tunafaa tuone ni nini tunaweza kufanya katika hospitali zetu. Kama nilivyosema hapo awali, ningependekza watoto wasomee humu kwetu huku wakiwahudumiwa watu wetu. Ajira yao itakuwa chini si kama ya mtu ambaye amefuzu.

Tukiangalia, utaona kwamba wauguzi wanadhulumiwa sana. Utakuta mtu amezalisha hata watu 40 kwa siku na anayefaidika ni daktari. Kuna dhuluma ambayo *nurses* hawapati chochote. Daktari anabadilishi magari lakini *nurse* hata kiatu hawezi kubadilisha.

Kwa hayo, nauunga Hoja hii mkono.

Sen. G. G. Kariuki: Thank you, Madam Temporary Speaker. This is a very straight forward Motion although it is stressing more on private practitioners and doctors without talking of the services. You can have very good doctors or personnel, but they may not have facilities that will give them the ability to do what they are supposed to do. The issue of services ought to have been part of this Motion. If doctors are leaving the county governments to go to private hospitals, personally I have no problem with that.

The reason for them to find opportunities in private hospitals is because of the shortage of doctors. If we have more doctors in this country, doctors will work better than they are working today. The current shortage has created a lot of excuses. That is what the Government and the county governments need to look at. They need to make sure that the shortage of doctors is no longer allowed to go as it is. The purpose of educating men and women is to serve the whole nation and even outside the nation.

There can never be boundaries between Kenya and Uganda for professionals. If somebody gets a well paying job in Uganda, he has a right to cross the border. Nobody is trained because he wants to die for you or for the members of the public; such people are very few, if any. Medical practitioners are employed and they are just like any other professionals. So, we need to find out why we are in this situation. We should ask ourselves a few questions; before devolution, did we have enough doctors? The way we are talking now, it is as if a situation has arisen which no one knew about.

But I want to assure you that we had this problem where you and I come from; we never had sufficient medical personnel. It is not just medical personnel, even the structures to give these people the opportunity to treat men and women were not sufficient. But now, in the same area we have come from, we find three men or women in one hospital bed waiting to be helped. This is a major issue than the doctors themselves. We need to facilitate the few doctors that we have; they need to feel comfortable with the job they are doing. But if you are a doctor, you go to a hospital and you are treating three patients in one bed, then you will find yourself out of place because you were not trained to work like that.

Therefore, Madam Temporary Speaker, this Motion is quite clear. The Mover of the Motion is calling upon the Senate and the national Government to urgently address the concerns of medical practitioners to avert the looming breakdown of health services in counties. Whatever you do, these people will move on and do what they want to do. We have to create some financial motivation, facilities and benefits to attract these medical personnel. Unless we do that, irrespective of the improvements we do in our rural areas, you will never find them. For example, where I come from, we have been talking of doctors being posted there only to find that it is not possible because they are not there. Those who are there are employed by private hospitals, but even if they go to private hospitals, who do they treat? It is the people. The only problem there is the amount of money they are required to pay. Otherwise, if we had as many as we can afford, we can allow those who want to go to private hospitals to go because they will get a better income or a good working environment and you cannot stop it. I will not tell my son not to go to Uganda to look for a job if there was a better attraction.

So, Madam Temporary Speaker, we need to ask ourselves several questions when we are dealing with this matter. Let us always speak as if we belong to this country. But most of the time when we are talking, it is like we have just come from far away from this country and we have found a lot of problems which did not exist before. All these problems have always been there and they will continue to be there until the Government decides to prioritize what is important, be it the medical services, the security or whatever other area which appears to be more important than the other. It is this position that will require the Government to take advantage of what they think is right in terms of priorities.

We need to ask ourselves – because even in devolution, the problems were there – what are we planning to do as the Senate? Do we have any capacity as the Senate? Do we have total ability to influence these people if we have to pass a Motion to call upon the Government to do exactly what we are trying to say? But when you are saying that the county governments and the national Government to co-ordinate their efforts so that they can resolve these problems, they did not wait for this Motion to do that; they have problems. Definitely, they have a lot of problems, especially where I come from.

Some hospitals have no medicine even today and it is not this Motion or anything else which is going to give us medicine; it is the management. We have a big problem in terms of wastage, especially of medicine. A lot needs to be done so that the public can feel protected. But the way things are, I would – if I was in a position to do that – want to make things more effective. We can call upon, we can urge, we can find

some resolution, for example, by a Committee formed by this Senate to go and visit these areas. We have had these Committees in place; we should ask ourselves: What do these Committees do if we have to appoint another Committee or if we have to urge the Government to talk with the county governments, yet we are there representing the county governments? We should initiate dialogue and make sure that we make it work, especially our Committee on Health, because this is their job. But why do we run away from our responsibilities all the time? We just want to come here and make some statements.

Let us find a way of talking to the public about serious matters like this one. This is a challenge to the Committee of the Senate which deals with health, if it is there. Because if it was there, it should have stood up and told us “this is what we have done; we have taken the following steps.” But now, they are just there; we have a Committee, we have the Senate and yet we are talking of urging somebody else! I do not know where we are heading to; we have to start being serious. I know---

The Temporary Speaker (Sen. Ongoro): Senator, your time is up. Do you support the Motion?

Sen. G.G. Kariuki: Madam Temporary Speaker, I beg to support the Motion.

The Temporary Speaker (Sen. Ongoro): I do not see any further requests to contribute, so I call upon the Mover to reply.

Sen. Ndiema: Thank you, Madam Temporary Speaker. I beg to reply. First of all, I want to really thank the Senators who have contributed to this Motion. They have brought out all the issues that are facing our hospitals in general and more specifically, the problems facing the health personnel, including doctors, nurses, clinical officers and all cadres of workers in the hospitals.

Madam Temporary Speaker, I am glad that those who have spoken have all agreed that there is a problem that should be addressed by both levels of Government. The real challenges that have come out have to do with finances. The county governments, with the allocations that they currently have, are not able to provide services including proper remuneration to their staff. This is true because as we are talking some counties have not been able to pay their personnel on time.

I am aware of a hospital in my county where the temporary staff - people who are at the low level in terms of staffing - have gone without salary for some months because of the limited finances that are available. If temporary staff at the low levels cannot be managed or remunerated, what about the specialists in those areas? Very soon, there will be a problem.

Madam Temporary Speaker, under the Maputo Declaration, agriculture is supposed to get 10 per cent of the national budget. There is a similar declaration concerning health where we have undertaken to provide 15 per cent. The two functions, which are devolved in this country, according to the Constitution should be getting 25 per cent of the national budget. We are all aware that the total budget going to the counties for all functions is nowhere near there because whatever is allocated is also shared with other departments, Ministries or functions and the administrative work of the county. Therefore, it is important that allocations to counties be enhanced so that health services do not suffer.

Madam Temporary Speaker, the issue of personnel has also come up. Most counties do not have adequate personnel especially at the specialist level. We, in the Senate have resolved that every county should have a Level 5 hospital. That is what we are all aiming to move towards. In Kitale and Trans Nzoia, we have resolved to move to that direction. However, we may have physical facilities, but then where shall we get personnel if they are not transferrable freely from other institutions?

As of now, counties are independent entities. They recruit and if you have to leave your post, you have to resign to be able to go and work in another county. What this Motion seeks is that there should be flexibility in movement of health personnel like specialists, doctors and so forth between counties and also with the national Government. Let this personnel be a shared resource. In the event that we have an outbreak of a disease and God forbid, like is happening in other countries now, and we may want to move staff immediately from county "A" which is not affected to county "B" which is affected, how do we do it? There is no formula or provision currently.

What this Motion sought is that administration of health staff must retain some national approach. The two levels of government should be able to discuss and agree on modalities. I am aware, that this function is devolved. This Motion does not seek to centralize provision of services. We recognize that the function is devolved. However, there is a way under Article 187 of the Constitution where a function which can well be performed by another level of Government can be done by that other level on behalf of the other level.

What we are saying here is, administration of the health personnel, even if health is devolved, remain a national function. They should be paid at the national level, their training at the national level, but deployed to counties. Day to day administration can be done by the counties and they can, therefore, be transferrable. That way, they are assured of pension and promotion to the level of Director of Medical Services.

Madam Temporary Speaker, the other issue is that of shortage of personnel in the counties. The way they are moving away from Government employment is a serious threat to the health of our people. Articles 26 and 47 of our Constitution guarantee that every person has a right to health. Therefore, what we are trying to do here is to ensure that health facilities are provided. I take the challenge that we, as the Senate, should go further and perhaps prescribe the method or a way in which the counties and the national Government should work together in this respect. However, I thought that at this initial stage, we can urge them, let them sit together and bring solutions because this is provided for in the Constitution.

We also note that at some stage, it may be necessary to have an independent commission just like the teachers have their own; the Teachers Service Commission (TSC), let there be, for example, the Health Services Commission (HSC) to manage matters to do with health personnel. However, we have not reached that stage. Let them start using Articles 187 and 189(c) as mentioned by Sen. Wangari which requires that the two levels of government can liaise for the purpose of exchanging information, coordinating policies, administration and enhancing capacity.

With those few remarks, Madam Temporary Speaker, Sir, I appreciate the contribution by Members and the support.

I beg to move.

The Temporary Speaker (Sen. Ongoro): I want to state that I have looked at this Motion and I have come to the conclusion that it does not affect counties to the extent that it does not confer any undue advantage on any one county. I will therefore proceed to put the question.

(Question put and agreed to)

ESTABLISHMENT OF NATIONAL AIDS CONTROL
COUNCIL OFFICES IN ALL COUNTIES

THAT, cognizant that the core mandate of the National AIDS Control Council (NACC) is to develop strategies, policies and guidelines relevant to prevention and control of HIV and AIDS in Kenya; noting that the operational structure of NACC has not been aligned to the Constitution of Kenya, 2010; acknowledging the objects of devolution as set out under Article 174 of the Constitution; recognizing that under the Fourth Schedule to the constitution the health function has been devolved except for the health policy and referral hospitals; concerned that an estimated 1.2 million Kenyans are infected with HIV/AIDS with approximately 100,000 persons being infected annually; recognizing the need to achieve an “AIDS” free society’ by stepping up the fight against the pandemic at the County level, the Senate urges the National Government to set up National AIDS Control Council (NACC) County offices in all the County headquarters with the National headquarters providing overall co-ordination and that the resources allocated for the fight against HIV/AIDS be disbursed and managed at the County level.

The Temporary Speaker (Sen. Ongoro): Sen. Leshore communicated to the Chair that he had been summoned to attend a Parliamentary Service Commission (PSC) meeting and, therefore, this Motion has been deferred.

(Motion deferred)

ADOPTION OF REPORT OF THE AD HOC
COMMITTEE ON LEGISLATION ON HARAMBEE

THAT, the Senate adopts the Report of the Ad Hoc Committee on Legislation on *Harambee* laid on the Table of the Senate on Tuesday, 19th June, 2014.

The Temporary Speaker (Sen. Ongoro): This Sen. Anyang’-Nyong’o’s Motion, and since he is not in the House, it is deferred.

(Motion deferred)

ADOPTION OF THE REPORT OF THE AD HOC COMMITTEE ON
THE ESTABLISHMENT OF THE PUBLIC COMPENSATION BUREAUS

Sen. Obure: Madam Temporary Speaker, Sir, I beg to move:-

THAT, the Senate notes and adopts the report of the Ad Hoc Committee on the establishment of the Public Compensation Bureau laid on the Table of the House on Wednesday, 16th July, 2014.

Madam Temporary Speaker, hon. Senators will recall that when this Motion for the establishment of a one stop Public Compensation Bureau in each county was moved in this House in July last year, it received overwhelming support from the House because of two major reasons among others. First, Senators as representatives of the people are familiar with the many cases around the country in which citizens are denied access to their rights. They are also denied access to their dues and entitlements. Such dues and entitlements include retirement benefits, court awards, compensation awarded during accidents, occasioning injuries or death to employees at their work places, awards given by courts for wrongful dismissal from jobs; which included payment of insurance claims even after determination through a proper judicial process and many other such claims.

The second reason why the Motion received support from Senators was because we recognized the need to enforce the provisions of the 2010 Constitution and the Bill of Rights which prohibit ill treatment of citizens. We are all aware that we are under obligation as citizens to promote dignity, security and safety of all Kenyans at all times.

Hon. Senators also appreciated that ill treatment is not only limited to physical torture and illegal detention. Indeed, any action which has the effect of subjecting citizens to physical torture, financial distress, physical strain or social deprivation constitute a serious violation of basic rights of citizens because they lead to stress and agony and disrupt families and their social life. They are often accompanied by crippling indebtedness and long term misery.

Madam Temporary Speaker, hon. Senators will also recall that even before the formation of this ad hoc Committee to address this very important matter, there were numerous stories highlighted in the media of individuals who were denied access to their benefits and were compelled to travel long distances to seek justice through the office of the Commissioner for Administrative Justice generally referred to as the *Ombudsman* here in Nairobi. This justice was often delayed for these individuals and in other cases never dispensed at all, with many people having to wait for decades to receive their benefits.

The need is, therefore, overdue for the services of a claims office to be devolved to the counties to assist our people at centres close to where they live. It was, therefore, the position of the House of Senate that the long delays experienced in settling valid claims were unacceptable because such claims traumatize our people and subject them to humiliating and demeaning experiences. The Senate then proceeded to form a Select Committee with a specific mandate to work on a legislative instrument which will create a bureau in the county for the purpose of facilitating settlement of claims and other dues owed to citizens. Members of that Select Committee were as follows:-

Sen. Chris Obure	-	Chairperson
Sen. Fatuma Dullo	-	Vice Chairperson
Sen. (Prof.) Peter Anyang'-Nyong'o	-	Member
Sen. Stephen Sang	-	Member
Sen. Beatrice Elachi	-	Member
Sen. Amos Wako`	-	Member
Sen. (Dr.) Agnes Zani	-	Member
Sen. Paul K. Wamatangi	-	Member

Sen. G.G. Kariuki	-	Member
Sen. G. Otieno Kajwang	-	Member
Sen. Adirahman Hassan Ali	-	Member
Sen. James Orengo	-	Member
Sen. David Musila	-	Member
Sen. Judith Sijeny	-	Member

The formation of this *ad hoc* Committee provided an opportunity for Members of the Committee to exchange views on cross cutting issues with regard to matters of compensation and to engage in dialogue with stakeholders including the office of the Commission for Administrative Justice, the Central Organization of Trade Unions (COTU), the management of Kenya National Social Security Fund (NSSF) and many other members.

I wish to point out, that although the Committee requested for written submissions from the Director of Pensions, the Retirement Benefits Authority, the Office of the Public Trustee and the State Law Office, we did not receive any response. This is particularly regrettable because these offices are among the most notorious offenders. This report is therefore in effect a record of the activities of the Select Committee on the establishment of Public Compensation Bureau in each of our 47 counties in the Republic.

Madam Temporary Speaker, the Committee has also worked on a proposed draft Bill which is attached. The objective of that draft Bill is to address the various issues and challenges which were identified by the Committee. The Bill seeks to be all inclusive with regard to participation of the various stakeholders. It seeks to eliminate bureaucratic and red tape technicalities which prevent beneficiaries from receiving their entitlements promptly. It also seeks to compel institutions to deliver services by the date or time stipulated in the law or under any regulations made under the law. It also seeks to incorporate social welfare claims in the proposed legislation.

Madam Temporary Speaker, the Bill which will be available to Members, is fairly simple and straightforward. It is intended to be an amendment to the Inter-Governmental Relations Bill of 2013. In that Draft Bill, you will find a number of definitions, including definition of the bureau we intend to establish, a description or a definition of the kind of claims we are expecting the bureaus to deal with, and basically describing the claims as:-

- (a) retirement benefits;
- (b) social security benefits;
- (c) benefits relating to accidents or injuries sustained at work places;
- (d) benefits arising from insurance compensation matters;

- (e) compensation for death, injury or damage occasioned by wildlife;
 - (f) benefits emanating from irregular dismissals from employment;
- and such other benefits, for example, those which relate to unsettled court awards.

Madam Temporary Speaker, where a proper court with due jurisdiction has made a determination and the award is never settled or never paid, these are the kind of claims that we expect the bureaus at each of our 47 counties to deal with. They should help citizens with the view to ensuring that those claims are paid.

Madam Temporary Speaker, having highlighted some of the key features of the Bill, I want to emphasise that the Draft Bill then proceeds to establish the compensation bureaus in each county. The Bill is proposing that the bureaus will be made of membership from various sectors. The Chairperson of the Commission on Administrative Justice or his representative will be the Chairperson. Then one person nominated by the Governor of the County shall be the Deputy Chairperson. One person nominated by the County Assembly Service Board.

We are also proposing that the leader of majority party or coalition of parties in the county assembly becomes a member of that bureau. The leader of the minority party or the coalition of parties in the county assembly also becomes a member. The Chairperson of the *Maendeleo Ya Wanawake* Organisation in the county will sit in this Committee because this group of people is greatly affected by being denied their benefits.

Then we have one representative of the Central Organisation of Trade Union (COTU) because their membership is greatly affected at their work places, one public officer nominated by the Attorney-General, one representative of the Kenya National Union of Teachers (KNUT) and two persons of either gender, nominated by the bureau to represent persons living with disabilities. The Secretary of the County Service Board will also be a member; he or she will be the chief executive officer of the bureau and the secretary to the bureau but will not have any voting right. He or she will simply provide secretarial services.

We have also outlined the functions of the bureau. They are many but very precise. We have provided for offences and there are various sanctions which we have proposed. The idea is to ensure that claims are speedily dealt with and paid when they fall due. We have also looked at the functions of the Commission on Administrative Justice and the Committee felt very strongly that the services of the *Ombudsman* should be devolved to the counties. This was considered to be of paramount importance as the cost of travel to Nairobi to seek justice has become prohibitive.

The Committee further recommends in this report that the Commission on Administrative Justice whose mandate is wide and critical for the realization of justice for all Kenyans be allocated more resources to enable it to spread its services to all the counties. Additional resources will in no doubt strengthen the Commission and enable it to discharge its mandate more effectively.

Madam speaker, I take this opportunity to thank Members of the *ad hoc* Committee for their useful and invaluable contribution. We are also grateful for the technical and logistical support we obtained from the Clerk of the Senate and in particular the directors of committee and legal services.

Finally, I thank Mr. Speaker for extending the time of the *ad hoc* Committee to enable it to exhaustively consider all the weighty matters before it. The Committee is pleased to have completed this assignment on the basis of its mandate. Hon Senators are requested to familiarize themselves with the Bill. We look forward to the day when the Bill will be enacted into law to provide relief to Kenyans whose benefits and entitlements have been denied without good course. We also look forward to assist---

The Temporary Speaker (Sen. Ongoro): Order Senator. Take note that this is a Committee report and it falls under the provisions of Standing Order No. 100. As a Mover, you have one hour. If you wish to continue with your statement when we resume, you still have 42 minutes.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon Senators, it is now time to adjourn the Senate. The time being 6.30 p.m, the business of the Senate stands adjourned until tomorrow, Thursday 6th November, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.